



## REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

# 844 Don Mills Road, 1150 and 1155 Eglinton Avenue East - Official Plan Amendment, Zoning By-law Amendment and Plan of Subdivision Applications - Request for Direction Report

**Date:** February 20, 2020

**To:** City Council

**From:** City Solicitor

**Wards:** Ward 16 - Don Valley East

### **REASON FOR CONFIDENTIAL INFORMATION**

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This report contains advice or communications that are subject to solicitor-client privilege. This report contains information regarding potential litigation.

The purpose of this report is to request further instructions for the Local Planning Appeal Tribunal.

### **SUMMARY**

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The Local Planning Appeal Tribunal, with the support of the City, approved the redevelopment of the 24 hectare (60 acre) property in the northwest quadrant of Eglinton Avenue East and Don Mills Road to allow for a mixed-use, transit-supportive community called Crosstown (formerly Celestica Inc.). The approval includes a gross floor area of 460,640 square metres consisting of: 387,150 square metres of residential uses, including affordable ownership and rental housing, approximately 60,000 square metres of office uses, and 11,000 square metres of commercial and retail uses. Community uses have also been secured, including a City-owned child care facility and 2.5 hectares of parkland, which includes land to accommodate a community recreation centre.

There are 4,982 residential units approved in three to four storey townhouses, eight to ten storey midrise buildings, and 27 to 48 storey tall buildings. The office uses will be located in two buildings of eight and nine storeys in height, situated closest to Don Mills

Road. Celestica Inc. is proposing to relocate their corporate headquarters into the nine storey office building at the corner of Don Mills Road and Eglinton Avenue East. Retail uses will be focused along the Don Mills Road frontage and along a new publicly accessible Private Street B, interior to the site.

The redevelopment was approved to take place in a number of phases with the first phase consisting of the nine-storey office building at the corner of Don Mills Road and Eglinton Avenue East, 1,604 residential dwelling units (129,450 square metres) in the form of three residential tall building, three midrise buildings, stacked townhouses, street townhouses, and a public park at the south end of the site adjacent to Eglinton Avenue East.

The owner is now seeking revisions to the approved Zoning By-law Amendment No. 1214-2019 (LPAT), draft plan of subdivision, and conditions of draft plan approval to allow for the office development and public plaza on Blocks 1A and 1B to proceed in advance of the balance of Phase 1. The applicant seeks to make these changes by way of Section 35 of the *Local Planning Appeal Tribunal Act*, which allows the Tribunal to review, rescind, or vary any decision or order made by it in accordance with the rules.

The purpose of this report is to request instructions for the owner's request pursuant to Section 35 of the *Local Planning Appeal Tribunal Act*. The City Solicitor requires direction on this matter in litigation.

## **RECOMMENDATIONS**

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The City Solicitor recommends that:

1. City Council adopt the recommendations contained in the Confidential Attachment 1 to the Report (February 20, 2020) from the City Solicitor.
2. City Council authorize the public release of the Confidential Recommendations in Confidential Attachment 1, from the City Solicitor, if adopted by City Council.
3. City Council direct that all other information contained in Confidential Attachment 1 to the Report (February 20, 2020) from the City Solicitor is to remain confidential at the discretion of the City Solicitor, as it contains advice and information, which is subject to solicitor-client privilege.

## **FINANCIAL IMPACT**

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There is no financial impact arising from the adoption of the Confidential Recommendations beyond what has already been approved in the current year's budget.

## DECISION HISTORY

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### **Appeal to Local Planning Appeal Tribunal**

On December 1, 2017 the Owner appealed the Official Plan Amendment, Zoning By-law Amendment and Plan of Subdivision applications to the Local Planning Appeal Tribunal (the "LPAT"), citing Council's failure to make a decision within the prescribed time frames set out in the *Planning Act*. After appealing, the applicant continued to work collaboratively with staff in order to advance the applications and resolve outstanding issues. The applicant continued to attend community consultation meetings, present revisions and make their resubmitted plans, drawings and materials available online to the public through the City's website.

On May 28, 2018 the applicant submitted a with prejudice public settlement offer to the City for its consideration.

### **Request for Direction Report**

At its meeting on June 26, 27, 28, and 29, 2018, City Council considered a report from the Chief Planner and Executive Director, City Planning Division, dated May 28, 2018, recommending that City Council direct the City Solicitor, together with City Planning staff and any other City staff as appropriate, to attend the Local Planning Appeal Tribunal hearing in support of the with prejudice settlement offer dated May 28, 2018.

