

966 Don Mills Road – City-Initiated Official Plan and Zoning By-law Amendment Application - Supplementary Report

Date: November 7, 2021

To: City Council

From: City Solicitor

Wards: Ward 16- Don Valley East

REASON FOR CONFIDENTIAL INFORMATION

This report is about litigation or potential litigation that affects the City or one of its agencies or corporations.

This report contains advice or communications that are subject to solicitor-client privilege.

SUMMARY

At its meeting of November 9, 2021, City Council will consider Item NY26.2, a report from the Chief Planner regarding a Rezoning and Official Plan Amendment for 966 Don Mills Road. Attached to the item as a communication to City Council are two letters from the solicitor for the developers of 169 the Donway West and the current owners of the lands at 966 Don Mills, making a with-prejudice settlement offer regarding lands at 169 The Donway West (the "**Settlement Offer**" attached as Public Appendices "A" and "B"). This report will outline the Settlement Offer, its associated challenges, the relationship between 966 Don Mills and 169 The Donway West, and offer confidential advice from the City Solicitor related to the Settlement Offer.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the Recommendations contained in Confidential Attachment 1 to this report.
2. If the confidential instructions in Confidential Attachment 1 are adopted, City Council authorize the public release of the recommendations contained in the Confidential

Attachment 1, with the remainder of the Confidential Attachment 1 to remain confidential, as it contains advice subject to solicitor-client privilege.

FINANCIAL IMPACT

Adopting this report will have no financial impact beyond what has already been approved in the current year's budget.

DECISION HISTORY

In January 2018, City Council adopted a settlement report related to 169 The Donway West. The settlement as endorsed was for a Rezoning and Official Plan Amendment to permit a 25 storey tower with a 12 storey midrise component on a former post office site in the Don Mills Centre. The report from the City Solicitor recommending the settlement can be found here:

<https://www.toronto.ca/legdocs/mmis/2018/cc/bgrd/backgroundfile-111794.pdf>

On February 5, 2019, the Ontario Land Tribunal issued a decision in matter PL160225, approving the settlement for 169 the Donway West as endorsed by City Council. The decision indicated that a final order in the matter would be issued once certain preconditions, including the entering into of a Section 37 agreement, were finalized to the satisfaction of the City. No final order has been issued.

As is laid out in detail in the August 23, 2021 report from the Chief Planner in item NY26.2, in 2019 City Council approved a community recreation centre on the former Celestica lands at 844 Don Mills Road, which could accommodate a twin-pad arena/multi-sport indoor courts, gymnasium with walking track, an aquatic centre, and community and program space, co-located with a large community park to serve the communities along Don Mills Road, from York Mills Road to Flemingdon Park (the "**Celestica Community Recreation Centre**" or "**Celestica CRC**"). The Council decision asked staff to begin the process of unwinding the plans for the community recreation centre at 966 Don Mills in favour of the Celestica CRC.

In the same decision, City Council directed that staff undertake a review of other public community uses that could be accommodated at 966 Don Mills Road through the execution of a Public and Community Needs Scan of the Broader Don Mills Catchment Area to determine what public and community needs will exist following the completion of the recommended Celestica CRC. The City Council direction on these matters can be found here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.EX7.5>

On July 12, 2019 the Don Mills Resident's Inc. ("DMRI") filed a Notice of Application at the Ontario Superior Court of Justice seeking orders which, among other things, would have required the City to construct a community recreation centre at 966 Don Mills Road and to use the money to be paid by Cadillac Fairview pursuant to its s. 37 agreement at that site, and not at another location.

The decision of the Superior Court in this matter was released on June 2, 2021. The decision found that the City should not be required to construct the originally proposed Don Mills Community Centre at 966 Don Mills Road; that Council's July 2019 decision to proceed with the Celestica Community Recreation Centre was reasonable; and that the Celestica CRC would better serve the Don Mills community and would be a better use of public resources than the originally proposed community space at 966 Don Mills Road. On July 2, 2021, the DMRI appealed the decision of the Superior Court to the Court of Appeal of Ontario.

At its meeting on October 1 and 4, 2021 City Council deferred consideration of Item NY26.2 to the Nov 9, 2021 meeting of City Council.

