

## **2650-2672 St. Clair Avenue West - Official Plan Amendment, Zoning By-law Amendment and Draft Plan of Subdivision Applications - Supplementary Request for Directions Report**

**Date:** November 1, 2021

**To:** City Council

**From:** City Solicitor

**Wards:** Ward 5 - York South-Weston

### **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.

### **SUMMARY**

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On March 6, 2020, the applicant, Dunpar Holding Inc. (Dunpar), appealed its Zoning By-law Amendment and Draft Plan of Subdivision applications to the Ontario Land Tribunal (OLT). The appeal was made without revisions to the original proposal and citing Council's failure to make a decision on the application within the timeframe prescribed by the *Planning Act*.

On July 28 and 29, 2020 Council directed the City Solicitor, together with appropriate staff, to attend the OLT hearing to oppose the appeal respecting the Zoning By-law Amendment application, as proposed. Concurrently, the City Solicitor obtained instructions from the Chief Planner and Executive Director, City Planning to attend the OLT hearing to oppose the appeal respecting the associated Draft Plan of Subdivision application.

On September 22, 2020, Dunpar submitted an Official Plan Amendment application proposing to amend Chapter 7, Site and Area Specific Policies, Policy No. 540 and Schedule 2 of the Official Plan "The Designation Of Planned But Unbuilt Road" to change the requirement for a public road on the subject site to a private road.

On February 17, 2021, Dunpar appealed its Official Plan Amendment application to the OLT. The appeal was made without revisions to the original proposal and citing Council's failure to make a decision on the application within the timeframe prescribed

by the *Planning Act*. This appeal was consolidated with the appeals of the applications for Zoning By-law Amendment and Draft Plan of Subdivision for the subject site at the OLT.

On February 25, 2021, the applicant submitted a Right of Way Plan, prepared by Dunpar, dated February 18, 2021 for the property municipally known as 2650-2672 St. Clair Avenue West, showing a private road on the westerly portion of the subject site (Public Attachment 1).

On October 8, 2021, the applicant submitted drawings in support of a further revised proposal on a with prejudice basis. Those drawings were further revised and resubmitted on or around October 19, 2021, along with the architectural plans prepared by Dunpar and dated October 14, 2021, on a with prejudice basis as a part of a formal submission to the City.

The purpose of this report is to request further instructions in respect of this matter prior to the OLT hearing that is scheduled to commence on November 29, 2021.

## **RECOMMENDATIONS**

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The City Solicitor recommends that:

1. City Council adopt the Recommendations contained in Confidential Attachment 1 to the report (November 1, 2021) from the City Solicitor.
2. City Council authorize the public release of the confidential recommendations contained in the Confidential Attachment 1 to the report (November 1, 2021) 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 (November 1, 2021) from the City Solicitor is to remain confidential at the discretion of the City Solicitor, as it contains advice which is subject to solicitor-client privilege.

## **FINANCIAL IMPACT**

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

## **DECISION HISTORY**

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Dunpar engaged in mediation with the City at the OLT, together with other parties, in an attempt to settle Dunpar's site specific issues regarding OPA 231 in relation to the subject lands. Dunpar submitted a Settlement Offer to the City, which City Council accepted on December 5, 6, 7 and 8, 2017, with instructions to the City Solicitor to support the settlement at the OLT. City Council's decision and the staff report in this regard can be found at the following link:

Report for Action with Confidential Attachment on 2650-2672 St. Clair Avenue West - Request for Directions

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.CC35.3>

As there was no specific redevelopment plan for the site at the time, Dunpar entered into an Acknowledgement and Undertaking, which noted that Dunpar would finalize all design matters through a subsequent Zoning By-law Amendment application, including, but not limited to, site layout, built form, massing and vehicular and pedestrian access to the entire site. The settlement consisted of modifying OPA 231 as it applies to the subject site in the following respects: redesignating the northern portion of the subject site to *Neighbourhoods*; redesignating the southern portion of the subject site to *General Employment Areas* at the ground level and to *Core Employment Areas* on the second level (stratified designation); and adding a planned but unbuilt road extending from St. Clair Avenue West to the public lane to the north.

The modifications referenced above were implemented through [Site and Area Specific Policy \(SASP\) No. 540](#). SASP No. 540 includes various conditions that secure the purpose and intent of OPA 231 to be fulfilled through the eventual review of future development applications for the subject site. As there was no specific redevelopment plan for the subject site at the time of the settlement, Dunpar signed an Acknowledgement and Undertaking, committing, among other things, to finalize through a subsequent Zoning By-law Amendment application all design related matters, including site layout, built form, massing, vehicular and pedestrian access to the site and the design of the future public road.

