

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: August 05, 2021

CASE NO(S): PL200309

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

Applicant and Appellant:	Holmes Avenue Ltd.
Subject:	Request to amend the Official Plan - Refusal of the City of Toronto to adopt the requested amendment
Existing Designation:	The site is designated Mixed Use Areas
Proposed Designated:	To amend the provisions of the Secondary Plan to add a site-specific policy that includes permissions for a 17- storey residential building,
Purpose:	To permit a 17-storey residential building (height of 52.75 metres) with a total residential gross floor area of 10,717 m ² and an overall density of 7.25 times the lot area
Property Address/Description:	35-39 Holmes Avenue
Municipality:	City of Toronto
Approval Authority File No.:	18 104519 NNY 23 OZ
OLT Case No.:	PL200309
OLT File No.:	PL200309
OLT Case Name:	Holmes Avenue Ltd. 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:	Holmes Avenue Ltd.
Subject:	Application to amend Zoning By-law No. 7625 - Refusal of City of Toronto
Existing Zoning:	"One Family Detached Dwelling Fourth Density Zone (R4)"
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit a 17-storey residential building (height of 52.75 metres) with a total residential gross floor area of 10,717 m ² and an overall density of

Property Address/Description:	7.25 times the lot area 35-39 Holmes Avenue
Municipality:	City of Toronto
Municipality File No.:	18 104519 NNY 23 OZ
OLT Case No.:	PL200309
OLT File No.:	PL200310

Heard: July 5 to July 16, 2021 via video hearing

APPEARANCES:

Parties

Holmes Avenue Ltd.

City of Toronto

Counsel

Christopher Tanzola

Alexander Suriano
Lauren Pinder

DECISION DELIVERED BY T. PREVEDEL AND M. RUSSO AND INTERIM ORDER OF THE TRIBUNAL

[1] The matter before the Tribunal is an appeal under s. 22(7) and 34(11) of the *Planning Act* (the “Act”) from the City’s refusal of an application for a Zoning By-law Amendment (“ZBA”) and Official Plan Amendment (“OPA”) by Holmes Avenue Ltd. (the “Appellant”).

[2] The Appellant proposes a 17-storey residential building comprised of 154 residential units at 35, 37 and 39 Holmes Avenue (the “Subject Site”), with a gross floor area of 10,717 square metres.

NEIGHBOURHOOD CONTEXT

[3] The Subject Site is generally located within the southeast quadrant of Yonge Street and Finch Avenue East, just east of Doris Avenue which was conceived originally as part of a ring road system as a transportation alternative for the *North York Centre*.

[4] The property has direct frontage along the south side of Holmes Avenue, which runs in an east-west direction from Yonge Street and terminates in a cul-de-sac just east of the Subject Site, with pedestrian connections easterly through a green space to Kenneth Avenue. The intent of terminating Holmes Avenue just west of Kenneth Avenue was to mitigate traffic infiltration from North York Centre into the surrounding low-density neighbourhoods.

[5] The site is an assemblage of three former lots, namely 35, 37 and 39 Holmes Avenue, with a total area of 2,376.3 square metres. The former 35 Holmes Avenue property currently acts as a driveway access on easement for the 28-storey condominium located at 60-62 Byng Avenue to the southwest. The site is generally rectangular in shape and contains an irregular lot depth as a result of the angle of Holmes Avenue. While the frontage on Holmes Avenue is 46.01 metres, the lot depth ranges from 52.67 metres on the west to 49.4 metres on the east.

[6] Kenneth Avenue, which runs north and south, is the eastern boundary of the North York Centre, with the built form westerly towards Yonge Street increasing in height and density and the area to the east remaining as a stable neighbourhood.

[7] Directly east of the Subject Site is 420 to 442 Kenneth Avenue, a block of three-story townhouses oriented towards Kenneth Avenue with a private Mews facing west.

[8] Directly north of the Subject Site on the north side of Holmes Avenue is a two-storey single detached dwelling and a four-storey townhouse development which was recently constructed and occupied. The town houses are organized into two blocks above and below grade parking with the western bloc presenting a side yard condition and vehicular access ramp to Holmes Avenue. The eastern bloc of town houses are in a back to back configuration similar to those directly east of the Subject Site fronting both Kenneth Avenue and an internal private Mews area.

[9] To the immediate west of the Subject Site is 33 Holmes Avenue, a single-family dwelling of similar size to that of the original underlying lots that originally occupied the

south side of the street. From this home westerly are two remnant land parcels owned by the City and currently form part of a City-wide Greenspace System. The remnant parcels were created as a result of land expropriation by the City for the construction of Doris Avenue and are evident all along Doris Avenue on both sides. The resident of this property, Mr. Siew Bisnath, is a Participant at this Hearing and has expressed his concerns. This particular property will be discussed in more detail later in this Decision.

[10] To the immediate south of the Subject Site is 60-62 Byng Avenue, a 28- storey residential condominium sited at the corner of Doris Avenue and Byng Avenue with two story townhouses fronting Byng Avenue. Parking access is accommodated by way of an easement across 35 Holmes Avenue. The redevelopment of this property was permitted by City of Toronto By-law No. 744-2002 which amended the former North York General Zoning By-law No. 7625. 35 Holmes Avenue, which forms part of the Subject Site was included within the rezoning. Although this property was sold to the current Appellant, the density allocation remains with the condominium development at 60-62 Byng Avenue.

[11] The area east of Kenneth Avenue can be characterized as a low-rise residential area with single family dwellings being the predominant dwelling typology with interspersed townhouses fronting the east side of Kenneth Avenue and a mix of walk up apartments further east.

[12] West of Doris Avenue towards Yonge Street the built form transitions to primarily tall buildings increasing in height as one moves farther from the lower scale neighborhoods east of Kenneth Avenue. Along Yonge Street, tall buildings are the predominant form both within the existing and planned context.

[13] The Subject Site is presently occupied with a single detached dwelling on the east portion, on the lot municipally known as 39 Holmes Avenue. The property municipally known as 37 Holmes Avenue is currently vacant.

THE PROPOSAL

[14] The revised proposed development consists of a 17-storey residential building, 58.49 metres in height, with 154 units comprised of a three-story podium and a tower of 14 storeys oriented towards Holmes Avenue with two levels of underground parking.

[15] In total, 154 dwelling units are proposed for a total residential growth floor area of 10,717 square metres and a lot coverage of approximately 49.95% which preserves more than half of the site at 50.05% as open space.

[16] The three- storey podium is set back a minimum of 3.11 metres from the north property line, 7.58 metres from the east property line, 12.5 metres from the south property line and 13.53 metres from the west property line.

[17] All 14 storeys of the tower element maintain a consistent floor plate of 663.1 square metres.

[18] Of the 154 dwelling units, there are 107 one-bedroom units, 31 two-bedroom units and 16 three-bedroom units.

[19] Vehicular access is provided via a single access point off Holmes Avenue located at the western edge of the Subject Site. Access to an underground parking ramp is at the rear of the site which is screened from Holmes Avenue.

[20] A total of 90 underground parking spaces are proposed, including two car share spaces for an effective supply of 96 spaces. A total of 42 parking spaces are proposed on the first underground level consisting of 25 residential spaces plus the two carshare resident spaces and 15 visitor spaces. A total of 48 parking spaces are proposed on the second underground parking level, all of which serve as residential spaces

[21] A total of 116 bicycle parking spaces are provided as part of the proposed development. This includes 32 spaces on the second level, 53 spaces on the ground

level and 20 spaces in the first underground parking level for short term. Visitor bicycle parking of 11 spaces are provided on the ground level.

[22] With respect to amenity space, the proposed development provides a total of 669 square metres comprised of approximately 238 square metres of indoor amenities and 431 square metres of outdoor amenity space. A 204 square metre outdoor amenity space is proposed at grade along the eastern portion of the Subject Site. A 122 square metre landscaped outdoor amenity area is provided above the ramp at the rear of the building to cover the underground parking access which links to a contiguous 86 square metres of indoor amenity space within the interior of the building a secondary 104 square metre outdoor amenity area and contiguous in dormant amenity area of 118 square metres is also provided on the fourth floor on the northeast edge of the building which provides a more passive private amenity area

[23] Waste is collected within a wholly contained garbage handling room located on the ground floor of the proposed development

THE HEARING

[24] The Hearing of the appeal took place over the course of 10 days. The conduct of the Hearing was governed by a Procedural Order previously approved by the Tribunal on November 18, 2020 confirming Parties and Participants.

[25] The panel heard from eight witnesses on behalf of the Parties. All witnesses were qualified to provide expert evidence in their respective fields.

Appellant's Witnesses:

- Sean McGaffey Urban Design
- Kenneth Chan Transportation

- James Vafiades Landscape Architecture
- Andrew Ferancik Land Use Planning

City's Witnesses:

- Andrew Au Transportation
- Quinn Dunn Urban Forestry
- Swathika Anandan Urban Design
- Jenny Choi Land Use Planning

[26] Participant Statements were received from the Monet Condominium (60-62 Byng Avenue), Mr. Siew Bisnath as mentioned earlier, Ms. Lucy Cao, Mr. Yasoui Wang and Luis Yan Wang.

THE ISSUES

[27] The Issues List forming part of the Procedural Order governed the presentation of the evidence and the Hearing of these Appeals. From a policy context, the issues before the Tribunal require the general determinations of whether the proposed OPA and the proposed ZBA have sufficient regard to the Provincial interests listed in s. 2 of the *Planning Act*, is consistent with the Provincial Policy Statement, 2020 ("PPS"), conforms to the Growth Plan for the Greater Golden Horseshoe, 2019 ("Growth Plan"), conforms to the City's Official Plan ("OP"), conforms to the North York Centre Secondary Plan ("NYCSP") and in general, represents good planning and is in the public interest.

[28] At the outset of the Hearing, Mr. Tanzola advised the Tribunal that the Parties had reached an agreement on four of the Issues as follows:

Issue No. 15: Does the proposed development provide sufficient vehicular parking on site?

[29] The Appellant has agreed to provide a total of 90 parking spaces including two spaces for car share services (96 effective parking spaces). The Appellant has also agreed to a commitment for traffic demand measures and a contribution of \$50,000 towards a bicycle sharing initiative. As a result, this is no longer an issue.

Issues No. 17 and 18: Is there sufficient capacity to accommodate the proposed development (including water, sanitary and stormwater)? And would the cumulative impact of this and other developments at a similar density result in negative impacts on the existing servicing infrastructure within the North York Centre Plan area?

[30] The Parties have agreed that there is sufficient capacity in the existing infrastructure and that there will be no cumulative negative impacts.

Issue No. 19: On-site Parkland Conveyance

[31] The Parties have agreed to a cash-in-lieu contribution towards parkland as there is no practical opportunity for on-site parkland dedication.

[32] Mr. Suriano confirmed that the City was agreeable to removing the above four issues.

[33] As the evidence was presented over the course of the Hearing, it was noted by the panel that the key concerns raised by the City were the proposed density and massing of the application, the minimum setback requirements for the westerly tower face, the loss of five mature trees on the easterly boundary and the staff concerns regarding road and transit capacity as well as the lack of a pick up/drop off facility for the development.

