

February 2, 2023

Hon. Steve Clark
Minister of Municipal Affairs and Housing
777 Bay Street - 17th Floor
Toronto, Ontario
M7A 2J3

Dear Minister Clark:

**Re: Toronto Official Plan Amendment 591
ERO Number 019-5868
Ministry Reference Number 20-OP-222176**

**Toronto Official Plan Amendment 591
Conversions and Related Matters
Modification Request
Choice Properties - 17 Leslie Street**

We act for Choice Properties Limited Partnership, owners of the lands at 17 Leslie Street in the City of Toronto, with respect to this matter.

We are writing to request that the Minister modify Toronto Official Plan Amendment 591 to remove the Employment designation from the lands, and to designate them as mixed use instead.

This submission includes the attached two planning reports from Urban Strategies, supporting the conversion of the lands at 17 Leslie Street.

Lands at 17 Leslie Street in Toronto Should be Converted From Employment to Mixed-Use By Modification to the Official Plan, or the Matter Should be Referred to the Tribunal

The subject lands are on the east side of Leslie Street, between Easter Avenue and Lake Shore Boulevard, in Toronto. They are designated as general employment.

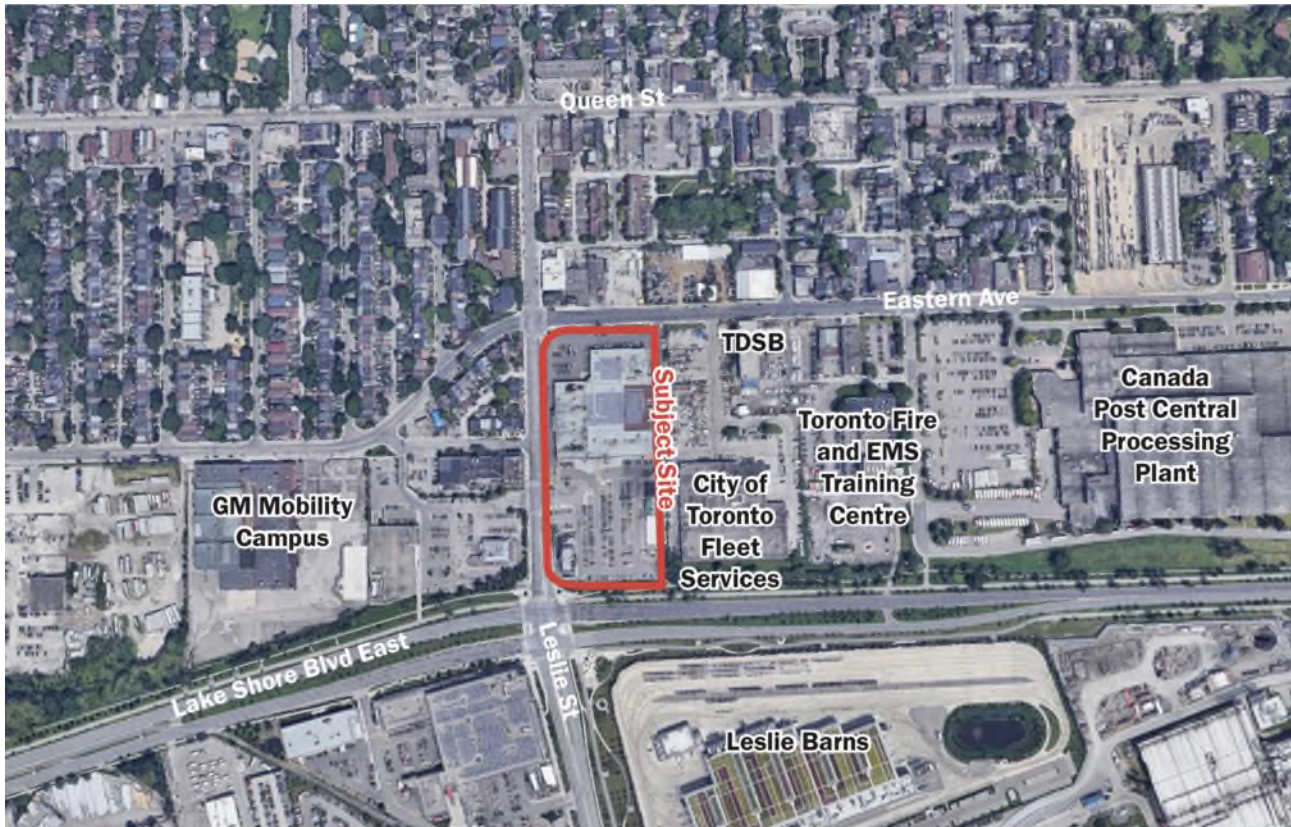
The lands in question are already zoned, and developed, for a Loblaws supermarket, generally not a use anticipated or permitted in employment areas under provincial policy. Other service and retail uses exist on site, along with a stand-alone Starbucks restaurant. Thus, in reality, the lands are already de facto converted from employment to allow what is essentially a retail shopping centre use. Formal conversion is necessary to allow mixed use, including the introduction of residential development. Thus, the requested conversion is to some degree technical in nature. The lands to the north and west are established residential neighbourhoods.

