

Report to Planning and Environment Committee

To: Chair and Members
Planning & Environment Committee

From: George Kotsifas, P. Eng.
Managing Director, Development & Compliance Services and
Chief Building Official

Subject: Delegation Request By: Kirkness Consulting Inc.
131 King Street
Obtain a Section 45(1.4) Council Resolution

Meeting on: February 19, 2019

Recommendation

That, on the recommendation of the Director, Development Services, the following information report regarding 131 King Street, **BE RECEIVED** for information.

Executive Summary

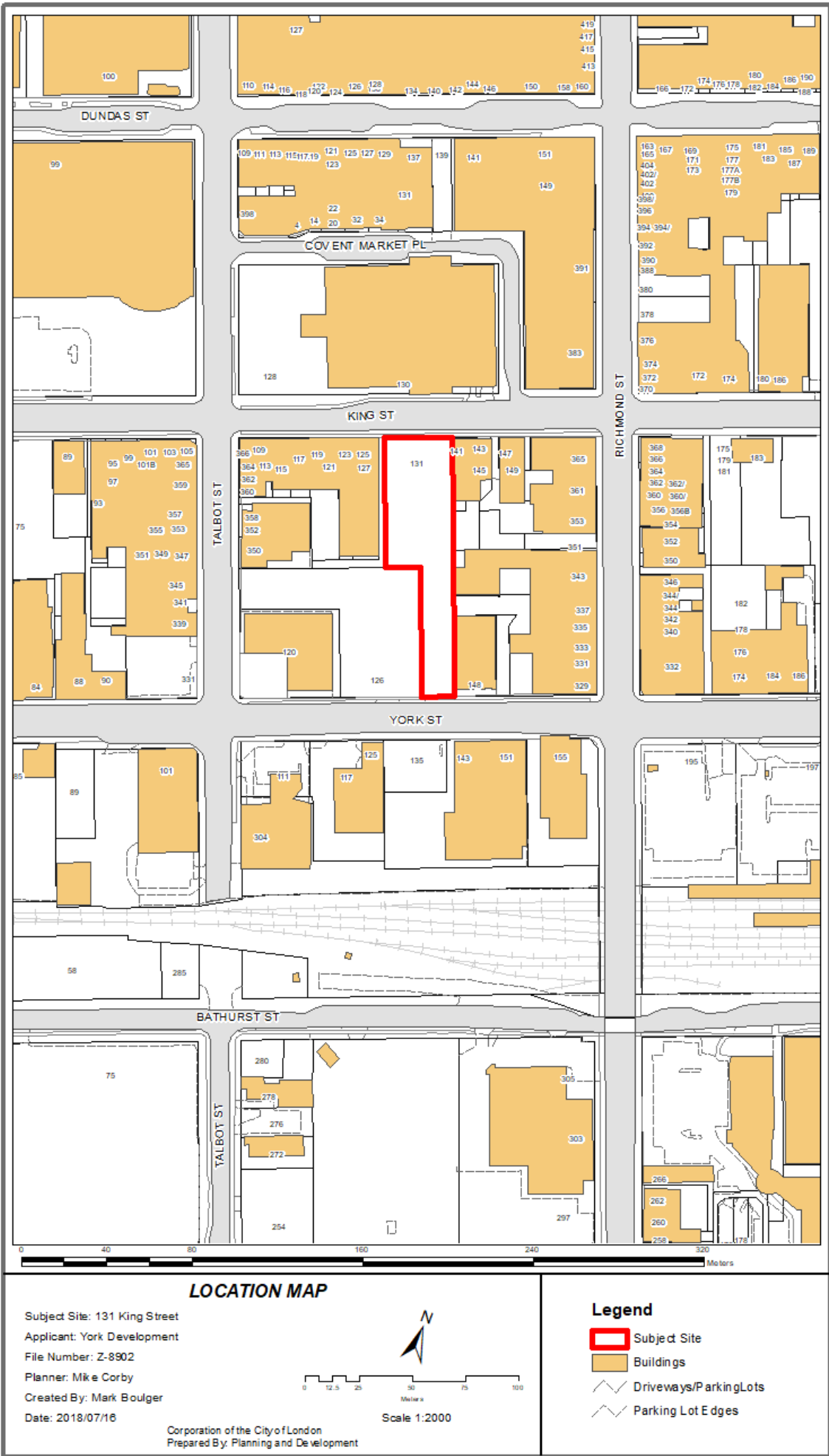
Purpose and the Effect

The purpose and effect of this report is to provide information to Municipal Council about the planning history and policy context for the subject site. This information is