DENSITY AND BUILT FORM

[34] With respect to planning matters, the City's case was called through two

witnesses, Swathika Anandan and Jenny Choi. Ms. Anandan's testimony was focused on urban design matters. Ms. Choi was a City staff planner who had carriage of the applications and was familiar with the internal review and issues generated by the applications.

[35] The Subject Property lies within the NYCSP, which has governed development of its plan area since the early 1990s. The NYCSP has identified density and height limits for the land parcels within it and has policy with respect to density incentives and density transfers. The City treats the NYCSP as an integrated product of careful planning and infrastructure analysis which has successfully overseen the development of the North York Centre area. The City treats this as a planning regime which has proven itself and still has currency as a control mechanism in the interest of good planning.

[36] The NYCSP is prescriptive with respect to density limits as outlined in Policy 3, Map 8-7 and the Subject Site lies within a density limit or Floor Space Index ("FSI") of 2.6.

[37] Section 3.4 of the NYCSP provides for density transfers between sites, which allows the gross floor area of one site to be transferred to another site for the purpose of adding density from the "donor site" to the "recipient" site. These transfers are subject to conditions established in the NYCSP, including that the density cannot exceed the total gross floor area assigned to the donor site and receiving site. Importantly, the effect of the transfer on the donor site is that its site area correspondingly cannot be used for the purpose of future density calculation on the donor site. This policy introduces flexibility into the NYCSP's density levels, while ensuring that the overall density contemplated by the NYCSP remains unchanged, and to prevent "double dipping" by using the site area of one site in two applications, and correspondingly increasing the overall density in the NYCSP. The maximum allowable density transfer is capped at 33 %.

[38] The issue of density and compliance with the NYCSP density limits was a key issue during the Hearing.

[39] In order to properly address the issue of density, the following numerical data is presented:

[40] Total Gross Floor Area of the proposed development is 10,717 square metres. The total floor area allowed assuming a 2.6 FSI density maximum would be 3,840 square metres and assuming a 33% density incentive this could be increased to 5,110 square metres.

[41] The total area of the Subject Site is 2,376.3 square metres. The sizes of the individual lots comprising the Subject Site are as follows; 35 Holmes Avenue: 899 square metres, 37 Holmes Avenue: 711.5 square metres and 39 Holmes Avenue: 765.9 square metres.

[42] The proposed FSI, assuming all three lots are included in the calculation, is 4.51.

[43] The Appellant's land use planning case was called through two witnesses, Sean McGaffey and Andrew Ferancik. Mr. McGaffey's testimony was focused on urban design matters while Mr. Ferancik focused on overall land use planning issues.

[44] Mr. Ferancik explained to the Tribunal that the City takes the position that the developable area of the subject property is reduced from 2376 square metres to 1477 square metres by removing the "sterilized" (a term he used, when removing density to a parcel of land) area of 35 Holmes Avenue and that the density permission from the NYCSP should only be considered relative to this reduced site area. This would result in an "as of right" density for the subject property of approximately 3840 square metres and approximately 5110 square metres with permitted density incentives as outlined in Policy 3.3.1 of the NYCSP. If only 37 and 39 Holmes Avenue is allowed in the calculation, the 10,717 square metre proposal would result in an FSI of 7.25 according to the City.

Built Form

[45] During the hearing, Mr. McGaffey provided the Tribunal with an exhaustive review of his evidence regarding urban design and built form. He opined that built form and massing is the framework for the proposal and density follows as a natural consequence. His strong opinion was that the NYCSP requirements for density caps are outdated as the plan is over 30 years old. This fact was reinforced during Mr. Ferancik's oral testimony as well.

[46] Mr. McGaffey opined to the Tribunal that for the average person, the visual impact with "eyes on the ground" is the built form and transition elements. This proposal meets the height and transition policies of the Secondary Plan. Densities and density transfers are more of a paper exercise encouraged by the NYCSP, but not necessarily in line with provincial policy which encourages intensification adjacent to higher order transit nodes. He referred to the concept of "paper density". This being a number that exists only on paper and does not provide adequate information by itself about the particulars of a development, its scale, its massing and whether it fits into its existing and planned context in the North York Centre. Density does not tell you all you need to know about a development.

[47] The City raised many issues related to urban design on the Issues List, however, in their witness statements and in oral evidence, the witnesses focused singularly on the set back of the proposed tower to the west property line abutting 33 Holmes Avenue.

[48] Mr. McGaffey explained to the Tribunal that the proposed building envelope straddles two height limits within the NYCSP, with 39 Holmes Avenue being within the 15 metre maximum height limit and 35-37 Holmes Avenue having a maximum height limit of 70% of the distance from building face to the Relevant Residential Property Line ("RRPL"). The RRPL in this case is defined as the east limit of the Kenneth Avenue right-of-way. He opined that the proposal's built form complies to the transition requirements and height requirements of the Secondary Plan as well as the City's OP.

[49] During oral testimony, the City's witnesses did not take issue with the height or transition issues. Ms. Anandan's evidence confirmed that there are no urban design concerns with the height of the proposal and that the site is an appropriate location for a tall building. She also confirmed that there are no urban design concerns with the relationship and fit of the proposed development to the public realm.

[50] Both Ms. Anandan and Mr. McGaffey were in agreement that density is not an urban design tool that is used to determine built form.

[51] Mr. McGaffey provided evidence that the three-storey podium base provides for a minimum building set back of 3.11 metres from Holmes Avenue with a "sawtooth style" element where portions of the building are pulled further from the public realm to create private outdoor patio spaces. He stated that the podium element is set back a minimum of 7.58 metres from the east property line, 13.53 metres from the west property line and 12.5 metres from the south property line.

[52] He described the tower element, which rises above the three-storey podium element from the fourth floor to the 17th floor with a consistent floor plate size of 663.1 square metres. The proposed tower element is set back 5.89 to 7.96 metres from Holmes Avenue, 15.3 metres from the east property line, 12.5 metres from the south property line and 10.03 metres from the west property line.

[53] Ms. Anandan, the City's expert witness, in her witness statement and oral testimony, confirmed that she had no issues or opinions on the proposal being consistent with the PPS, conforming with the Growth Plan, OPA 479 or the Growing Up Guidelines.

[54] She took the Tribunal to several policies within the City's OP, OPA 480, the NYCSP and the Tall Building Guidelines. Her primary and focused concern was with respect to the proposed set back of the tower element to the western property line. During her testimony, she rigidly adhered to the fact that the dimension should be measured from the outside face of the balcony to the western property line, which

would result in a set back of 8.5 metres instead of the 10.03 metres referred to in Mr. McGaffey's testimony.

[55] In his Reply Witness Statement ("RWS") and oral testimony, Mr. McGaffey opined that the Tall Building Guidelines are "guidelines" and not "policy". These guidelines are intended to provide direction **but are not mandatory**. This was re-enforced in Mr. Ferancik's oral testimony. Mr. McGaffey took the Tribunal to Section 3.2.3 of the Guidelines which reiterate that tower separation distances are to be *"...measured from closest building face to building face..."*. In his opinion (and in his experience working with the City's guidelines), there is a clear expectation that balcony elements are permitted to project into the recommended 25 metre tower separation. Such an interpretation is applied by Ms. Anandan to the northern (Holmes Avenue) tower setback, which she notes at 5.69 metres to 7.96 metres in Table 1 to her Witness Statement. Ms. Anandan further identifies the southern tower setback at 12.5 metres. In making these calculations, Ms. Anandan excludes the projecting balcony elements and identifies the setback to the building face.

Growing Up Guidelines

[56] These Council adopted Guidelines provide guidance on the proportion and size of larger units recommended in new multi-unit residential developments, as well as design elements within the buildings themselves to accommodate families living in a vertical environment.

[57] Mr. McGaffey opined that many of the Guidelines are highly-specific and relate to the design and layout of interior and exterior common spaces and even of individual dwelling units, considerations that are generally best addressed through a more detailed stage of design, including Site Plan Approval where appropriate.

[58] Of the proposed 154 dwelling units, a total of 107 units or 69.48% are one-bedroom or one-bedroom plus den, a total of 31 units or 20.13% are two-bedroom or two-bedroom plus den and a total of 16 units or 10.39% are three-bedroom. In general,

the largest dwelling units are located at grade within the three proposed townhouse style dwellings fronting Holmes Avenue. The unit mix noted above meets the growing up Guidelines in terms of percentages.

[59] Under cross-examination, Mr. McGaffey admitted that only three of the 154 units fit within the suggested range of sizes for two- and three-bedroom units. He opined that market demand drives the size of units in terms of cost and marketability and that, in some cases, market reality trumps the Guidelines.

[60] However, Mr. McGaffey explained to the Tribunal that the proposed OPA and ZBA do not preclude the use of flexible design, such as knock-out panels or demisable partitions, allowing for dwelling units to be consolidated into larger units. He also provided the Tribunal with a thorough review of the proposed amenity spaces on three different levels of the building, as well as noting that the proposed balconies offer a larger area than what is suggested in the Guidelines.

[61] Ms. Choi, under cross-examination, admitted to the Tribunal that the approved development at 15-21 Holmes Avenue also did not meet the Growing Up Guidelines in their entirety and details were deferred to the Site Plan Application stage.

[62] The Tribunal agrees with Mr. McGaffey in that the proposed OPA and ZBA should not be refused on the basis of these Guidelines and notes that these details can be further discussed at the Site Plan stage with City staff.

Density

[63] Ms. Choi provided the Tribunal with her opinion evidence related to land use planning. Her main focus during her oral testimony was the fact that the proposed development exceeded the density limit of 2.6 FSI as prescribed in the NYCSP.

[64] Mr. Ferancik advised the Tribunal that both the PPS, the Growth Plan and the City's own OP have undergone numerous updates since the inception of the NYCSP,

and in particular the provincial policy documents encourage achieving and exceeding minimum density targets, not placing a cap on density.

[65] Under cross-examination, while Ms. Choi admitted that it would not be good planning to stop growth once a density target has been met, her opinion remained steadfast that the NYCSP continues to achieve the substantive outcomes of the policies promoted in the PPS and Growth Plan.

[66] During her oral testimony, it became evident that she felt the NYCSP provided an integrated comprehensive framework for growth in the North York Centre, despite the evidence from the Appellant's expert witnesses that the Plan is over 30 years old and has not been sufficiently monitored or updated (as policy prescribes) by the City since its enactment in the early 1990s.

[67] Ms. Choi opined that the requested density represents a major departure from the density framework in the NYCSP. She suggested that approval of the proposal would be tantamount to the abandonment of density controls on this parcel and, because of the precedent that would be created, the abandonment of density controls for the remaining development sites in the North York Centre as a whole.

[68] During his oral testimony, Mr. Ferancik provided the Tribunal with many examples of recently approved developments in the vicinity of the Subject Site, also within the NYCSP and subject to similar density caps as outlined in Map 8-6. Three notable examples within the North portion of the Plan are as follows:

[69] The Newtonbrook Plaza site is at the southeast corner of Yonge Street and Cummer Avenue. The NYCSP height and density limits in this area are 87 metres and 2.926 FSI respectively. The approved heights and densities are in the range of 104 to 124 metres and the approved density is at 4.14 FSI. In this particular case, Mr. Ferancik demonstrated that a relatively small change to the permitted FSI resulted in an additional 47,000 square metres of development permissions being realized.