The owners propose to establish introduce residential uses on the lot, while maintaining a supermarket use on site.

The overall lands are 2.6 hectares in size. Based on its size, location, and surrounding uses, it will never be developed for warehousing or manufacturing (the uses for which employment designation protects land). As such, its continued designation as employment makes no sense from a planning perspective. The only result is that, without a conversion now, the lands will remain underutilized for a decade or more awaiting the next municipal comprehensive review.

The proposed use would actually result in an increase in jobs over the existing use, and over what would be produced if the lands were developed under the existing employment designation.

Under the Minister's traditional approval powers, the Minister should modify the mapping of the land at 17 Leslie Street so that it is no longer designated as employment.



17 Leslie Street site is outlined in red.

Minister has the Jurisdiction to Modify, or to Refer the Subject Lands to the Tribunal for a Hearing

Under section 17 of the Planning Act, the Minister of Municipal Affairs is the approval authority for the Toronto Official Plan resulting from its Municipal Comprehensive Review process. Under section 17 (34) (a) of the act, the Minister, in acting as the approval authority, may “approve, modify and approve as modified or refuse to approve a plan”. This would allow the Minister to modify the designation on the lands in question to remove the employment designation, without delaying the coming into force of all other aspects of the Regional Official Plan.

In the alternative, under the Minister’s new referral powers established by Bill 109, the Minister could refer the proposed employment designation for the lands at 17 Leslie Street to the Ontario Land Tribunal for a hearing, while still modifying or approving the balance of the Official Plan.

Growth Plan Permits Conversions Only Through a Municipal Comprehensive Review

Under policy 2.2.5.9 of the Growth Plan for the Greater Golden Horseshoe, employment conversions “may be permitted only through a municipal comprehensive review”. Thus, if the conversion is not approved now, it will likely be a decade or more before it will be considered again.

Only once a conversion is in place, can required applications for official plan amendment, rezoning, and site plan approval commence. On their own, these application processes typically take many years in Toronto. Thus, if conversion is not approved at 17 Leslie Street, the delivery of any new housing supply will likely be delayed for at least fifteen years or more.

Conversion of 17 Leslie Street Would Reflect Realities of Existing Use on Site, and Surrounding Planning Context

The owners of 17 Leslie Street currently enjoy zoning permissions for a range of retail and service uses typical of a retail centre. In fact, the site has had an operating supermarket for over 20 years. They are now seeking approval for conversion to facilitate the introduction of residential uses and intensification.