being provided in response to a delegation request (see Appendix A) from a potential applicant requesting approval to submit a Minor Variance Application to seek permission for relief to the Zoning By-law to assist with a proposed 30 storey apartment building at 131 King Street. The *Planning Act* does not permit the consideration of Minor Variance for two years following the date of the adoption that the by-law was amended, unless otherwise permitted by Municipal Council.

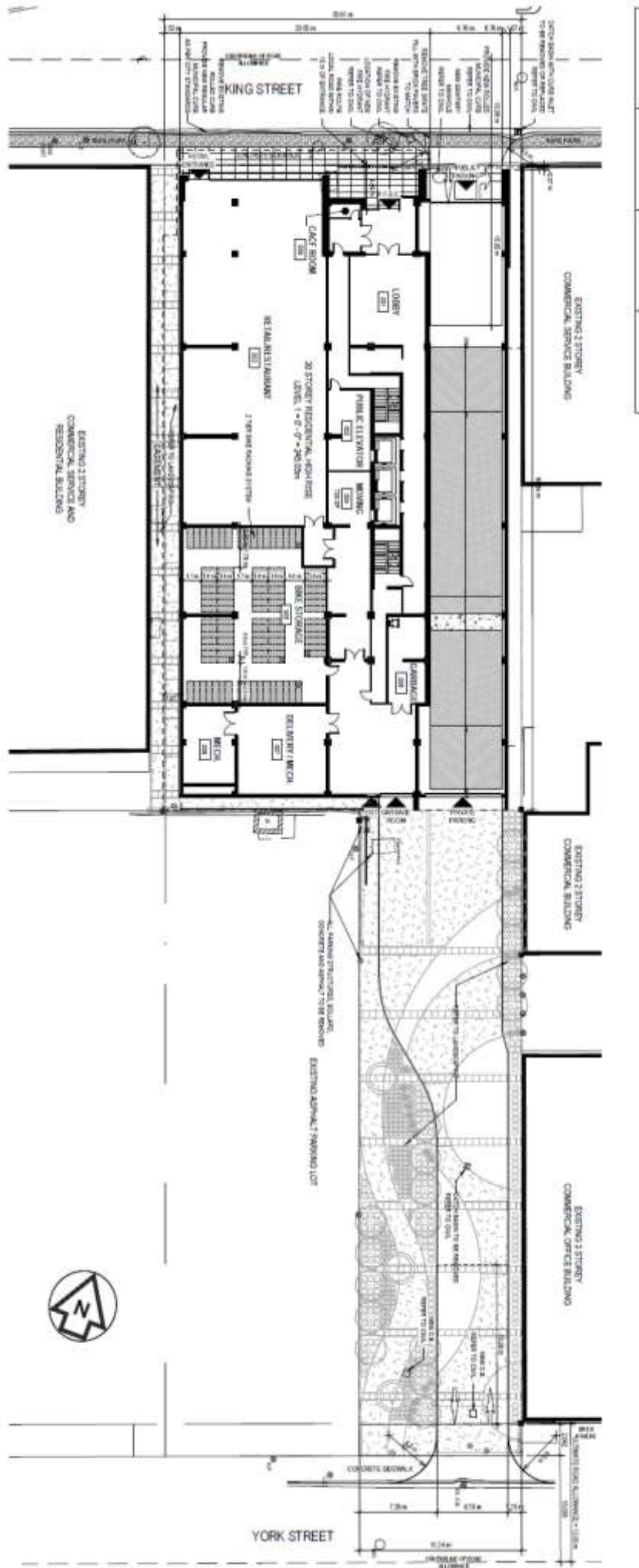
If Municipal Council resolves that the applicant is permitted to request an application to the Committee of Adjustment, the merits of the proposed application would be evaluated following the submission of a complete application to the Secretary-Treasurer, Committee of Adjustment.