[70] The car dealership site at 5842-5870 Yonge Street on the west side has a height and density limit of 87 metres and 2.66 FSI respectively and the approved height is 108.9 metres with an FSI of 4.71.

[71] The “Mezzanotte” site at 5300 Yonge Street had a cap of 87 metres and a 4.98 FSI with density transfers. It was approved by the Local Planning Appeal Tribunal in 2020 at 107.26 metres in height with an FSI of 8.8.

[72] Mr. Ferancik took the Tribunal to other examples of approved and proposed official plan amendments in the general area, however the three noted above are the ones closest to the Subject Site. The point he wanted to emphasize to the Tribunal is that exemptions have been made to height and density limits within the NYCSP notwithstanding the nuances of specific benefits and negotiations that took place on each of the above sites.

[73] Mr. Ferancik concluded by saying that the density numbers can be amended and have been amended in the past.

[74] Mr. Ferancik explained to the Tribunal that the proposal being requested represents a Gross Floor Area (“GFA”) of approximately 5600 square metres over the permitted amount. City staff are claiming that this density is way beyond the permitted density, however in the case of the Newtonbrook development noted above, the additional GFA requested over the permitted area was 47,000 square metres and yet it was approved by City Council.

[75] He opined to the Tribunal an interesting analogy that the NYCSP could be considered an old house that dated back to the 1980s. While still livable, the old house is in need of renovations which are not in the immediate forecast. The individual site specific OPA and rezoning can be considered a room by room renovation rather than a wholesale upgrade of the entire home.

[76] Mr. Ferancik advised that, in processing this application, the City has taken the

position that the currently proposed GFA of 10,717 square metres would produce a density of 7.25 FSI. In order to meet the maximum allowable GFA with density transfers as prescribed by the NYCSP, this would require reducing the size of the building to a permitted floor area of 5110 square metres. In his opinion, a project of this size on the site would be inappropriately low and would require significant reduction in the height of the proposed development or a change in built form altogether on a site where a tower form of development can clearly be accommodated. Such an outcome would not be consistent with or conform to the provincial directions regarding intensification, optimization and efficient use of resources and land.

[77] He further opined that given the transfer of density from 35 Holmes Avenue is now almost 20 years old, it should not be considered a deciding factor in determining what is good planning for this site and the outcome of this appeal, in particular given the request for an official plan amendment.

[78] Ms. Anandan in her oral testimony confirmed that the Subject Site was suitable for tall building development and met the height and transition requirements of the Secondary Plan.

Development Potential of 33 Holmes Avenue

[79] In his witness statement and oral testimony, Mr. McGaffey clearly indicated that the development potential of 33 Holmes Avenue, which is on the west side of the proposal, is limited. The westerly property is occupied by a two-storey single detached dwelling, with a lot frontage of approximately 15.5 metres. Adjacent to 33 Holmes Avenue are two “remnant” parcels of land as a result of the creation of the right-of-way for Doris Avenue, one of the identified “service roads” in the North York Centre Secondary Plan.

[80] Mr. McGaffey opined that 33 Holmes Avenue does not represent a potential redevelopment site for a tall building similar to that of the Proposed Development. This is not to say that intensification of the property is not possible, but to acknowledge that a

tower or tall building form of development cannot reasonably be accommodated on the approximately 15 metre wide property with appropriate building setbacks to adjacent residential properties and the existing residential tower element at 60-62 Byng Avenue, which is setback 4.2 metres from its northern lot line. In his opinion, the Proposed Development will not adversely or negatively impact the future potential for intensification of 33 Holmes Avenue.

[81] Mr. McGaffey further opined that even if 33 Holmes Avenue were to mirror the proposed western setback of 10.03 metres, this leaves a potential east-west envelope area of approximately 5.5 metres for a tall building form. This assumption would have to further rely on a 0.0 metre tower setback from the municipal parkland along Doris Avenue. Applying a 12.5 metre tower setback to the property would result in an available tower footprint area less than 3 metres wide. Given the dimensions of the property, intensification of 33 Holmes Avenue, if it were to occur, would most likely occur through the development of a lower scale built form and not a tall building.

[82] During cross-examination, Ms. Anandan acknowledged that the 12.5 metre minimum setback as identified in the Tall Building Guidelines was intended to ensure a minimum separation distance of 25 metres for tall buildings. Despite the uncontested evidence that a tall building could not be built to the west side of the site, she insisted that a minimum setback of 12.5 metres was required because “that is what the guidelines state”.

TRANSPORTATION

[83] Mr. Suriano explained to the Tribunal that the original Witness Statement (“WS”) regarding transportation was prepared and submitted by Mr. Arthur Lo, the City’s expert witness. However, due to an unfortunate bicycle accident, Mr. Lo was not able to attend the Hearing. However, Mr. Andrew Au, another of the City’s expert witnesses, has taken ownership of Mr. Lo’s WS and has adopted its contents, and will speak to both Mr. Lo’s original WS and his reply witness statement on matters of transportation.

Issue No. 13: Does the proposed development provide appropriate vehicular access which is shared with the development at 60 - 62 Byng Avenue, including appropriately accommodating on site traffic flows and minimizing traffic conflicts with existing residents at the Condominium.

[84] Mr. Chan, on behalf of the Appellant, told the Tribunal that a meeting of experts took place on April 16, 2021. At this meeting, it was agreed that the proposed location and design of the loading space and underground ramp access meets technical standards. It was also agreed that the vehicular loading and servicing facility for the proposed development is appropriately designed from a technical perspective. As noted earlier in this Decision, the experts also agreed that the proposed development provides sufficient vehicular on-site parking.

[85] Mr. Lo, in his witness statement and Mr. Au, the City's expert witness during oral testimony, expressed concerns that the proposed development's only vehicular access would be from the existing driveway on Holmes Avenue. The proposed development will impose additional functions on this existing driveway, specifically access to a loading space and access to its underground residential and visitor parking. Vehicles accessing or servicing the 35-39 Holmes Avenue site are not planned to access the 60-62 Byng Avenue property in order to enter, maneuver within or exit the site. Mr. Au went on to express his opinion that the proposed development has not minimized the potential for disruption and conflicts with vehicles accessing 60-62 Byng Avenue and has not satisfied the requirement in NYCSP Policy 8.12 a) to design service vehicle access in a manner that minimizes disruption to traffic flow.

[86] Mr. Chan provided evidence that the ingress and egress of service vehicles for the Subject Site has been properly designed. In his opinion, the proposed driveway access to the loading and servicing facility and parking ramp does not pose any conflict with the neighboring property at 60-62 Byng Avenue. Traffic volumes are not anticipated to be high; visitors can be accommodated in the underground parking garage and pick up and drop off activities can occur from Holmes Avenue. Appropriate design measures and signage can be introduced at the Site Plan stage to direct vehicles away from any potential conflicts with 60-62 Byng Avenue such as using its

parking area for turning maneuvers.

[87] He further opined to the Tribunal that the Condominium at 60-62 Byng Avenue is a participant in this hearing and is not objecting to the development proposal.

[88] In considering the above matter, the Tribunal prefers the evidence provided by Mr. Chan and notes that Issue No. 13 can be removed from the Issues List as well as Issue No.15 which has previously been discussed.

Issue No. 14: Does the proposed development contain appropriately designed vehicular loading and servicing facilities and pick up and drop off locations?

[89] The City staff report dated March 23, 2021 indicated that a dedicated on-site pickup and drop-off area was required to ensure that this activity does not occur within the Holmes Avenue road allowance. This issue was reinforced by Mr. Au during his oral testimony

[90] Mr. Chan explained to the Tribunal that vehicles making a short term stay at the site would utilize the visitor parking via the underground parking ramp accessible through the shared laneway with 60-62 Byng Avenue. There are 15 underground visitor spaces which can be used for this purpose.

[91] Vehicles making immediate pick up or drop-off will pull up in front of the main entrance on Holmes Avenue and can then proceed forward in a round about motion through the cul-de-sac which is approximately 30 metres to the east of the Subject Site. Mr. Chan explained that the existing width of Holmes Avenue is approximately 8.25 metres with no parking on the south side and parking restrictions on the north side. A temporarily stopped vehicle for pickup or drop-off activity will therefore not impede through traffic passage.

[92] Mr. Chan opined that given the cul-de-sac design of Holmes Avenue terminating 30 metres to the east, this operating condition is acceptable and will not negatively impact the traffic operation of Holmes Avenue in the vicinity of the Subject Site given the

low traffic volumes.

[93] Mr. Chan further opined that options could be explored during the Site Plan stage or appropriate signage or the use of the pedestrian sidewalk walkway to the south of the service area or for further refinements of the visitor parking in the underground for potential pickup and drop-off solutions.

[94] During cross-examination, Mr. Au was taken to several of the nearby sites such as the condominium at 60-62 Byng Avenue, the proposed development at 15-21 Holmes Avenue and the existing townhomes on Kenneth Avenue. The development under construction at 15-21 Holmes Avenue with over 300 units only have a layby for pick-up and drop-off whereas the existing development at 60-62 Byng Avenue at 300 units does have a turn around off Byng Avenue. However, the existing townhouse units on Kenneth Avenue with approximately 71 units has no turnaround provision whatsoever.

[95] Under cross-examination, Mr. Au agreed that given the difference of drop-off and pickup locations noted above there are other options that can be explored during the Site Plan stage such as within the parking garage or in the pedestrian area to the south.

[96] Given the fact that Holmes Avenue terminates in cul-de-sac with relatively low traffic volumes and the evidence provided by Mr. Chan that refinements could be made at the Site Plan stage for pick-up and drop-off, the Tribunal feels that this issue can be resolved at a larger stage if it is deemed absolutely necessary. However, consideration should be given to the evidence provided by Mr. Chan that Holmes Avenue with its low traffic volumes would not be adversely impacted should pick-up and drop-offs occur on the road itself.

Issue No. 16: Would the cumulative impact of approval of the proposed development and other developments at a similar density result in negative impacts on the transportation infrastructure within the North York Centre Secondary Plan area?

[97] Mr. Chan explained to the Tribunal that a Transportation Impact Study (“TIS”) was undertaken in 2018 and 2019, which examined both transit and vehicular capacity consistent with the City of Toronto TIS guidelines.

[98] Mr. Chan opined that the analysis results indicate that under existing conditions, all intersections and transit routes are operating with residual capacity.

[99] Mr. Chan further explained that for the traffic analysis, future background conditions were developed with the review of planned and proposed developments within the North York Centre. For his transportation study, a total of 12 background developments were included. The list of background developments included approximately 2,800 additional residential units which, together with background growth, in his opinion, would provide a clear cumulative impact of future developments within the North York Secondary Plan area.

[100] In his oral testimony and WS, Mr. Chan explained that a Transportation Tomorrow Survey (“TTS”) modal split analysis indicates that there is a downward trend in auto dependency from 53% in 2001 to 49% in 2016. More importantly, transit and walk modal split has increased from 28% to 32% in the same timeframe. This is a clear indication of a reduction in auto dependency occurring and a shift to transit and walk mode is evident.

[101] Mr. Chan explained in detail the trip generation methodology undertaken by his firm and explained that this approach is consistent with the North York Centre Secondary Plan methodology being used for proposed developments.

[102] On this basis, his conclusion was that the traffic conditions in the study area were all found to be acceptable under existing, future background and future total conditions.