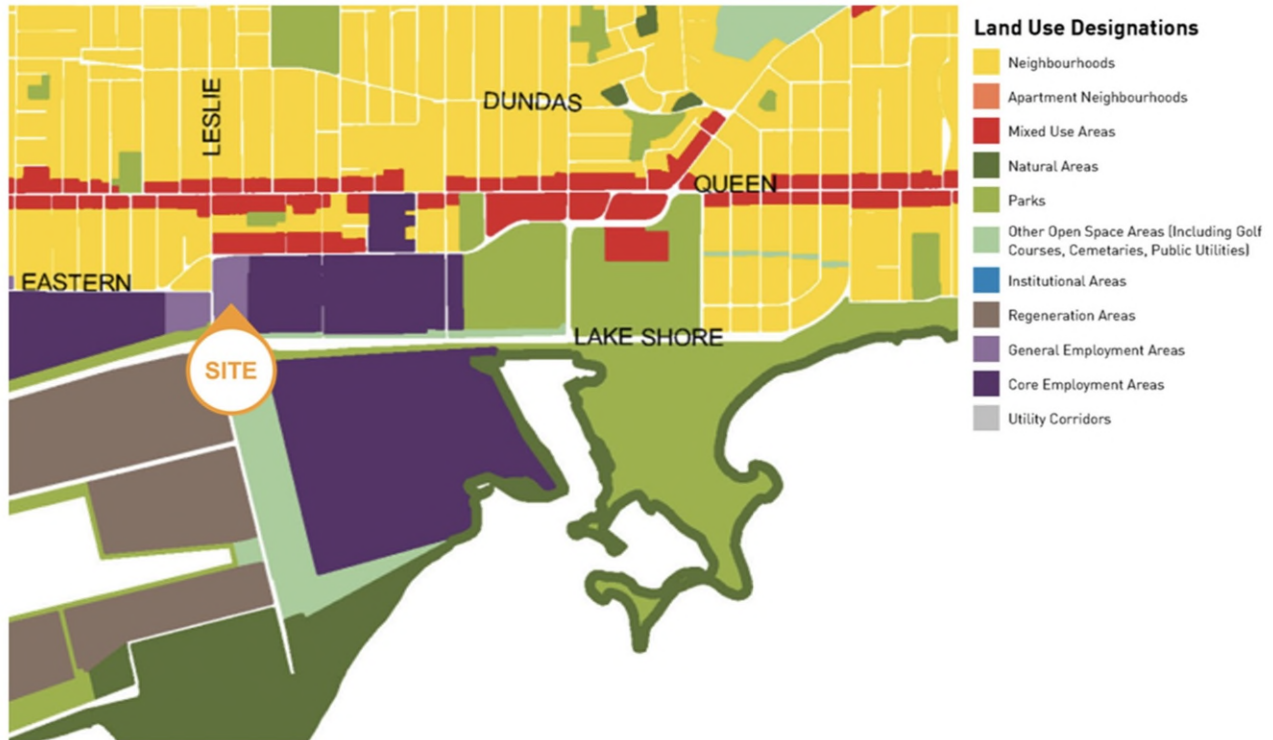
The overall site is already de facto converted (a community serving retail shopping supermarket is not an employment use). As such, in many ways, the conversion is actually technical in nature.

The Leslie Street corridor is already recognized as different from surrounding core employment areas, and features a general employment designation, with retail and restaurant uses on both sides. The fundamental character makes this Leslie Street corridor an appropriate location for residential intensification.

The Official Plan currently features residential uses directly across Leslie from the site and to the north. In fact, the site currently functions as a key part of these adjacent residential neighbourhoods, serving their daily grocery shopping needs, serving as part of this complete community. It is clear that the uses now at 17 Leslie primarily serve the residential neighbourhoods - and the employment designated lands in the area only provide a limited element of their customer traffic.

The map below shows the existing official plan designations, including the existing residential in yellow, and the Leslie Street general employment (actually functioning as retail) in lavender.

Figure 2-2: Land Use Designations



SOURCE: urbanMetrics inc., based on the Toronto Official Plan (Map 21 – Land Use Plan, February 2019). See Figure A-1 in Appendix for full maps.

The Site is De Facto Already Converted

The purpose of the conversion requirements in the Planning Act and the Growth Plan is to protect land for space extensive manufacturing and warehousing uses from the compatibility limitations that would arise from the introduction of sensitive uses like residential. Only “associated retail” (i.e. serving the principal manufacturing and warehousing uses) is contemplated in an employment area by the Growth Plan.

The site is currently zoned under the former City of Toronto Zoning By-Law 438-86. Under that old by-law, the lands are zoned as IC D5 N1 - a dated zoning category. This zoning allows a range of traditional employment uses, but also permits retail and service commercial uses, that typically are usually now permitted in mixed use areas. As such, the existing zoning has resulted in actual uses that are more appropriately considered to be mixed use.

The existing use of this site effectively as a community serving retail plaza, means that it is de facto converted, despite the employment designation.