On February 13, 2018, the OLT approved the settlement and the proposed modifications to OPA 231 (including the addition of SASP 540) were brought into force with respect to the subject site.

A pre-application meeting to discuss the development of the site was held on April 5, 2018. The current application was submitted on August 13, 2018 and deemed complete on September 20, 2018.

The applications for Zoning By-law Amendment and Draft Plan of Subdivision were submitted on August 13, 2018 to amend the former City of York Zoning By-law 1-83 and City-wide Zoning By-law 569-2013 and to seek Draft Plan of Subdivision approval to redevelop the subject site. The proposed development is for a new residential neighbourhood at the rear of the site, while renovating the existing building at the front of the site for employment uses. The Zoning By-law Amendment and Draft Plan of Subdivision applications propose a residential neighbourhood comprised of 98 four-storey townhouses in five blocks, below grade parking, public and private roads and publicly accessible open spaces.

A Preliminary Report for the Zoning By-law Amendment and Draft Plan of Subdivision applications was adopted by Etobicoke York Community Council on January 15, 2019 authorizing staff to conduct a community consultation meeting with an expanded notification area. The Preliminary Report can be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.EY2.5>

On March 6, 2020, Dunpar appealed its Zoning By-law Amendment and Draft Plan of Subdivision applications to the OLT. On July 28 and 29, 2020 Council directed the City

Solicitor, together with appropriate staff, to attend the OLT hearing to oppose the appeal respecting the Zoning By-law Amendment application, as proposed. Concurrently, the City Solicitor City Solicitor obtained instructions from the Chief Planner and Executive Director, City Planning to attend the OLT hearing to oppose the appeal respecting the associated Draft Plan of Subdivision application. The Request for Direction Report may be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.EY16.3>

## COMMENTS

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On October 8, 2021, Dunpar submitted drawings in support of a further revised proposal on a with prejudice basis. Those drawings were further revised and resubmitted on or around October 19, 2021, along with the architectural plans prepared by Dunpar and dated October 14, 2021, on a with prejudice basis as a part of a formal submission to the City (the "Resubmission").

The Resubmission includes the following general revisions:

- Reduction in number of units from 98 to 96;
- Increase in total residential gross floor area from 14,334 square metres to 16,140 square metres;
- Parking for non-residential (163 spaces) was previously proposed at grade and in a below grade parking structure below the residential component of the development. Parking for non-residential is now proposed at grade only. The number of spaces has not been provided. The applicant has also received approval for and constructed a lay-by along the frontage of the subject site to provide additional parking for the commercial building. As these spaces are located within the City right-of-way, the owner would not have exclusive use of these spaces and they are not counted toward meeting the parking requirements for the development;
- Location of the proposed park has been revised from three separate public open spaces along the laneway with a total combined area of 1,252 square metres, to a consolidated park in the rear of the site adjacent to the public lane with an area of 1,545 square metres;
- All other items remain essentially the same as the original plans submitted for the applications.

The City Solicitor requires further instructions. This report is about litigation before the OLT and contains advice or communications that are subject to solicitor-client privilege. Confidential Attachment 1 to this report contains confidential advice and it should be considered by Council *in camera*.

## **CONTACT**

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Ray Kallio, Solicitor, Planning & Administrative Tribunal Law; Tel: (416) 397-4063; Fax: (416) 397-5624; Email: [Ray.Kallio@toronto.ca](mailto:Ray.Kallio@toronto.ca)

Roman Ivanov, Solicitor, Planning & Administrative Tribunal Law; Tel: (416) 392-4807; Fax: (416) 397-5624; Email: [Roman.Ivanov@toronto.ca](mailto:Roman.Ivanov@toronto.ca)

## **SIGNATURE**

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Wendy Walberg  
City Solicitor

## **ATTACHMENTS**

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Public Attachment 1 - Right of Way Plan, prepared by Dunpar, dated October 14, 2021 for the property municipally known as 2650-2672 St. Clair Avenue West

Public Attachment 2 - Architectural Plans prepared by Dunpar, dated October 14, 2021 for the property municipally known as 2650-2672 St. Clair Avenue West

Confidential Attachment 1 - Confidential Information