The proposed development is projected to generate an additional 37 two-way auto trips during the weekday a.m. peak hour and an additional 37 two-way auto trips during the weekday p.m. peak hour. These are modest volumes and do not pose any significant issues for the transportation network.

[103] Mr. Chan underlined for the Tribunal that City transportation staff accepted the findings of his TIS and raised no concerns with respect to the ability of the area street system to accommodate travel demands of the proposed development, including the increased density being sought.

[104] The City's expert witness, Mr. Au, opined to the Tribunal that the TIS has not met the definition of a comprehensive review as required in the NYCSP in Policy 1.13, when an amendment to NYCSP Figure 4.3.1 (long range development levels) is required. However, Mr. Au provided no evidence to countermand the data and conclusions brought to this Hearing by Mr. Chan regarding the trends in modal split and the anticipated trip generation from the proposal and how it will have marginal or no effect on the area road network.

[105] Mr. Au took the Tribunal to Figure 14 of the City's visual evidence, which graphically illustrated built/proposed development within the NYCSP from January 2002 to December 2020. He opined that there was still a lot of potential within the Secondary Plan for future development that is currently not proposed or approved.

[106] His expressed concern during oral testimony was that the cumulative transportation impact of the proposed density increase above permitted levels could be taken as a precedent and replicated on other soft sites within the NYCSP area. When cross-examined, he confirmed that his primary concern was the "risk" that all remaining undeveloped sites within the Secondary Plan area could potentially apply for increased densities.

[107] Under cross-examination, Mr. Au also confirmed that within the soft sites as noted above there already were many existing developments that were not likely to be

redeveloped in the near future such as Mel Lastman Square, the Empress Walk and the existing office towers at Yonge Street and Finch Avenue.

[108] Both Mr. Chan and Mr. Au made reference several times to figure 4.3.1 of the NYCSP which prescribed maximum densities with respect to GFA. Mr. Chan took the Tribunal to Policy 9 of the Plan which states that regular monitoring is required on a five-year basis and reporting requirements on an annual basis with respect to development trends in the North York Centre.

[109] He opined that the City has not undertaken as prescribed monitoring of growth and transportation trends in the area.

[110] Under cross-examination, Mr. Au was not able to establish what the current GFA is within the Centre and whether or not any monitoring had taken place. He confirmed that Policy 9 of the NYCSP had not been complied with as yet.

[111] With respect to transit ridership, the TIS prepared by Mr. Chan concluded that an additional 20 person trips would be added to the Line 1 Yonge Street subway. This is a relatively small amount compared to the current capacity on Line 1.

[112] Mr. Au took the Tribunal to a memo dated April 11, 2019 which spoke to Line 1 capacity requirements and how population and employment growth is contributing to an increase in ridership which will ultimately require capital investment for future improvements. He expressed a concern that this application as well as other future applications would introduce concerns for the continued safe, reliable and effective ability of Line 1 to serve transit customers.

[113] Under cross-examination, Mr. Au was taken to Exhibit 14, a letter dated March 1, 2018 from the Toronto Transit Commission ("TTC") indicating that they had no issues with the proposed application in terms of transit ridership.

[114] Mr. Au also expressed concerns regarding capacity constraints at the Highway

401 interchange with Yonge Street which are existing today.

[115] Mr. Chan opined that with the modest increase in vehicle trips generated by this proposal, this would have no material impact on conditions at the Yonge/401 interchange.

[116] In his reply witness statement, Mr. Chan opined that the extensive area of the NYCSP which is serviced by 12 external vehicular nodes consisting of 32 lanes of two way traffic, and the incremental impact of the additional two way trips generated from this development would be negligible. Furthermore, the modest number of additional trips generated do not require the completion of the portions of the NYCSP road network which is anticipated, and it is not reasonable to conclude otherwise in the context of this development.

[117] Mr. Chan also opined that the 2021 projected ridership on Line 1 is 13,500 passengers per hour per direction. It should be noted that the TTC Board, on January 27, 2020 recommended funding of \$1.5 billion to initiate the Line 1 capacity enhancements which will actively increase capacity.

[118] Mr. Ferancik also advised that Metrolinx is currently in the active stages of the Yonge Street line improvements into the Regional Municipality of York and that funding has been allocated to this initiative.

[119] On the basis of the evidence presented by both Mr. Au and Mr. Chan, the Tribunal prefers the expert evidence given at the hearing by Mr. Chan. The transportation impact study has been undertaken in a thorough and professional manner and the conclusions indicate that the cumulative impact of the additional trips generated, both auto and transit, will have no adverse effects on the existing road or transit network.

REMOVAL OF FIVE MATURE TREES

[120] There are five mature trees along the eastern boundary of the Subject Site, four Colorado Blue Spruce and one Sugar Maple, noted as numbers 21, 22, 24, 25 and 28 on the tree inventory for the site. There was some discrepancy in the Witness Statements and oral testimony of the expert witnesses regarding the species of spruce trees for numbers 21 and 22 (Norwood versus Colorado Blue), as well as the maple tree (sugar versus silver). However, it was agreed that this discrepancy was irrelevant.

[121] It was agreed by both expert witnesses that the five trees are noted as being in fair to good condition and in a mature state.

[122] Ms. Dunn, the City's expert witness, opined that the identified trees have capacity for continued growth well into the future and that they are worthy of retention and will provide many environmental community and economic benefits both for this neighborhood and the City as a whole for many years to come. On this basis, she is opposed to the proposed development of this site in its current form because aspects of the overall concept plan for the site are, in her opinion, inconsistent with parts of the City's Official Plan, the North York Centre Secondary Plan and City Council's objectives concerning tree canopy cover.

[123] Ms. Dunn took the Tribunal to Policy 3.1.2 of the City's Official Plan sub d) *"preserving existing mature trees wherever possible and incorporating them into landscape designs"*. She also took the Tribunal to Policy 3.4.1 sub d) *"preserving and enhancing the urban forest by providing suitable growing environments for trees and increasing tree canopy coverage and diversity especially of long lived native and large shade trees and regulating the injury and destruction of trees"*.

[124] Ms. Dunn opined that the proposed development has not been appropriately designed to permit the maintenance of the five mature private trees outside the "as-of-right" building envelope and has not had appropriate regard for the policy direction to preserve and retain trees wherever possible. She further opined that the NYCSP has

policies such as Policy 6.2 where “*existing mature healthy trees will be retained wherever possible as determined by the City*”.

[125] Mr. Vafiades gave oral testimony on behalf of the Appellant. He is an experienced Landscape Architect with over 40 years of working experience. He explained to the Tribunal that the proposed development would require the excavation of the entire site to the limits of the property in order to allow for construction of the underground parking garage.

[126] Mr. Vafiades also explained to the Tribunal that, in order for the five trees to be preserved, the excavation would be limited to the existing drip line of the tree canopy which would require a shift of approximately 3.6 metres of the parking structure to the west. This is not a practical solution on the Subject Site as it would either create severe setback issues on the western boundary or alternatively severely reduce the footprint of the proposed development.

[127] In his oral testimony and WS, Mr. Vafiades opined that, in his professional opinion, the five trees in question are mature and are close to reaching their life expectancy. The spruce trees are in good condition; however, they have dead branches in their upper half and are free of branches in their lower half. The Sugar Maple is in fair condition with similar attributes according to the arborist report.

[128] Mr. Vafiades further opined that in the circumstances, it would not be uncommon for trees of these species and in this condition to be removed as part of the overall consideration of a development project.

[129] Mr. Vafiades explained to the Tribunal that these five trees do not have any particular arboricultural or heritage significance, although they are protected by the City's tree By-law. In addition, it should be noted that, in his opinion, the spruce trees do not add any significant value to the City's shade cover as they are columnar in form providing much less shade than a wide canopy deciduous tree.

[130] Mr. Vafiades went on to explain that the site landscape design as proposed has been developed to create a viable and enjoyable outdoor amenity area for the anticipated residences and to create an appropriate interface with the neighbouring properties to the east. A row of six deciduous shade trees and a continuous shrub bed will be provided along the western boundary to provide screening of the development for 33 Holmes Avenue. On the east boundary a similar planting arrangement consisting of four deciduous shade trees and five columnar trees will provide a generous screening from the townhouse development to the east

[131] Mr. Vafiades explained to the Tribunal that the removal of trees is common with this type of redevelopment and that the landscape plan proposes to replace a number of trees in exchange for the trees that have been removed from the site. He further explained that the City has policies both in the OP and the NYCSP regarding the replacement of trees on a 3 to 1 ratio or payment in-lieu in terms of a specified formula. City staff have provided their requirements for payment of cash-in-lieu should the Tribunal approve this development.

[132] In closing submissions, counsel for the Appellant pointed out that City policies regarding the removal or injury of mature trees make reference to the term “wherever possible” recognizing that, in some cases, removal is necessary in order to allow for development.

[133] On the basis of the evidence provided by the two expert witnesses both in their oral and written testimony, the Tribunal prefers the evidence provided by Mr. Vafiades and agrees that the removal of the five trees should not be an impediment to the approval of this proposed development.

POLICY CONTEXT

The Planning Act

Issue No.1: Does the proposed development have regard for the matters of provincial interest as set out in Section 2 of the *Planning Act*, in particular Sections 2 (f), (h), (j) and (r)?

[134] These matters of public interest are all important planning principles and the PPS and the Growth Plan provide direction on how to achieve them.

[135] With respect to subsection (f), Mr. McGaffey opined that matters related to functional servicing capacity or constraints have been removed as issues for this hearing with transportation related matters remaining. With respect to transportation related matters, the WS of Mr. Chan provides technical rationale that the proposed development can be accommodated by and makes efficient use of existing transportation infrastructure. Mr. Ferancik opined that the proposed development will provide for a more intensive compact built form, contributing towards the efficient use of land and resources, where well-established servicing, public services, amenities, transportation, and transit infrastructure are available.

[136] With respect to subsection (h), Mr. McGaffey opined that the proposal provides for the orderly development of the Subject Site and the broader NYCSP area by proposing a built form that conforms to the relevant OP and Secondary Plan policies with the exception of the permitted density for which an amendment is being requested. The proposal has regard for the relevant Council adopted urban design guidelines and will contribute to an overall increase in pedestrian safety along Holmes Avenue by framing the public realm with grade related residential uses, active patio areas and introducing a 2.1 metre pedestrian sidewalk along the south side of Holmes Avenue where one does not currently exist.

[137] With respect to subsection (j), both witnesses for the Appellant opined that the proposed development will contribute to the supply and range of housing necessary to

accommodate the forecasted growth for the City and further contributes to the supply of housing with a mix of unit types and sizes including two and three-bedroom units suitable for families.

[138] With respect to subsection (r), Mr. McGaffey opined that the proposed development, from a built form standpoint, has been designed to conform to the policies of the City's OP, and the NYCSP, with the requested amendment required to permit the proposed density. It has appropriate regard for and implements many of the City's Tall Building Design guidelines and Growing Up Guidelines. Mr. McGaffey opined that the proposal also provides for a building typology that is consistent with those found within the immediate contextual area and frames the public realm with grade related residential uses providing a transitional aspect from the low rise uses east of the site and reinforcing a sense of place for the North York Centre.

[139] The City witnesses did not provide any opinion related to this issue.