The current supermarket use would be considered “major retail” under the City’s Official Plan. OPA 231 modified the Employment Areas designations to explicitly prohibit new major retail in both Core and General Employment Areas. The rationale is to discourage uses in employment areas that draw a lot of people to the area. Not only is the grocery store inconsistent with typical employment area uses, it is explicitly excluded and the current use of the site could not be built today under existing employment area policies.

As such, the use is already functioning as a community use - meaning that in form and function, it is de facto converted. The Minister should formalize this, and modify OPA 591 to formally convert the property from employment to mixed-use

There is No Reasonable Prospect that this Site Will Ever Develop for Manufacturing or Warehousing - The Purpose of the Employment Area Protection

There is absolutely no reasonable prospect for this site ever being developed for manufacturing or warehousing. The parcel is too small. The surrounding area has been transitioning away from employment for some time. The approved retail and existing community context makes it an increasingly inappropriate location for the heavy truck traffic, and the associated effects that would result from such an employment use. That is why employment uses have generally been leaving this area over time.

If this site was being approached as a blank canvas today, it is unlikely that a planner would recommend an initial designation to provide for manufacturing or warehousing. For the same reason, it is not appropriate to maintain the employment designation on this site.

The Existing Approvals, and the Community Context, Make Conversion the Right Planning Choice for 17 Leslie Street

With approvals on site permitting the retail supermarket, it is clear that the subject lands will not ever be developed for space extensive warehousing or manufacturing. In addition, the surrounding lands would make such employment uses less than ideal. The lands to the north and the west represent stable residential neighbourhoods.

The proposed introduction of a residential use on the site would be far more appropriate for the community context than warehousing or manufacturing.

There are No Land Use Compatibility Concerns if Conversion Is Approved and Residential Development Takes Place

There are no nearby manufacturing uses that would have their operation constrained under provincial land use compatibility guidelines, should residential development take place on the lands at 17 Leslie Street. Lands to the east, which are designated employment, feature mostly public uses such as Toronto's fleet services (garage), Taxicab Inspection Station, Ambulance Services, the Toronto Fire and EMS training centre, and the Canada Post South Central sorting station. None of these uses are significant generators of noise or emissions. The TTC Leslie Streetcar Barns are across Lake Shore Blvd, to the south. Retail uses predominate to the south on the west side of Leslie Street, north and south of Lake Shore Blvd. Residential uses are located directly across Leslie to the west, and to the north across Eastern Avenue.

Lands further west along Eastern Avenue are vacant, or have predominantly film studio related uses.

A land use compatibility study was conducted by SLR consulting. The report, dated June 30, 2021 examined the potential for any sensitive (residential) land use at 17 Leslie Street to give rise to issues with respect to the Ministry of Environment Land Use Compatibility Guideline. Only two businesses merited additional study for potential mitigation measures - CanRoof and Dufferin Concrete, located well to the south on Commissioners Street.

The SLR study concluded that, "based on the results of our studies, adverse air quality impacts from surrounding industrial sources are not anticipated". To the extent that further study results in recommended mitigation, the report concludes that "Based in our experience, such mitigation measures are feasible".

In conclusion, there are no issues arising from residential development limiting the ongoing operation of area industry, related to the provincial land use compatibility guidelines from the Ministry of the Environment.

A particular focus for examination in this area is the presence of the Ash Bridges Bay Wastewater Treatment Plant. The SLR Consulting report examined this matter, in the context of the Ministry of Environment D-2 Guideline for wastewater treatment facilities. The separation distance for 17 Leslie from the facility is similar to that of other residences on the north side of Eastern Avenue. The SLR report concludes, "Given the separation distance and presence of existing residences in the area, no issues are expected in relation to the operation of the waste treatment facility."

17 Leslie Street Satisfies the Growth Plan Criteria for Conversion

Policy 2.2.5.9 of the Growth Plan for the Greater Golden Horseshoe sets out the tests for approval of a conversion:

- A) need
- B) lands not required for purpose designated
- C) sufficient lands maintained in municipality for forecast employment growth
- D) proposed uses will not affect the overall viability of employment area
- E) Infrastructure and public services are available

The 17 Leslie Street site satisfies the required provincial criteria for approval of conversion.