Analysis

1.1 Location Map



1.2 Proposed Site Plan – 131 King Street



2.0 Revelant Background

2.1 Previous Reports Pertinent To This Matter

Z – 8902 – 131 King Street — Report to Planning and Environment Committee (November 12, 2018). City Staff submitted a planning report recommending approval of the requested application to amend the Zoning By-law to permit a 30-storey (102 metre) apartment building with 266 residential units (931uph). The development was approved through the use of a bonus zone which ensures that the development will provide ground floor commercial space, three levels of underground parking (together with two storeys above ground), 41 publicly accessible parking spaces, a publically accessible civic space, \$250,000 financial contribution toward public art, and the construction of the high quality form of development. Council approved the amendment at its meeting on November 20, 2018.

2.2 Planning History

Prior to the aforementioned Zoning By-law amendment application, the subject site had been used as a surface parking lot for over 30 years.

In November 2018, subsequent to Councils approval of the Zoning By-law amendment (Z-8902), York Developments submitted an application for Site Plan Control approval for the development of the approved 30 storey apartment building. Staff reviewed the application and provided conditional approval for the development on December 24, 2018. Final approval is subject to the applicant satisfying their conditions outlined by staff in their conditional approval letter. Staff are anticipating a follow-up submission from the applicant to address outstanding comments.

On January 25, 2019, Kirkness Consulting Inc. submitted a letter (Appendix A) to the Chair and Members of Planning and Environment Committee, requesting delegation status at an upcoming meeting of the committee. The request is being made to seek a resolution of the Planning and Environment Committee and Council to allow the applicant to proceed with a Minor Variance application for the proposed development. The Planning Act prohibits an Owner from making a minor variance application within two years of their zoning approval date, unless a resolution is passed by Council.

At the February 4, 2019, Planning and Environment Committee, It was resolved that staff prepare a report with respect to the request made by Kirkness Consulting Inc.

2.3 Delegation Request

The January 25, 2019 request from Kirkness Consulting sought a request to proceed with a Minor Variance application to the Committee of Adjustment. As indicated, the Planning Act does not permit an application for Minor Variance within two-years of the passing of a Zoning By-law amendment, unless a Council resolution is passed allowing them to do so. The applicant is requesting an increase to the height of the building, to allow 31 storeys (a maximum of 30 storeys is presently permitted), and to change the location of the access to the site for the publicly accessible parking spaces, from York Street to King Street. No change to the number of approved units is being sought in association with the increase in height.

Kirkness Consulting has stated that the changes are being requested because they were not foreseen at the time of the Zoning By-law amendment, and that they do not significantly affect the development.

2.4 Pertinent Matters from the Staff Report – November 12, 2018 – Z-8902

In support of the Zoning By-law amendment application (Z-8902), Staff, in their report, indicated that both Staff and the Urban Design Peer Review Panel were generally supportive of the proposed design (as applied for) but had some concerns with the

visual massing of the building due to the length of the building along the north/south axis. In response to the comments made by staff and the panel, the massing of the tower was reduced at the top portion to improve its overall visual massing and scale. Detailed revisions included adding an additional setback on the west side of the building, an introduction of additional balconies and glazing, and a significant reduction in height in the south-east portion of the building to help reduce the visual massing of the structure.

With respect to the publicly accessible parking space access location, the Owner sought approval for two accesses to the site. The bonus zone included language to permit access to the public parking spaces from York Street, as they were applied for in this manner.

3.0 Policy Context

3.1 Planning Act

The Planning Act provides the basis for the establishment of a Committee Adjustment to evaluate requests for relief from regulations of a Zoning By-law.

Powers of Committee

45 (1) The committee of adjustment, upon the application of the owner of any land, building or structure affected by any by-law that is passed under section 34 or 38, or a predecessor of such sections, or any person authorized in writing by the owner, may, despite any other Act, authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof, as in its opinion is desirable for the appropriate development or use of the land, building or structure, if in the opinion of the committee the general intent and purpose of the by-law and of the official plan, if any, are maintained. R.S.O. 1990, c. P.13, s. 45 (1); 2006, c. 23, s. 18 (1); 2009, c. 33, Sched. 21, s. 10 (11).