[140] Based on the evidence provided above, the Tribunal finds that the proposal has appropriate regard for the matters of provincial interest as set out in Section 2 of the *Planning Act*.

Issue No. 2: Would approval of the proposed development have regard to the decision of City Council to refuse the application and the information and material that City Council considered in making its decision as required by Section 2.1 of the *Planning Act*?

[141] In deciding on land use planning matters, the Tribunal must ensure that land use planning in the province is based on a top-down approach, from the *Planning Act*, the PPS and Growth Plan, through to the City's OP and NYCSP.

[142] The Tribunal must also have regard for the decisions of Council with respect to land use planning.

[143] In the case of the Proposed Development, City Council chose to deny the application based on the City staff report.

[144] The Tribunal has had the benefit of two weeks of extensive evidence on the land use issues and proposal, and based on the evidence provided, the Tribunal is satisfied that the proposed OPA and ZBLA is appropriate for this location.

The Provincial Policy Statement, 2020

Issue No. 3: Is the proposed development consistent with the Provincial Policy Statement?

[145] The PPS came into effect on May 1, 2020 and provides direction on matters of provincial interest related to land use planning and development. The document, through the *Planning Act*, directs that decisions affecting planning matters “shall be consistent with” the PPS.

[146] Mr. Ferancik opined that the PPS strongly supports intensification within settlement areas and the delineated built-up area, including the entirety of the City, particularly where infrastructure to support growth exists or is planned.

[147] He provided evidence in his oral testimony that the proposed development will promote the efficient use of land by intensifying an underutilized site with new housing options, contributing to meeting market demand. It incorporates development standards that are sensitive and compatible with adjacent land uses. He made reference to the PPS’s direction to promote opportunities for transit-supportive development, which the PPS defines as development that makes transit viable and that optimizes investments in transit infrastructure.

[148] Mr. McGaffey opined that the proposed development will enhance pedestrian safety along Holmes Avenue by providing grade related residential uses for passive surveillance while the proposed podium height of three storeys provides a comfortable

sense of enclosure and defines the public realm. He also stated that the development will provide for a desirable compact form with a residential density that supports and makes efficient use of existing transit infrastructure all within an urban context that supports the use of active transportation methods for daily convenience such as groceries, restaurants, local retail uses, parks, places of worship and employment uses such as offices.

[149] Ms. Choi stated that while the Subject Site is in an area appropriate for intensification and growth, it is proposing intensification of a scale not contemplated in the Secondary Plan. It is seeking a maximization instead of optimization of the site. It does not consider the long-term cumulative impacts at the proposed intensification level. The Proposal does not balance the increase in intensification proposed with an appropriate provision of community facilities and infrastructure. Therefore, it is her opinion that the proposed Official Plan and Zoning By-law amendments are not consistent with the PPS.

[150] In response to that statement by Ms. Choi, Mr. Ferancik replied that, conversely, limiting the proposed development by strictly applying the density limits currently applicable under the NYCSP would not promote or facilitate redevelopment of the site in the manner prescribed or directed by the PPS.

[151] With respect to section 1.2.1 of the PPS, Mr. Ferancik opined that the approach of using site specific development applications within the NYCSP area is well established and these site-specific applications have been used to consider increased densities including recent examples as noted above. Like all site-specific applications in the City of Toronto, this application is required to consider the implications on the larger road network and public infrastructure which has been adequately covered by Mr. Chan's expert testimony.

[152] Mr. Ferancik also opined that with respect to section 1.4 of the PPS, the proposed development is consistent with the housing policies. It delivers 154 new high-quality housing units in a compact built form on an underutilized infill site that is

appropriate for housing and has access to a full range of services and amenities that comprise a complete community.

[153] With respect to section 1.6 of the PPS, Mr. Ferancik stated that the proposed development would efficiently utilize existing and planned infrastructure such as municipal services, community facilities, roads and transit. It will support reduced automobile dependency and increased transit ridership as well as active transportation. This area, being an urban growth centre, is well positioned to accommodate such increases as a result of ongoing public investment in transit infrastructure such as the capacity improvements on the TTC Line 1 subway and the proposed Yonge Street subway extension. In his opinion, the proposed development will efficiently utilize existing and planned infrastructure such as municipal services, community facilities, roads and transit.

[154] With respect to section 4.6 which states that the OP is the most important vehicle for implementation of the PPS, it was the opinion expressed by Mr. Ferancik that this section of the PPS is based on the premise that official plans will be kept up to date and this includes secondary plans. Mr. Ferancik reminded the Tribunal that this secondary plan has not been reviewed in any substantive manner since its original approval approximately 30 years ago and contains policies, particularly with respect to densities, that are, in his opinion, outdated.

[155] On the basis of the evidence presented, the Tribunal finds that the proposed development is consistent with the PPS 2020

Issue No. 4: Does the proposed development conform with, and not conflict with, the Growth Plan for the Greater Golden Horseshoe, 2019?

[156] The Growth Plan as amended supports intensification, particularly in areas that have been designated as appropriate for growth and where infrastructure already exists or is planned. North York Centre is identified as an *urban growth centre*.

[157] In her witness statement and oral testimony, Ms. Choi stated that the North York

Centre had already achieved minimum target densities of 480 people and jobs per hectare as of 2016. In her opinion, in order to comprehensively plan for intensification for the North York Centre, at the proposed intensification levels, it is good planning to understand where intensification should be directed and where intensification should not be directed to, based on the local context and the existing infrastructure capacity. Section 3.2.1 contains policies that require municipalities to implement the Growth Plan by coordinating infrastructure planning, land use planning, and infrastructure investment using a comprehensive approach

[158] In her opinion, if new density limits are set beyond the densities contemplated in the NYCSP, the cumulative impacts on infrastructure is not known. Infrastructure investment planning and exploring other implementation tools and mechanisms to facilitate intensification at the proposed intensification levels, have not occurred. The infrastructure and investment planning to support the proposed density levels require infrastructure planning and investment decisions on behalf of City Council in directing funds and capital costs to support such changes.

[159] Mr. Ferancik, in his WS and oral testimony, provided a thorough review of the relevant policies within the Growth Plan and how they apply to the Subject Site. He explained that the Growth Plan supports intensification, particularly in areas that have been designated as appropriate for growth and where infrastructure already exists or is planned, and specifically highlights access to public transit services as a focus area for growth. In the Guiding Principles, Section 1.2.1, the Growth Plan identifies supporting “the achievement of complete communities that are designed to support healthy and active living and meet people’s needs for daily living throughout an entire lifetime”, prioritizing “intensification and higher densities in Strategic Growth Areas to make efficient use of land and infrastructure and support transit viability” and supporting “a range and mix of housing options, including additional residential units to serve all sizes, incomes, and ages of households”, among other priorities.

[160] Mr. Ferancik took the Tribunal to section 2.2.4 and stated that the Subject Site is

located approximately 300 metres from a higher order transit hub, the Finch Avenue subway station, as well as being well served by TTC surface transit routes. He opined that section 2.1 notes that “better use of land and infrastructure can be made by directing growth to settlement areas and prioritizing intensification, with a focus on Strategic Growth Areas, including Urban Growth Centres and Major Transit Station Areas. Section 2.2.1.2 provides that “the vast majority of growth will be directed to settlement areas that: have a delineated built boundary; have existing or planned municipal water and wastewater systems; and can support the achievement of complete communities”. He further opined that, although the area around the Finch Avenue subway station has not yet been formally delineated, it certainly has the required attributes of a Major Transit Station Area (“MTSA”), where the provincial policy documents encourage intensification to be directed.

[161] In his opinion, the proposed development conforms to these policies. The proposed development directs growth to an underutilized site within the delineated built-up area and within a likely future delineated MTSA. It will provide a built form that is appropriate in the context of the surrounding area and provides for transition to surrounding uses and is in close and walkable proximity to a wide range of local services and amenities, employment and rapid transit routes along Yonge Street and will therefore support walking, cycling, transit ridership, and other alternatives to private automobiles allowing for further reduced automobile dependency. It will contribute to meeting and exceeding the Province’s minimum intensification and density goals for this Centre.

[162] On the basis of the evidence presented, the Tribunal prefers the evidence of Mr. Ferancik and agrees that the proposal conforms to the Growth Plan.

Issue No. 5: Does the proposed development conform with the City of Toronto Official Plan?

[163] At the start of his oral testimony, Mr. Ferancik told the Tribunal that, at the time of the initial OPA and ZBA applications on January 12, 2018, and at the time of the appeal

on July 26, 2018, OPA 479, which amended a number of sections of the OP relative to public realm policies, and OPA 480, which amended the OP relative to general built form criteria, had not yet been adopted by Council. The Province approved both OPAs 479 and 480, with some modifications, on September 11, 2020. The application and appeal predate OPAs 479 and 480 and his opinions are based on the pre-OPA 479 public realm policies and pre-OPA 480 built form policies. However, he stated that OPAs 479 and 480 do not change his opinion.

[164] Mr. Ferancik took the Tribunal to the explanatory text of the Official Plan which describes *North York Centre* as:

... focused on three subway stations on its Yonge Street spine, is served by both the Yonge subway and the Sheppard subway and is also a terminus for regional transit from communities to the north. It is a major concentration of commercial office space where businesses benefit from excellent transit service to the Downtown core as well as from good highway access. It should continue to grow as an important commercial office location. It should also continue to be a vibrant residential and cultural centre. A dedicated transit corridor should be established on Yonge Street north of Finch Station to facilitate the development of Yonge Street as an Avenue and to improve transit service for residents of York Region.

[165] Mr. Ferancik emphasized during his oral testimony that both the provincial policies and the City's OP direct intensification to transit-supportive urban growth centres. *Centres* are a central component of the Official Plan's strategy to focus growth within areas that can accommodate it. *North York Centre*, by virtue of its centrality and position relative to existing transit investment, is a uniquely significant growth node in the City of Toronto. He further opined that the Subject Site represents an excellent opportunity to provide for more intense development within the *Centre* that will better reinforce its existing vertical profile, and add to its vibrancy and add to its transit supportive densities which optimize the use of land and infrastructure, consistent with Provincial policy. The Subject Site, which is presently largely vacant, is highly underdeveloped for this context. Accordingly, the Subject Site is an ideal candidate for intensification and redevelopment, especially given the higher scale context of the surrounding area, which will relate well to the existing and emerging context. Moreover,

the Subject Site is buffered from the *Neighbourhoods* area to the east and will not create any adverse impacts towards the enjoyment of these uses. These various features of the Subject Site highlight its appropriateness for accommodating the proposed development.

[166] Ms. Anandan, in her WS and oral testimony, focussed primarily on the issue of the proposal not achieving the minimum separation distance along the western property line. She took the Tribunal to Policy 4.5.2 c) and opined that the subject proposal does not meet the above mentioned Detailed Performance Criteria as it does not transition appropriately to the single detached dwelling on the west which is a future potential development site. The transition between the Subject Site and 33 Holmes Avenue does not have the minimum separation distance.