NEED - There is a clearly demonstrated need for additional housing. Ontario is undergoing a serious housing supply crisis - which is reflected in escalating housing prices. Increasingly, with changes in the retail industry, retail sites are becoming an attractive and appropriate location for intensification, an efficient use of infrastructure, and one that would make for more complete communities. This site is well-located to contribute to satisfying the need for housing.

LAND NOT REQUIRED FOR EMPLOYMENT - The subject lands have been used for retail shopping purposes for over 20 years. The long-standing permitted retail use on site has resulted in the lands not being developed for “employment uses” and it is more appropriately considered to be part of the surrounding residential community, rather than the employment area. As such, the lands are no longer contemplated or required for employment uses. As the lands are not currently developed for employment uses, the conversion of the site will not result in the displacement of a single manufacturing or warehousing business or job. In fact, approval of the conversion would likely maintain or increase the number of jobs on site, while adding considerable housing potential - which would create additional population, which would result in additional community-based jobs. The conceptual development plans associated with this conversion request could accommodate up to 1,021 jobs, approximately 4 times what the existing buildings on the site can accommodate today.

SUFFICIENT OTHER LANDS MAINTAINED FOR EMPLOYMENT - While the subject lands are not appealing to prospective employers, there are abundant other lands in Toronto that can better serve that purpose. The Toronto Planning Staff recommendations in the municipal comprehensive review have identified that much land can be converted away from employment without adversely affecting the overall supply of appropriately located employment lands to meet the needs of the market. If the Choice lands remained designated as employment, they will still not be available to meet the need for employment lands, as the location is not what the market is seeking - and the existing use effectively means that the lands are already not part of the employment land supply to 2051. Thus, there are sufficient and more appropriate lands available in Toronto to meet employment needs to the Growth Plan 2051 horizon and beyond.

NO IMPACT ON VIABILITY OF OTHER EMPLOYMENT AREA - Since the subject site has not been developed for employment uses, its conversion in no way will destabilize any other employment uses in the vicinity. In addition, there are no nearby industries with which compatibility issues would arise under the Ministry of Environment’s Land Use Compatibility Guidelines, if the lands were to develop for mixed use purposes including residential. Finally, as the site is at the east end of a transitioning employment area, and adjacent to residential and community uses, there will be no impact on the viability of the employment area in the vicinity. The uses to the east are primarily public sector in nature, and unlikely to be affected by changing market considerations arising from conversion. The viability risks to the employment area to the west have already been determined by the marketplace, and will not change as a result of the conversion of 17 Leslie Street.

SUFFICIENT INFRASTRUCTURE AND PUBLIC SERVICES - The 17 Leslie Street site is well-served by infrastructure. It has available water and sewer servicing. Maple Leaf Forever Park, Greenwood Park, Leslie Grove Park, and a number of other parks serve the area. The regional serving Woodbine Park is a short distance to the east, and Ash Bridges Bay, Woodbine Beach, and the Beach boardwalk are all a pleasant walk away. Leslieville Junior Public School, Duke of Connaught Public School and St. Joseph Catholic School are all in the neighbourhood. A TTC streetcar line runs along Queen Street, providing existing high capacity, frequent service public transit just a short 250 metres from the site (the Leslie streetcar barns are just a short distance to the south). A future streetcar line is planned to run along Leslie Street directly in front of the site. There will be availability of retail and service uses including a supermarket right on site. An abundance of retail and service offerings are available close by on Eastern Avenue, Leslie Street and along the Queen Street corridor. Overall, the site is well-served by infrastructure, and by public services required by residents.

In conclusion, it is clear that the proposed conversion satisfies the tests under policy 2.2.5.9 of the Growth Plan for the Greater Golden Horseshoe to allow conversion from employment land to other uses including residential.

Housing is an Important Provincial Priority - The Subject Site has The Ability to Deliver Significantly More than 1,000 New Residential Units

As reflected in the Provincial Housing Supply Action Plan, the delivery of additional housing supply is an important policy objective of the province, in order to meet the significant and growing demand for such housing.

While there is no specific development application on the site, as it does not yet have conversion, a conceptual development concept has been studied and explored. It has been concluded that a mixed use development, including a supermarket, and residential towers can be accommodated at 17 Leslie. The number of units that this will produce will depend on the unit mix, and detailed design. However, it is reasonable to conclude that, using typical current unit sizes, such a development would add more than 1,000 units of new housing.