On July 1, 2016, Bill 73 came into effect and implemented a number of legislative changes to the Planning Act. As part of Bill 73, Section 45 of the Planning Act was amended (45 (1.3)) by putting in place a two-year moratorium for minor variance applications within two years of the date of passing of a zoning by-law amendment. The intent of the changes to the Planning Act were to give greater control to Municipalities to prevent the reversal of zoning provisions that council determined to be important through the by-law amendment processes. It was also recognized that there may be instances where material changes to development proposals are necessary and that minor relief from regulations are required to permit the development. To address this, provisions were further included in the Planning Act (45 (1.4)) to allow, by Council resolution, the opportunity to submit an application for a Minor Variance.

Two-year period, no application for minor variance

45 (1.3) Subject to subsection (1.4), no person shall apply for a minor variance from the provisions of the by-law in respect of the land, building or structure before the second anniversary of the day on which the by-law was amended. 2015, c. 26, s. 29 (2).

Exception

45 (1.4) Subsection (1.3) does not apply in respect of an application if the council has declared by resolution that such an application is permitted, which resolution may be made in respect of a specific application, a class of applications or in respect of such applications generally. 2015, c. 26, s. 29 (2).

The applicant has made a request of Council by way of the Planning and Environment Committee in accordance with Section 45 (1.4), to permit such a resolution to be passed.

It should be noted that minor variances are deliberated by the Committee of Adjustment and that public notice to neighbouring properties would be provided should the application be permitted to be made.

4.0 Conclusion

This report is to be read in conjunction with the delegation provided by the applicant for the property at 131 King Street.

Should Municipal Council resolve to allow the applicant to submit a Minor Variance application to provide relief to the height (maximum) and location of access for the publicly accessible parking, Staff will present recommendations to the Committee of Adjustment with regard to the merits of the application.

Prepared by:	Michael Pease, MCIP RPP Manager, Development Planning
Recommended by:	Paul Yeoman, RPP, PLE Director, Development Services
Submitted by:	George Kotsifas, P. Eng. Managing Director, Development and Compliance Services and Chief Building Official
Note: The opinions contained herein are offered by a person or persons qualified to provide expert opinion. Further detail with respect to qualifications can be obtained from Development Services.	

CC: Michael Tomazincic, Manager, Current Planning
Aisling Laverty, Minor Variance Coordinator
Dan Fitzgerald, Site Development Planner, Development Services

APPENDIX A



January 25, 2019

Chair and Members
Planning and Environment Committee
City Hall
300 Dufferin Avenue,
London, ON N6A 4L9

Re: REQUEST FOR DELEGATION STATUS for 131 KING WEST INC. (York Developments) at 131 King Street, London ON.

Dear Chair and Members:

As you are aware, the Civic Administration is unable to accept Planning Act applications that amend the City's Comprehensive Zoning Bylaw Z-1 for two years. Council adopted the site specific amending Bylaw Z-1-182708 on November 20, 2018. I respectfully request delegation status at the February 4, 2019 Planning and Environment Committee to request that the Civic Administration accept the applications relating to the properties located at 131 King Street for a 30 storey mixed use residential apartment- commercial building with 266 dwelling units.

The purpose of the new application is to consider the following:

1. The property was zoned for 266 units but urban design discussion outcomes made the building more slender and an additional storey is now needed to achieve the 266 dwelling units. The new application would increase the height by one storey to 31 storeys.
2. The public parking is zoned to be accessed from York Street and underground. Our proposed building has underground parking accessing from King Street.

The reasons that we believe that the applications should be accepted by the Civic Administration are:

- a) The changes are refinements that could not have easily been foreseen at the time PEC considered the ZBA application;
- b) The changes do not significantly affect the overall development and the many public benefits that would be gained.

Kirkness Consulting Inc., Urban and Rural Planning

Per: Laverne Kirkness BES.RPP.MCIP

cc. Michael Pease – Manager of Site Plan Approvals
cc. Michael Tomazincic, MCIP, RPP Manager, Planning Review