[167] Ms. Choi, in her WS and oral testimony, stated that the proposal does not meet the OP public realm policies that will provide an appropriate size and configuration for the proposed land use and scale of development and intended form of the buildings and open space. As mentioned, the intended purpose for a portion of the Subject Site (35 Holmes Avenue) is to contain the primary driveway access for 60-62 Byng Avenue in accordance with the previous density transfer approvals and within the NYCSP's density limits. In addition, the site cannot adequately contain a tower building in accordance with the Tall Building Guidelines, while adequately providing the required on-site pick-up and drop-off area or turnaround for visiting vehicles or delivery service vehicles. The site area is too small to accommodate the site organization required to support the tall building and its activity without the potential for the activity to over spill on to the adjacent property or on the public road. For this reason, the subject proposal does not meet the public realm policies as it will have negative impacts on the public realm, neighbouring properties and the overall livability for prospective residents of the building and the neighbouring occupants.

[168] Conversely, the City's Urban Design witness, Ms. Anandan is of the opinion that "the proposed development in its current form frames the adjacent streets and open

spaces” whereas Ms. Choi is of the opinion that the “subject proposal does not meet the public realm policies as it will have negative impacts on the public realm”.

[169] The Tribunal notes the City’s two witnesses as noted above seem to have differing opinions on how the proposal relates to the OP. Ms. Choi has focussed most of her testimony on her opinion that the NYCSP, despite its vintage, is still performing adequately and conforms to the policies espoused in the PPS and Growth Plan.

[170] Nevertheless, the Tribunal having reviewed the Witness Statements, Reply Witness Statements and listened to the oral testimony of the expert witnesses, prefers the evidence presented by Mr. Ferancik and finds that the proposal conforms to the City’s OP.

Issue No. 6: Does the proposed OPA and ZBA conform, and not conflict with, the NYCSP?

[171] Mr. Ferancik explained the chronology of the NYCSP process to the Tribunal. He explained that planning policies to guide the intensification of the North York Centre area were largely introduced following the extension of the Yonge Subway to Finch Station in the 1970s. The policies evolved gradually over a period of time through Official Plan Amendments that expanded the area of what is now the Centre, and which introduced various policies for accommodating transit-oriented growth.

[172] He further explained that OPA 293, which was adopted by North York Council in 1988, established the general pattern of densities in the southern part of the Centre. Those density limits established approximately 33 years ago, remain essentially unchanged today as part of the North York Centre Secondary Plan. In the early 1990s, the Uptown Study Area process was established, which established the boundaries and a policy framework (including density policies) for the northern portion of the present-day Centre. The Subject Site is within this portion of the Centre. The Uptown Study Area was generally an extension of the Downtown OP policies established in OPA 293 into the Uptown area.

[173] Much of the issues related to the NYCSP have already been discussed in earlier portions of this Decision, especially with respect to densities and density transfers. Ms. Anandan admitted, under cross-examination, that the site is appropriate for a tall building and that the height of proposed development is not an issue. Ms. Anandan also had no concerns with the podium height, its relationship to Holmes Avenue and no issue with compliance with the angular plane.

[174] Ms. Anandan stated, in her evidence during oral testimony, that the proposal appropriately deals with and addresses the public realm issues with respect to the Official Plan and the Secondary Plan. She also had no issues with sunlight or shadow impacts.

[175] Both of the City witnesses took the Tribunal to sections 1.13 and 1.14 of the Secondary Plan. Section 1.13 indicates that substantial amendments to the Secondary Plan that may be proposed will normally be addressed by general rather than site specific review.

[176] Conversely, Mr. Ferancik argued that the proposed development conforms to the basic principle set out in the NYCSP as well as the current versions of the parent Official Plan and Provincial Policies, although an amendment to the permitted density is proposed. The density limits in the Secondary Plan are a form of planning control that no longer adequately reflects contemporary planning policy. Changes have occurred over the past 15 years, most notably with respect to the Province's designation of North York Centre as an urban growth centre and the minimum density targets required by the Growth Plan for those areas.

[177] Mr. Ferancik took the Tribunal to section 1.14, which discusses considerations pertaining to site-specific amendments, providing:

... the City will be satisfied that the proposed amendment is minor in nature and local in scope, and that it does not materially alter provisions of this Secondary Plan dealing with boundaries, land use, density, height or built form. However, the numeric limits contained in this Secondary Plan with respect to density, and the limits respecting height, will

nonetheless be considered to be absolute. In dealing with such site-specific amendments, the City will further be satisfied that the traffic certification requirements of this Secondary Plan are satisfied and that the amendments do not adversely impact stable residential areas.

[178] Mr. Chan in his WS and oral testimony, provided traffic certification evidence to the satisfaction of the Tribunal.

[179] Mr. Ferancik opined that the reference in the Secondary Plan to absolute limits on heights and densities is an unreasonable and overly rigid policy expectation that, if enforced literally, would have a detrimental effect on achieving good planning outcomes in North York Centre as it continues to mature, as it would inappropriately restrict appropriate forms of growth from being achieved. This is exemplified by the proposed development which conforms to all of the Official Plan's and Secondary Plan's other planning principles, such as achieving good urban design and transition. There are no other areas of the City that impose this level of explicit restriction on density increases, especially within the urban growth centres.

[180] Mr. Ferancik pointed out to the Tribunal that section 9 of the NYCSP requires a monitoring of trends and population on a five-year basis, requiring a public meeting to assess the appropriateness of the policies contained within the Secondary Plan. Section 9.3 also requires that an annual reporting be made available. Both Mr. Ferancik and Mr. Chan stated to the Tribunal that none of this monitoring has occurred since the inception of the Plan, thus the City does not have a clear understanding of what the population and non- residential numbers are in the North York Centre.

[181] In consideration of the evidence provided by the expert witnesses, the Tribunal prefers the evidence of Mr. Ferancik and finds that the proposed development conforms adequately to the NYCSP.

PARTICIPANT STATEMENTS

[182] The Monet Condominium at 60-62 Byng Avenue requested participant status prior to the Hearing, although no formal statement was submitted. However, they are in

support of the proposed development and have entered into an agreement with the Appellant regarding access and site requirements.

[183] Participant statements were also received from Mr. Siew Bisnath, the resident at 33 Holmes Avenue, Ms. Lucy Cao, Mr. Yasoui Wang and Mr. Luis Yan Wang

[184] Mr. Bisnath, in his Participant Statement, expressed his concerns regarding the proposal and, in particular, a concern that he thought that the 18 storey residential tower, (now revised to 17-storey), was located a mere 3 metres from his house. Evidence has shown that the separation distance from his property line is 10.03 metres for the tower and 13.53 metres for the podium. He also expressed his concern of losing a row of mature Linden trees. Mr. Vafiades described to the Tribunal the proposed landscaping plan which would be in place after the building is constructed and the provision of appropriate screening to the west and east.

[185] Ms. Cao, in her witness statement, expressed concerns regarding car parking on Kenneth Avenue which currently takes place due to the townhouses or condos nearby and noise concerns with the close proximity of high-rise buildings.

[186] Mr. Yan Wang, the resident at 431 Kenneth Avenue expressed concerns regarding shadow impacts and blocking of his view to the west of his house as well as potential perceived concerns perceived regarding privacy and noise.

[187] Mr. Wang is the owner of the property at 38 Holmes Avenue, which is situated directly opposite the proposed building. He expressed similar concerns regarding privacy, loss of daylight and the feeling of being boxed in by the development.

[188] Mr. Ferancik, in reviewing the participant statements of Siew Bisnath, Lucy Cao, Yasoui Wang and Luis Yan Wang, stated that the statements generally raise issues of compatibility, built form, shadowing, skyview, sufficiency of parking and sufficiency of community facilities and infrastructure. They also raise other issues that, in his opinion, are not germane to these proceedings such as perceived impacts on property values,

views from the proposed development to existing properties and construction inconveniences.

[189] Mr. Ferancik further opined that the planning concerns of the Participants are addressed variously throughout the witness statements and reply witness statements of Mr. Chan, Mr. McGaffey and Mr. Vafiades. In his opinion, the proposed development is consistent with the plan function of the site, notwithstanding the existence of single-family homes in the immediate vicinity. The other Holmes Avenue properties are also located within the North York Centre where intensification has been anticipated and planned for at least the past 30 years.

[190] Mr. Ferancik also indicated that the Kenneth Avenue properties are outside the Centre and the policies of the Centre are being met with respect to transitional matters. Sun shadow studies have been prepared that demonstrate acceptable impacts in this context. Adequate parking and infrastructure are available to serve the proposed development.

DISPOSITION

[191] In deciding on land use planning matters, the Tribunal must ensure that land use planning in Ontario is based on a top-down approach from the *Planning Act* to the PPS to the Growth Plan and through to the City's Official Plan and, in this case, the NYCSP.

[192] The Tribunal must also have regard for the decisions of Council with respect to land use planning.

[193] In the case of the proposed development, City Council chose to deny the application by the Appellant on the recommendation of City staff.

[194] The City's counsel, in their closing submission, maintained that the NYCSP is still relevant and successful despite its vintage. Counsel claimed that "time does not matter". They claim that the core of the Appellant's argument in support of the proposal

is that the NYCSP is out of date and accordingly the density provisions can be set aside.

[195] The Appellant's counsel, in their closing submission, argued that the City has not performed the monitoring required as per section 9 of the NYCSP even though the trends observed by all of the planning and transportation witnesses in this Hearing are that traffic generation rates have been falling since the inception of the Plan in the late 80s and early 90s. Transit and active transportation modal splits have been increasing, average unit sizes per square metre of gross floor area have been getting smaller and North York Centre has not realized as much commercial development as originally forecast.

[196] Counsel for the Appellant also pointed out that Mr. Ferancik and Mr. Chan were therefore of the opinion that the long range development levels in Figure 4.3.1 of the NYCSP were not particularly useful in 2021 since the numbers have not been kept up to date and since the underlying assumptions as noted in section 4.3 have been changing over the past three decades.

[197] However, the Tribunal, having the benefit of 10 days of expert witness testimony regarding all the issues and based on the evidence provided, is satisfied that the proposed OPA and ZBA are appropriate for this location. On the basis of the draft OPA and draft ZBA entered into evidence as Exhibit No. 1, Tabs 28 and 29, the Tribunal finds that the proposed development represents good planning and has regards for matters of provincial interest under section 2 of the *Planning Act*, is consistent with the PPS, conforms to the Growth Plan, conforms to the City's OP and generally conforms to and otherwise has appropriate consideration for the NYCSP, having regard to the amendment to the density and GFA provisions that are sought to be amended. The proposal has due regard for and shows a high level of consistency with the relevant City urban design guidelines.

[198] Pertaining to the argument of FSI, the Tribunal concurs with the City and its position that the proposal provides a 7.25 FSI density calculation. The exclusion of 35

Holmes Avenue is a fair position and is supported by NYCSP policies as they are written and in force. However, as has been argued by the Appellant's counsel and opinions provided by their witnesses, this numeric calculation of FSI alone should not be the determinative factor to deny the appeal. To this assertion, the Tribunal agrees. As the Tribunal has stated, it is in the totality of the evidence and its overall adjudication as to the intent of the ZBL that has led to the decision of this panel to concur with the Appellant's position that the ZBL intent supersedes the numeric FSI calculation and the proposal's height, substantial urban design evidence and tools associated to urban design support conformity and the proposal's general ability to fit in and harmoniously blend into the character of the neighbourhood.

[199] For this reason, the Tribunal supports the draft OPA and draft ZBA entered into evidence as Exhibit No. 1, Tabs 28 and 29 with the GFA being the numeric values provided and bearing greater weight in providing an overall better depiction of the proposal.