ISSUE BACKGROUND

The Settlement Offer seeks the City's support to ask the OLT to review its decision in the 169 The Donway West matter and permit certain revisions to the proposal. The letter outlining the Settlement Offer is attached to this report and generally proposes:

- Three additional stories (no more than 10 metres) will be permitted at 169 The Donway West.
- In exchange, a community space of no more than 19,000 square feet will be constructed at the base of the building at 169 The Donway West at the expense of the owner (the "**Community Space**"). The owner will construct and finish the Community Space at their own cost, inclusive of all fixtures, and will also provide furnishings and equipment for the Community Space, to a maximum cost of \$350,000.00. The Community Space will be sold to the City at a nominal cost upon completion and will be operated by the City or a third party operator.
- The Community Space will include a large fitness space with an integrated walking track, multipurpose programmable meeting space, and ancillary uses including changing rooms, storage, kitchen, and administrative space.
- The Section 37 quantum for the development will be increased from \$3 million to \$4 million, to be allocated to the Community Space.
- The City will provide a credit for the Parks, Forestry and Recreation component of the Development Charges for the building, to be used for the Community Space.
- Residential parking spaces to be provided in accordance with the PA4 rates and various Transportation Demand Management (TDM) measures. The proposal will include 40 visitor parking spaces of which 7 will be reserved for Community Space parking from 7:00 am to 9:30 pm.

COMMENTS

The Settlement Offer has been presented to City Council in a communication related to Item NYCC 26.2, a report on the rezoning at 966 Don Mills. The goal of the Settlement Offer, which was the result of discussions between the developer and the City, is to provide a hyper local community space at the Don Mills Centre which will give local residents a number of amenities (such as a walking track, a large fitness space that can accommodate pickleball and meeting space) which were discussed as part of the public needs scan described above.

On October 13, 2021, a community information meeting was organized by Community Planning to update the community on work undertaken in the area since the 2019 public needs scan and to review the Settlement Offer for 169 The Donway West.

At the meeting, Parks, Forestry and Recreation and Community Planning Staff indicated that they generally support the Settlement Offer. Staff raised concerns regarding the fact that litigation by the DMRI pertaining to 966 Don Mills is still ongoing, and that there is a risk that the City could be required by the Court to build the originally-proposed community space at 966 Don Mills. Staff explained that they could not support the development of the Community Space at 169 the Donway West if there was a risk they could also be required to build a community space at 966 Don Mills. The two sites are less than 500 meters apart and would both require the use of City resources and Section 37 funds. As such, it was the position of Staff that only one of these facilities should proceed to ensure equitable and efficient recreational services, especially in light of the Council direction to proceed with the Celestica CRC 900 meters to the south.

On October 31, 2021, the City received a with prejudice communication from counsel for the DMRI proposing two options for a possible resolution of the issues as between the City and the DMRI. The letter is attached as Public Appendix C to this report.

The DMRI supports the proposal by Lanterra and Cadillac Fairview, the developers of 169 The Donway West, with respect to their development at that site. The first option in the letter from the DMRI's solicitor involves the City working with DMRI, the Province, Federal Government and Thompson House (an existing long-term care provider in the Don Mills community) to secure a long term care facility at 966 Don Mills Road. This proposal involves the City and Cadillac Fairview/Lanterra extending timelines by 90 days to reach an agreement. Under this scenario the DMRI would drop its appeal to the Court of Appeal outright if and when an agreement securing the use of the lands for Thompson House is achieved.

This option is not one to which the City can agree. The City cannot dispose of an asset such as 966 Don Mills without a transparent and public process. Further, the lands at 966 Don Mills are not presently owned by the City. The lands will be conveyed to the City as part of a land swap with Cadillac Fairview (**CF**) in exchange for the lands that currently house the Civitan Arena. The City has always endeavoured to allow the Civitan Arena to continue operations until such a time as the facility can be replaced. The August 23, 2021 report from the Chief Planner on 966 Don Mills recommends that City Council adopt recommendations related to revising the Section 37 agreement as

between the City and CF with respect to the Don Mills Centre. The recommendations, if adopted, will allow the City to reallocate the \$17 million originally intended for the community centre at 966 Don Mills to the Celestica CRC. As the report sets out, in negotiating this agreement with CF, the City agreed to allow CF up to twelve years to trigger the land swap so as to permit them time to deal with environmental remediation issues related to those lands. In the interim, the Civitan Arena will be allowed to continue operations. Accordingly no deal can be struck at present to imminently move a long term care home to the lands at 966 Don Mills.

The second option says that the DMRI will modify its appeal to the Ontario Court of Appeal to withdraw its request for injunctive relief/specific performance requiring the construction of the community centre. Its requests for declaratory relief and a trial to determine consequential (monetary) damages would continue. Further proposals are made regarding a working group, including no fewer than three members of the executive of the DMRI, to review potential future uses on the lands at 966 Don Mills and it is proposed that no change in the future use of the property would occur without the agreement of that working group.

Attached to this report is advice from the City Solicitor pertaining to the Settlement Offer. The attachment to this report contains confidential information and should be considered by Council in camera.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

Public Appendix A - Letter from Aird Berlis dated September 20, 2021

Public Appendix B - Letter from Aird Berlis dated September 22, 2021

Public Appendix C - Letter from Rayman Beitchman LLP dated October 31, 2021

Confidential Attachment 1 - Confidential Information

Report for Action with Confidential Attachment on 966 Don Mills