

## **169 The Donway West - Request for Directions regarding Ontario Land Tribunal Appeal**

**Date:** March 2, 2022

**To:** City Council

**From:** City Solicitor

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

### **REASON FOR CONFIDENTIAL INFORMATION**

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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**

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The City Solicitor has received a with-prejudice settlement offer regarding lands at 169 The Donway West (the "**Settlement Offer**" attached as Public Appendix "A"). This report will outline the Settlement Offer, its associated challenges, the relationship between 169 The Donway West and 966 Don Mills, and offer confidential advice from the City Solicitor related to the Settlement Offer.

### **RECOMMENDATIONS**

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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

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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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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.

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 Flemington 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 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 Section 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, which appeal will be heard on April 11.

At its meeting of November 9, 2021, City Council adopted item NY26.2, a report from the Chief Planner regarding the rezoning and re-designation of the lands at 966 Don Mills. The report recommended that the requirement for a community centre be removed from those lands and also made provision for the DMRI to be involved in future conversations about the use of lands at 966 Don Mills. In a September 2021 communication attached to that report, the solicitor for the owner of the lands at 966 Don Mills and 169 The Donway made a settlement offer which proposed that a local community space could be introduced at the base of 169 The Donway, provided that 3 additional stories were added to the building (the "First Settlement Offer"). The First Settlement Offer expired in November 2021. The report from the Chief Planner and related attachments can be found here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.NY26.2>

On March 1, 2022 the City Solicitor received an updated Settlement Offer regarding the community centre in the base of the building at 169 The Donway. The Settlement Offer is attached as Public Appendix "A" and offers the same terms as the First Settlement Offer of late 2021.

## 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 Settlement Offer 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 its 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**

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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 First Settlement Offer for 169 The Donway West.

Parks, Forestry and Recreation and Community Planning Staff generally support the Settlement Offer. Staff have 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 do not support the development of the Community Space at 169 The Donway West if there was a risk that the City may 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 is 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.

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**

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Wendy Walberg  
City Solicitor

## **ATTACHMENTS**

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Public Appendix A - Letter from Aird Berlis dated February 28, 2022

Confidential Attachment 1 - Confidential Information