ORDER

[200] Based on the evidence, discussions, findings and reasons described above, and after due consideration for all the arguments set forth in the opening statements and final written and oral submissions for the Parties, the Tribunal Orders as follows:

1. The Tribunal will allow the Appellant's appeals, in part, to direct amendments of the Official Plan to accommodate the proposed development generally in accordance with the draft amendments submitted to the Tribunal as Exhibit No. 1, Tab 28 and appended as Attachment 1.
2. The Tribunal will allow the appeals, in part, to direct amendments to North York Zoning By-law No. 7625, as amended, generally in accordance with the draft amendment submitted to the Tribunal as Exhibit No. 1, Tab 29 and appended as Attachment 2, and

3. That the Tribunal's final order be withheld until the Tribunal has received a written communication from counsel that the following matters have been satisfactorily addressed:
 - i. That the proposed Zoning By-law Amendment and Official Plan Amendment are in a form satisfactory to the City;
 - ii. The Appellant has provided a satisfactory Functional Servicing and Stormwater Management Report, and the Appellant has entered into any agreements required to secure any required upgrades or improvements to the existing municipal infrastructure should they be required, all to the satisfaction of the City;
 - iii. The Appellant complies to the Municipal Code requirements regarding appropriate tree replacement policies as outlined in the Witness Statement of Ms. Dunn, as follows:
 - Tree Planting Deposit in the amount of \$2,332.00 to ensure the planting and survival of four new City trees.
 - Application to Injury or Remove Trees with application fees for permission to remove two City trees listed as 1 and 17 in the submitted arborist report.
 - Payment for the tree appraisal value for Trees 1 and 17 identified in the submitted arborist report.
 - Application to Injury or Remove Trees with application fee for permission to remove 22 private trees listed as Trees 4-16 and 20-28.
 - Submission of a completed "Agreement for Private Contractor

to Perform Work on City-owned Trees” for removal of two City Trees 1 and 17 identified in the submitted arborist report, and

- Payment of appropriate Cash-In-Lieu (value to be determined upon confirmation of final plans
- iv. The Appellant and the City have come to an agreement on the provision by the Appellant to the City of certain community benefits and the Appellant and the City have entered into an Agreement under Section 37 of the *Planning Act* securing such community benefits and the Agreement has been executed and registered on title to the lands, all to the satisfaction of the City.

[201] The Members are available to be spoken to in the event of any difficulty satisfying such conditions.

“T. Prevedel”

T. PREVEDEL
MEMBER

“M. Russo”

M. RUSSO
MEMBER

Ontario Land Tribunal

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

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

ATTACHMENT 1

CITY OF TORONTO

BY-LAW NO. XXX-2021

To adopt Amendment No. XXX to the Official Plan for the City of Toronto respecting the lands municipally known in the year 2021 as 35-39 Holmes Avenue.

WHEREAS authority is given to Council under the *Planning Act*, R.S.O. 1990, c. P.13, as amended, to pass this By-law; and

WHEREAS Council of the City of Toronto has provided adequate information to the public and has held at least one public meeting in accordance with the *Planning Act*;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. The attached Amendment No. XXX to the Official Plan is hereby adopted pursuant to the *Planning Act*, as amended.

ENACTED AND PASSED this _____ day of _____, A.D. 2021.

FRANCES NUNZIATA,
Speaker

ULLI S. WATKISS,
City Clerk

(Corporate Seal)

**EXPLANATORY NOTE FOR AN APPLICATION
FOR AN OFFICIAL PLAN AMENDMENT
RESPECTING THE PROPERTY MUNICIPALLY KNOWN IN THE YEAR 2021 AS
35-39 HOLMES AVENUE**

This is an application to amend the Official Plan for the City of Toronto with respect to lands known municipally as 35-39 Holmes Avenue, in the City of Toronto, which is a mid-block located on the south side of Holmes Avenue, between Doris Avenue to the west and Kenneth Avenue to the east. (“subject lands”).

The subject lands are designated Mixed-Use pursuant to the Official Plan. A site-specific amendment is proposed in connection with a residential development comprised of an seventeen (17) storey residential building on the subject lands.

The proposal will facilitate a modest intensification within North York Centre North, and within the Gateway and Anchor Mobility Hubs associated with the Finch and North York Centre subway stations. It will contribute to the revitalization of the immediate and broader North York Centre and respect its existing and planned context.

LOCATION MAP OF THE LANDS SUBJECT TO OFFICIAL PLAN AMENDMENT



AMENDMENT NO. XXX**LANDS MUNICIPALLY KNOWN IN THE YEAR 2021 AS 35-39 HOLMES AVENUE**

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

1. Chapter 6, Section 8 (North York Centre Secondary Plan), is amended by adding the following Site Specific Policy:

XXX. 35-39 Holmes Avenue

- a) The Site Specific Policy 13.XX applies to the lands identified in heavy outline on Schedule “1” attached to this By-law (the “Lands”). A residential building with a maximum building height of seventeen (17) storeys is permitted.
- b) Notwithstanding the Density Limits prescribed in Section 3.2, a maximum of 10,800.0 square metres of residential gross floor area is allowed on the Lands permitting a maximum density of 7.25 times the lot area.
- c) None of the provisions of Section 3.3, Figure 3.3.1 and/or Section 3.4 shall apply to the Lands.

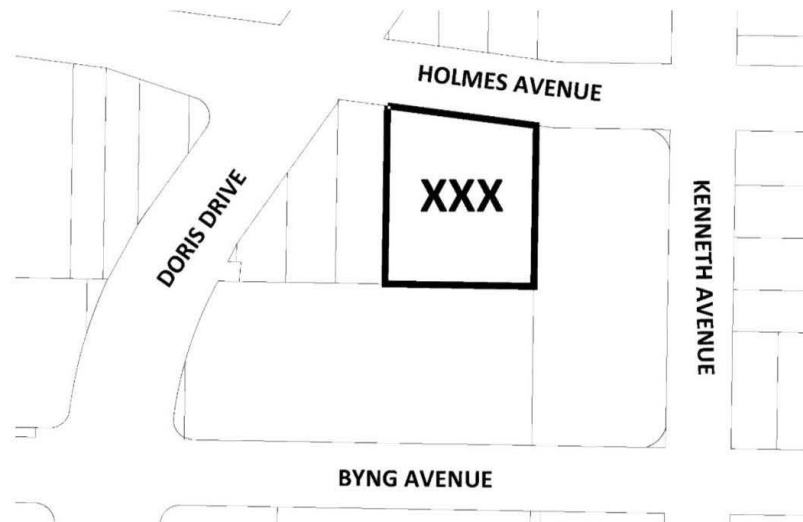


Figure 1

2. Chapter 6, Section 8 (North York Centre Secondary Plan), Map 8-7 entitled “North York Centre Density Limits” is amended to permit a maximum density of 7.25 times the lot area for the Lands known municipally in the year 2021 as 35-39 Holmes Avenue shown on the map above.

ATTACHMENT 2

CITY OF TORONTO

BY-LAW NO. XXX-

2021

To amend former City of North York Zoning By-law No. 7625, as amended, with respect to the lands known municipally known in the year 2021 as 35-39 Holmes Avenue.

Whereas authority is given to Council by Section 34 of the *Planning Act*, R.S.O. 1990 c. P.13, as amended, to pass this By-law; and

Whereas Council of the City of Toronto has provided adequate information to the public and has held at least one public meeting in accordance with the *Planning Act*.

The Council of the City of Toronto enacts:

1. Schedules “B” and “C” of By-law No. 7625, as amended, are amended in accordance with Schedule 1 of this by-law.
2. Section 64.13 of By-law No. 7625, as amended, is amended by adding the following subsection:

64.13 (XXX) RM6

(XXX) DEFINITIONS

For the purposes of this By-law, all bolded words and expressions have the same meanings as defined in By-law No. 7625, as amended, with the exception of the following:

- (a) For the purpose of this exception, **bicycle room** shall mean an indoor space that is designed and equipped for the purpose of parking and securing bicycles.
- (b) For the purpose of this exception, **bicycle parking space** shall mean:
 - i. A bicycle parking space with a minimum vertical clearance of 1.9 metres and minimum horizontal dimensions of 0.6 metres by 1.8 metres for bicycles parking in a horizontal position or 0.6 metres by 1.2 metres for bicycles parking in vertical position; and/or,
 - ii. A **stacked bicycle parking** space that is a horizontal bicycle parking space positioned above or below another bicycle parking space and equipped with a mechanical device providing floor level access to both bicycle parking spaces with a minimum vertical dimension of at least 1.2 metres and minimum horizontal dimensions of at least 0.45 metres width and 1.8 metres length;

ESTABLISHED GRADE

- (c) For the purpose of this exception, **established grade** shall mean the geodetic elevation of 192.30 metres;

GROSS FLOOR AREA

- (d) **gross floor area** shall mean the aggregate of the areas of each floor, measured between the exterior faces of the exterior walls of the building or structure at the level of each floor, including any areas used as balconies, but excluding:
- i. any part of the building used for mechanical floor area
 - ii. any space in a parking garage at or below grade used exclusively for motor vehicle or bicycle parking or access thereto; and
 - iii. the floor area of unenclosed residential balconies
- (e) For greater clarify, but not so as to restrict generality: The calculation of **gross floor area** may exclude:
- i. architectural features affixed to or extending beyond the exterior faces of the exterior walls.
 - ii. floor slab openings and other voids, including pipe space enclosures throughout, including within residential units;
 - iii. mechanical areas within residential units, including HVAC spaces;
 - iv. storm water storage tanks;
 - v. parking ramps and aisles to or within a parking garage;
 - vi. bicycle rooms contained within a parking garage;
 - vii. accessory uses to parking areas within a parking garage including:
 - a. airlock rooms adjacent to elevators or exits;
 - b. exit stairs that lead directly from a parking garage to the exterior of the building without serving any other areas;
 - c. curbs adjacent to the parking areas;
 - d. supporting columns, walls or other like structures in a parking garage;
 - e. pedestrian walkways within a parking garage;
 - f. motor vehicle loading spaces;
 - g. access thereto, and adjacent bin staging areas;
 - h. dead areas adjacent to parking spaces between columns, in corners and around curves or provided to facilitate vehicular turnaround;
 - i. other spaces in a parking garage not accessible and/or useable due to structural design; and
- (f) The calculation of **gross floor area** shall include:

- i. general storage spaces of any kind, including lockers and rooms;
- ii. bicycle rooms not contained within a parking garage;
- iii. vestibules other than airlock rooms;
- iv. garbage and recycling rooms;
- v. stairs, landings and hallways other than those that lead directly from a parking garage to the exterior of a building without serving any other areas;
- vi. amenity spaces;
- vii. elevator lobbies;
- viii. the floor areas of elevator cabs

INDOOR AMENITY AREA

- (g) For the purpose of this exception, **indoor recreational amenity area** shall mean an area set aside for social and/or recreational purposes such as exercise or entertainment rooms, indoor or outdoor swimming pools, change rooms, library space, lounges, meeting or party rooms, guest suites and other similar uses, which is common to all residents in the building.