This site offers the opportunity to deliver a significant increase in housing supply, in an appropriate location, well-served by amenities.

City has Refused Choice Request for the Conversion of 17 Leslie Street - Requirement for Provincial Approval Based on Special Policy Area Is Cited

The city of Toronto has refused the request from Choice that the 17 Leslie Street site be converted.

The refusal was based in part on the need for the approval of the province before the City could approve a conversion. The City advice to Choice included the following:

“any change or modification to the official plan policies, land use designations or boundaries applying to Special Policy Area lands, must be approved by the Ministers of Municipal Affairs and Housing and Natural Resources and Forestry prior to the approval authority approving such changes or modifications;”

The Special Policy Area in question relates to the Lower Don Lands, and the current proposal - although a considerable distance from the Don - is technically located in this Special Policy Area, at the far east end of it. The Province and the City have a protocol in place to work together to resolve the issues in the Lower Don to ensure that development can proceed. This is of considerable importance to the province in the facilitation of the East Harbour development that will accommodate a major transit hub, including both the Ontario Line subway, and a GO Train station.

The details and installation of the flood proofing works at East Harbour (from which 17 Leslie will benefit, and will resolve the Special Policy Area question) have not yet been concluded. However, despite that work in process, the province did proceed to issue a Minister’s Zoning Order for East Harbour on April 12, 2022.

The City now has an approved environmental assessment in place for the Lower Don floodproofing works. As a March 9, 2021 report of the Deputy City Manager on the environmental assessment advises, “The preferred alternative is a flood protection landform along the east side of the Don Valley Parkway and the Don River”.

The Deputy City Manager, in another report that paved the way for the Minister’s Zoning Order for East Harbour noted that by March 31, 2023, the parties aim to “Confirm approval of the design of the flood protection landform south of the Metrolinx rail embankment on the East Harbour site.” On the strength of this, and the approved environmental assessment, the Minister of Municipal Affairs was prepared to approve the Minister’s Zoning Order for the East Harbour site.

The March 9, 2021 report indicates that “The completion of phase one would physically remove areas to the east from the flood plain, including Broadview Avenue, Eastern Avenue, ...” which would include 17 Leslie, which is at the east end of the Special Policy Area. The report also notes that, “Staff would also work with the Province of Ontario to discuss the steps for eventual removal of the Special Policy Area designation upon completion of flood protection, building upon the work done through the Lower Don Protocol.”

It is clear that the floodproofing solutions are imminent, and that the Minister was prepared to issue the Minister’s Zoning Order for East Harbour on that basis. The same principle should apply to the conversion for 17 Leslie Street. Should the conversion be approved, Choice will still be required to obtain an Official Plan Amendment, a rezoning and site plan approval. As a result there are considerable opportunities to ensure that actual construction cannot proceed until the floodproofing measures are in place, and the Special Policy Area issues are addressed. These issues should not, however, serve as an excuse to delay a positive decision on the major question of conversion - which can only happen during a municipal comprehensive review. That positive conversion decision is necessary in order for all the other planning applications to proceed.

The Minister Should Recognize the Existing Planning and Community Context, and the Fact that this Site is Already De Facto Converted and Approve the Conversion of 17 Leslie Street

The site is already developed for retail uses not contemplated by the employment designation. As such, the site is already de facto converted, and approval of conversion by the province would be almost technical in nature. There will be no impact on the ability to ensure a sufficient supply of employment land in the City.

The conversion will allow much-needed housing to be delivered on this site. This housing would be delivered in an ideal community context, where there is a demonstrated market need for such housing

The conversion, if approved, will likely result in a similar or increased number of jobs on-site compared with the existing situation, and over what development for currently approved uses would deliver.

The Minister should use his approval powers under the planning act to modify the Toronto Official Plan Amendment 591, approving the conversion of the site, and ensure that the lands at 17 Leslie Street are designated as mixed use, rather than as Employment Area. In the alternative, the Minister should use his authority under the planning act to refer the question of the appropriate land use designation for 17 Leslie Street in the Toronto Official Plan, to the Ontario Land Tribunal for a hearing.

Yours sincerely,



AIRD & BERLIS LLP

Hon. Peter Van Loan
Partner

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