



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

221, 225, and 227 Sterling Road - Zoning By-law Amendment and Draft Plan of Subdivision Applications - Request for Direction Report

Date: April 27, 2023
To: City Council
From: City Solicitor
Wards: Ward 9 - Davenport

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

On May 7, 2021, Zoning By-law Amendment and Draft Plan of Subdivision applications (the "Applications") were submitted for the properties at 221-227 Sterling Road (the "Site"), proposing to redevelop the lands with three residential buildings having heights of 20, 25, and 29 storeys that would collectively contain 892 residential units. A Rental Housing Demolition application was also submitted to permit the demolition of 58 existing rental units.

The applicant appealed the City's failure to make a decision on the Applications to the Ontario Land Tribunal (the "OLT") on May 30, 2022.

The Site was designated as having cultural heritage value or interest in August, 2022 through Designation By-law 1130-2022 (the "Designation By-law"). The Owner appealed the designation by-law shortly thereafter.

On April 26, 2023, the City Solicitor received a With Prejudice Settlement Offer, consisting of the correspondence attached to this report as Public Appendix "A" and the architectural plans and drawings attached to this report as Public Appendices "B", "C" and "D" (the "With Prejudice Settlement Offer"), which propose to modify the Applications. A Heritage Permit Application is attached as Public Appendix "E".

The With Prejudice Settlement Offer expires on May 13, 2023. The Ontario Land Tribunal (the "OLT") hearing for the *Planning Act* appeals of the Applications for the Site is scheduled to commence on October 16, 2023. A hearing of the Owner's appeal to the OLT of Designation By-law 1130-2022 has not been scheduled.

The purpose of this report is to seek instruction in relation to applications pertaining to this Site that have been appealed to the OLT.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the recommendations contained in the Confidential Attachment 1 to this report from the City Solicitor.
2. City Council authorize the public release of the confidential recommendations contained in Confidential Attachment 1 and Confidential Appendix "A" to this report from the City Solicitor, if adopted by City Council.
3. City Council direct that all other information contained in Confidential Attachment 1 to this report from the City Solicitor is to remain confidential, as it contains advice which is subject to litigation and solicitor-client privilege.

FINANCIAL IMPACT

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

At its meeting of July 28 and 29, 2020, City Council directed the Chief Planner and Executive Director, City Planning to undertake an area study for the area generally bounded by Bloor Street West to the north, St. Helen's Avenue to the east, the Kitchener GO Rail corridor to the west, and Sterling Road to the south to develop a planning framework, including: an evaluation of appropriate built form, transportation and pedestrian networks, an overall public realm strategy including parks and open spaces, and potential heritage sites. An Official Plan Amendment or a Site and Area Specific Policy to implement the findings of the Planning Framework would be addressed as a second phase of the Study.

<http://app.toronto.ca/tmmis/view/AgendaItemHistoru.do?item=2020.TE16.77>

At its meeting on July 14, 2021, City Council endorsed the City-initiated Bloor Street West: St. Helen's Avenue to Perth Avenue Planning Framework. The Planning Framework included a summary of the Bloor Street Study CHRA: St. Helen's Avenue to Perth Avenue, including a list of thirteen properties identified as having heritage

potential. City Council directed City Planning staff to review all current and future development applications against the Planning Framework.

<http://app.toronto.ca/tmmis/view/AgendaItemHistory.do?item=2021.TE26.31>

On September 9, 2021, Toronto and East York Community Council adopted a Preliminary Report on the Applications, along with an associated Rental Housing Demolition application, for the lands at 221, 225, and 227 Sterling Road, and directed staff to conduct a community consultation meeting with an expanded notification area.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.TE27.21>

On May 11 and 12, 2022, City Council stated its intention to designate the property at 221 Sterling Road (including active entrances at 225 and 227 Sterling Road) under Part IV, Section 29 of the *Ontario Heritage Act*.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.PH33.17>

On August 15, 2022, City Council affirmed its decision to state its intention to designate the property at 221 Sterling Road (including active entrances at 225 and 227 Sterling Road) under Part IV, Section 29 of the *Ontario Heritage Act*, as set out in the City Council decision for Item [2022.PH33.17](#) on May 11 and 12, 2022, and authorized the City Solicitor to introduce the Bill designating the property at 221 Sterling Road (including active entrances at 225 and 227 Sterling Road) under Part IV, Section 29 of the *Ontario Heritage Act*.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.CC48.1>

On August 30, 2022, the owner of the properties at 221, 225, and 227 Sterling Road appealed City Council's enactment of Designation By-law [1130-2022](#) to the OLT.

On December 14 and 15, 2022, City Council directed the City Solicitor and appropriate City staff to attend the OLT in opposition to the appeals regarding the Applications for the lands at 221, 225, and 227 Sterling Road, and to continue discussions with the applicant in an attempt to resolve the issues outlined in the report (November 14, 2022) from the Acting Director, Community Planning, Toronto and East York District.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.TE1.2>

On February 10, 2023, the owner submitted an application to alter and to remove certain heritage attributes from the designated property, pursuant to Sections 33 and 34 of the *Ontario Heritage Act*. The City Solicitor is seeking City Council instructions with respect to this request in a companion report to be considered by City Council at its meeting scheduled for May 10, 11 and 12, 2023. Toronto Preservation Board considered the heritage permit applications at its meeting on April 24, 2023.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.PB5.6>

On March 29, 30 and 31, City Council directed the City Solicitor and appropriate City staff to attend the OLT in support of in support of a revised development proposal generally described in a settlement offer made in relation to appeals of development applications made for 1405-1409A Bloor Street West and 229-231A Sterling Road. City Council's decision is available here:

<https://secure.toronto.ca/council/agenda-item.do?item=2023.CC5.31>

COMMENTS

This report has been prepared in consultation with staff from City Planning, Transportation Services, Parks, Forestry and Recreation, and Economic Culture and Development.