MECHANICAL FLOOR AREA

- (h) For the purpose of this exception, **mechanical floor area** shall mean floor area within a building or structure used exclusively for the accommodation of mechanical equipment necessary to physically operate the building, including but not limited to heating, ventilation, air conditioning, electrical, plumbing, fire protection, telephone, telecommunication, cable and elevator equipment, garbage storage, recycling storage, garbage chutes and compactors, stormwater management and irrigation facilities.

LANDSCAPING

- (i) For the purpose of this exception, **landscaping** shall mean trees, shrubs, grass, flowers and other vegetation, decorative stonework, walkways, patios, screening or other horticultural or landscape architectural elements, or any combination of these, but not driveways or parking areas and directly associated elements such as curbs or retaining walls.

OUTDOOR RECREATIONAL AMENITY AREA

- (j) For the purpose of this exception, **outdoor recreational amenity area** shall mean an area(s) set aside for social and/or recreational purposes such as playgrounds, outdoor swimming pools and seating areas, which is common to all residents of the building.

PERMITTED USES

- (k) The only permitted uses shall be Residential containing Apartment House Dwellings and accessory uses thereto including private **indoor recreational amenity** areas and **outdoor recreational amenity areas**.

EXCEPTION REGULATIONS

- (l) The maximum number of dwelling units shall be 154.

MAXIMUM GROSS FLOOR AREA

- (m) The maximum **gross floor area** permitted shall be 10,800.0 square metres.

BUILDING HEIGHT

- (n) The building height shall not exceed the height limits in metres and in storeys, specified by the numbers following the symbol “H” on the attached Schedule 2 (XXX). The building height shall mean the vertical distance between the **established grade**, and in the case of a flat roof, the highest point of the roof surface. Mechanical penthouse height not included.

1. Notwithstanding Section (l) of this By-law, the following shall be permitted to project beyond the *heights* shown in metres specified by the number following the symbol “H” on Schedule 2 (XXX) attached to and forming part of this By-law:

- i) Safety railings and fences located at each of the roof levels of the building provided the maximum vertical distance of any such railing does not exceed 2.0 metres;
- ii) Parapets, including roof drainage, thermal insulation and roof ballast materials at each of the roof levels of the building provided the maximum vertical dimension of any such parapet does not exceed 2.5 metres;
- iii) Structures located at each of the roof levels used for outside or open air recreation, green roof elements, stormwater management elements, wind mitigation elements, landscape features, pools, spas, structures housing pool or spa maintenance or operation equipment, elevator overruns, elevator equipment, public art features, mechanical equipment, telecommunications equipment and antenna, window washing equipment, building maintenance equipment, stair towers, skylights, wheelchair ramps, partitions dividing outdoor recreation areas, trellises, fences, platens, bridges, walkways, gangways, walls or structures enclosing any such elements, lightning

roads and exhaust equipment at each of the roof levels of the building.

BUILDING ENVELOPE

- (o) No portion of any building or structure erected and used above **established grade** shall be located otherwise than wholly within the building envelope identified on Schedule 2 (XXX).
- 1. No part of any building or structure above *grade* is located otherwise within the heavy lines identified on Schedule 2, attached to and forming part of this By-law, except for the following permitted projections beyond the heavy lines:
 - i) Bollards, cornices, lighting fixtures, window washing equipment, awnings, canopies, finials, parapets, terraces, terrace guards, platforms ornamental or architectural elements, trellises, eaves, window sills, bay windows, balconies, canopies, guardrails, balustrades, railings, wind mitigation screens and features, planters, monuments, arbours, patios, decorative features, stairs, stair enclosures, stair landings, supportive columns, wheel chair ramps, vents, stacks, wind screens and features, acoustic screens and features, underground garage ramps and their associated structures, underground garage stair enclosures, retaining walls, fences, screens, weather protection canopies, bridges, walkways, gangways, wheelchair ramps and structures, skylights, solar panels, and landscape and public art features.

PARKING

- (p) A ratio of 0.53 resident parking spaces per dwelling unit and a ratio of 0.1 spaces for visitor parking spaces per dwelling units shall be provided on the site.
- (q) A total of 81 resident parking spaces and 15 visitor parking spaces.
- (r) A parking space shall have a minimum width of 2.6 m and a minimum length of 5.6 m.

LOT COVERAGE

- (s) The maximum permitted lot coverage is 50% of the site.

LANDSCAPING

- (t) A minimum of 550 m² of soft landscaping shall be provided on the site.

AMENITY AREA

- (u) A minimum of 430 m² of outdoor amenity area and a minimum of 238 m² of indoor amenity area.

YARD SETBACKS

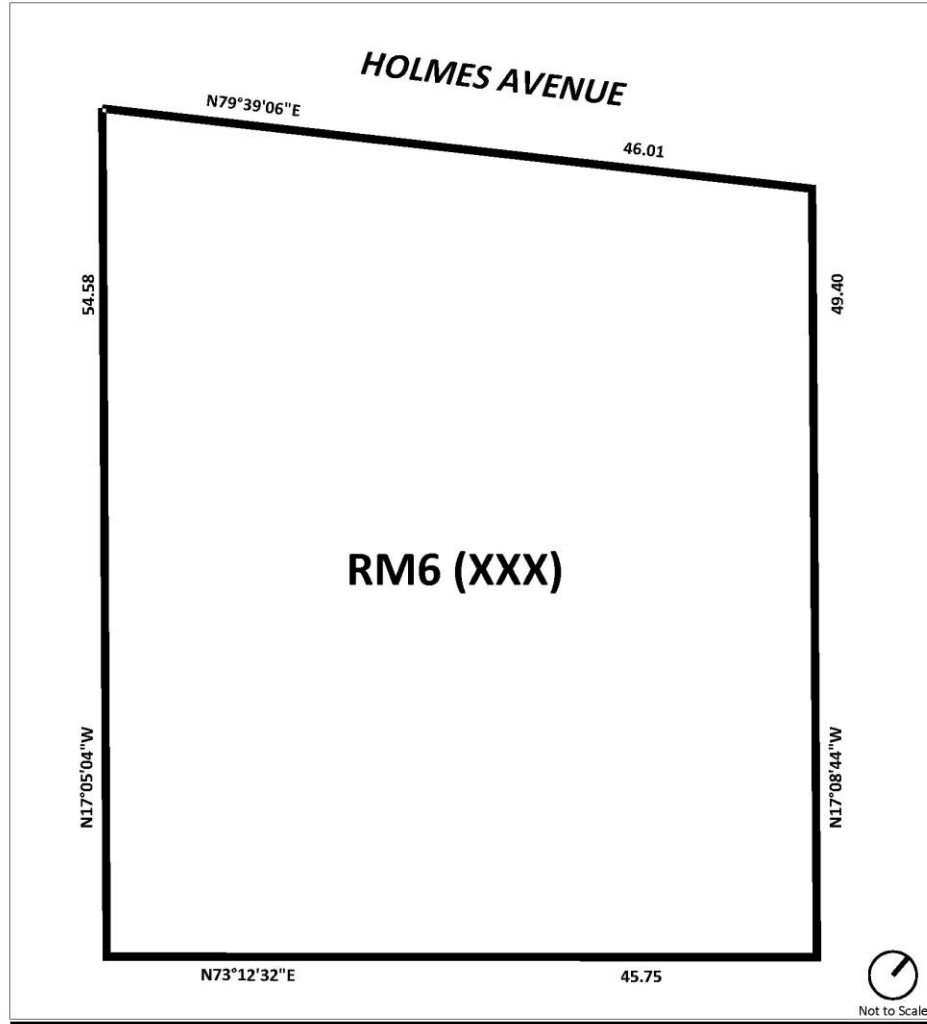
- (v) The minimum yard setbacks and distances between buildings shall be as shown on Schedule 2 (XXX).
- (w) Notwithstanding the provisions of Section 6(9), the building elements and structures listed in this exception are permitted to project into the required yard setbacks and distances between buildings.
- (x) Sections 6A (2), 6A(7)(d), 15.8, 16.2.1, 16.2.2, 16.2.3, 16.2.4, 16.2.6, and 16.3.2 of Zoning By-law No. 7625 shall not apply.
- (y) Notwithstanding any severance, partition or division of the site shown on Schedule 2 (XXX) of this By-law, the provisions of this By-law shall apply to the whole of the site as if no severance, partition or division occurred.
3. Section 64.16 of Zoning By-law No. 7625 is amended by adding Schedule 2 (XXX) attached hereto

ENACTED AND PASSED this _____ day of _____, A.D. 2021.

John Tory,
Mayor

ULLI S. WATKISS,
City Clerk

(Corporate Seal)



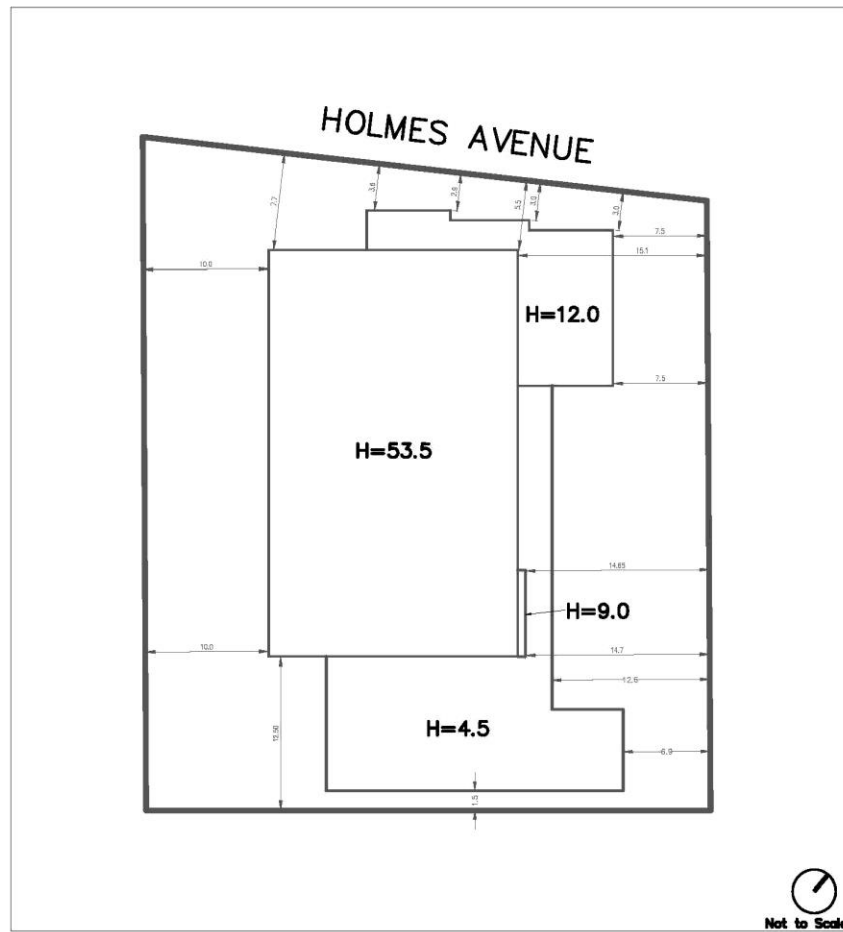
SCHEDULE RM6(XXX)

Zoning By-law Amendment

35-39 Holmes Avenue
City of Toronto

Area affected by this by-law





SCHEDULE 2
Zoning By-law Amendment
35-39 Holmes Avenue
City of Toronto

Area affected by this by-law