### **Local Planning Appeal Tribunal Decision and Order**

In a decision dated November 2, 2018, the LPAT approved in principle the draft planning instruments being the Official Plan Amendment, the Zoning By-law Amendments, and the Draft Plan of Subdivision. The LPAT directed that the instruments were to be further reviewed and revised to the satisfaction of the Chief Planner and City Solicitor prior to a final order being issued. The LPAT withheld its final order for the planning instruments until it was advised that the City was satisfied. The approval in principle was subject to conditions, to be satisfied by the applicant prior to final approval.

The LPAT Decision is available here:

<http://www.omb.gov.on.ca/e-decisions/pl171369-Nov-02-2018.pdf>

On December 10, 2019, the Tribunal was provided the final form of the instruments and confirmation from the City Solicitor that the conditions of approval had been satisfied by the applicant.

On January 21, 2019, the Tribunal issued its final order, which approved OPA 434, amended North York Zoning By-law No. 7625 and City of Toronto Zoning By-law 569-2013, and allowed the applicant's appeal of the draft plan of subdivision, subject to Conditions of Draft Plan of Subdivision. Pursuant to subsection 51(56.1) of the *Planning Act*, the City of Toronto was delegated authority to clear the conditions of draft plan approval and to administer final approval of the plan of subdivision for the purposes of subsection 51(58) of the *Planning Act*.

## COMMENTS

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On November 6, 2019, the City Solicitor received correspondence (the "Correspondence") from the solicitors for Don Mills (ARH) Homes Ltd., the registered owner of 844 Don Mills Road and 1150 and 1155 Eglinton Avenue East, as well as Diamond Corp., the applicant and appellant in respect of the matters described above in this report. The Correspondence is attached to this Report as Appendix "A".

The Correspondence requests City Council's support for the amendments which her client is seeking to Zoning By-law Amendment No. 1214-2019 (LPAT) and conditions of draft plan approval, pursuant to Section 35 of the *Local Planning Appeal Tribunal Act*.

The Correspondence asserts that the changes are primarily to allow for the office development and public plaza on Blocks 1A and 1B to proceed in advance of the balance of Phase 1, which would trigger a number of changes to the phasing requirements in Schedule A of the Zoning By-law Amendment, and by extension the Section 37 Agreement, as well as the Draft Plan Conditions.

The changes can be summarized as follows:

- Redefine Phase 1 to include Block 1B, such that the development of Block 1B would not trigger obligations tied to the balance of what is currently defined as Phase 3;
- Allow for Blocks 1A/1B to proceed in advance of the balance of Phase 1 without triggering certain obligations which either cannot be met in advance of the balance of Phase 1 proceeding or which are unrelated to the development of Blocks 1A/1B; and
- Making certain other minor adjustments required as a result of the foregoing.

The applicant's solicitor further explains that:

- While certain changes are required, most notably the timing of delivery of parkland, to allow Blocks 1A/1B to proceed in advance of the balance of Phase 1, the majority of the Phase 1 requirements can be satisfied in conjunction with the development of Blocks 1A/1B and as such no changes are proposed to the timing of delivery of those items.
- With respect to the delivery of parkland, the Draft Plan Condition and Section 37 Agreement currently require the conveyance of Block 6A upon registration of any portion of the Phase 1 lands. As Block 6A is connected to the residential development on the remaining (western) portion of the Phase 1 lands, there will not be sufficient time to satisfy the requirements necessary for the conveyance of Block 6A, prior to construction of the office building and public plaza on Blocks 1A/1B. Accordingly, in order to satisfy the parkland dedication obligations for

Blocks 1A/1B, it is proposed that the payment of the \$500,000.00 cash-in-lieu contribution be made prior to the issuance of any above grade building permit for any portion of the Phase 1 lands (whereas currently the payment is only required prior to the issuance of an above-grade permit for Blocks 8, 9 or 12).

- In addition, as the office development and public plaza on Blocks 1A and 1B will proceed in tandem, the Draft Plan of Subdivision and associated references in the Draft Plan Conditions are proposed to be amended to consolidate Blocks 1A and 1B as a single "Block 1".

The Correspondence attaches a redline illustrating the proposed changes to the Draft Plan of Subdivision dated June 27, 2018; Schedule A of the Zoning By-law Amendment; and the Draft Plan conditions, dated December 14, 2018.

Amendments to the registered Section 37 Agreement will also be required in order to implement the proposed changes to Schedule A of the Zoning By-law Amendment.

## **CONTACT**

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## **SIGNATURE**

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Wendy Walberg  
City Solicitor

## **ATTACHMENTS**

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Appendix "A" to Public Report - Correspondence from McCarthy Tétrault LLP dated November 6, 2019 re: LPAT Case No. PL171369 844 Don Mills Road, 1150 and 1155 Eglinton Avenue East (the "Property") Request for Amendments on Consent to Decisions/Orders issued January 21, 2019 and July 10, 2019

Confidential Attachment 1 - Confidential Information