On May 7, 2021, the Applications were submitted for the properties at 221, 225, and 227 Sterling Road to permit the redevelopment of the lands with three residential buildings having heights of 20, 25, and 29 storeys and collectively containing 892 residential units. In order to facilitate the development as originally proposed, the Applications proposed the demolition of all existing buildings, whereas City Council affirmed its decision to designate the property at 221 Sterling Road (including active entrances at 225 and 227 Sterling Road) under Part IV, Section 29 of the *Ontario Heritage Act*.

A Rental Housing Demolition application was also submitted to permit the demolition of 58 existing rental units. The Applications, as originally submitted, proposed the replacement of 33 rental units.

The Zoning By-law Amendment application, as originally submitted, proposed to amend the Zoning By-law to permit 56,482 square metres of residential gross floor area (GFA) within three residential buildings that would sit atop two base buildings and descend in height towards the southern limit of the Site.

The Draft Plan of Subdivision application, as originally submitted, proposed to convey most of the land necessary for the southerly extension of Ruttan Street to connect to Sterling Road. Vehicular access was proposed to be provided off the Ruttan Street extension and to continue east through the Site and lead to an underground parking ramp, two separate loading spaces, and a roundabout adjacent to one of the residential lobbies. The application also proposed a public park that would be located to the south of the intersection of the Ruttan Street extension and Sterling Road.

The Heritage Permit Application proposes to conserve and rehabilitate portions of the façades of the oldest part of the former Fairbanks-Morse Canadian Manufacturing Company building at 221 Sterling Road. Tower C is proposed to be stepped back from the southern, eastern, and western ends so that the height of the original industrial building will still be discernable. This southern part of the building at 221 Sterling Road would be rehabilitated with spaces having the original industrial height that could accommodate partial mezzanines and which could receive natural light through exterior windows and skylights. It is proposed that the original rail lines that exist within the interior of some of the existing units will be removed but commemorated as part of the proposed Interpretation Plan on the east side of Tower C. Apart from the conservation and rehabilitation of Building C, as noted above, the rest of the buildings on the subject lands would be removed to accommodate the proposed development.

This table provides a comparison of the Applications, as originally submitted, and the With Prejudice Settlement Offer:

Category	Original Application Submitted on May 7, 2021	With Prejudice Settlement Offer Submitted on April 26, 2023
Gross Floor Area	Residential: 56,483 square metres Total: 56,483 square metres	Residential: 54,704 square metres Community Space: 473.5 square metres Total: 55,177.5 square metres
Building Height	Building A: 29 storeys Building B: 25 storeys Building C: 20 storeys	Building A: 27 storeys Building B: 24 storeys Building C: 21 storeys
Residential Units	Studio: 67 units (7.5 percent) 1-Bedroom: 591 units (66.3 percent) 2-Bedrooms: 148 units (16.6 percent) 3-Bedrooms: 86 units (9.6 percent) Total: 892 units (100 percent), including 33 rental replacement units	Studio: 60 units (6.9 percent) 1-Bedroom: 580 units (66.7 percent) 2-Bedrooms: 140 units (16.1 percent) 3-Bedrooms: 90 units (10.3 percent) Total: 870 units (100 percent), including 40 replacement rental units and 18 replacement live/work rental units
Vehicular Parking Supply	Resident: 330 spaces Visitor Parking: 87 spaces Total: 417 spaces	Resident: 117 spaces Visitor Parking: 84 spaces Visitor: 201 spaces
Bicycle Parking Supply	Long-Term Spaces: 846 spaces Short-Term Spaces: 106 spaces Total: 952 spaces	Long-Term Spaces: 768 Short-Term Spaces: 64 Total: 832
Loading	2 Type 'G' loading spaces 1 Type 'C' loading space	2 Type 'G' loading spaces 1 Type 'C' loading space
Amenity Space	Indoor: 1,784 square metres (2 square metres/unit) Outdoor: 2,003.9 square metres (2.1 square metres/unit)	Combined amenity ratio (indoor and outdoor) of 4.0 square metres per dwelling unit
Road Conveyance	1,333.9 square metres	1,475.7 square metres
Parkland Dedication	987.9 square metres	1,220.9 square metres

The With Prejudice Settlement Offer proposes to modify the heights of residential buildings that would sit atop the two base buildings as follows: Tower A reduced from 29 storeys to 27 storeys; Tower B reduced from 25 storeys to 24 storeys, Tower C increased from 20 storeys to 21 storeys. The base building of Tower A would continue to have a height of 4 storeys and the height of base building of Towers B and C has been reduced from 7 storeys to 4 storeys. Towers A and B would have a maximum floorplate size of approximately 810 square metres and Tower C would have a maximum floorplate size of 750 square metres. All three towers would achieve a minimum tower separation of 25 metres from each other. The With Prejudice Settlement Offer proposes a total GFA of 55,177.5 square metres, of which 54,704 square metres would be residential GFA (870 residential units).

The remaining 473.5 square metres of GFA are intended to be provided as a community space, which would be contributed by the owner in at least partial satisfaction of the community benefits charge, provided that City Council decides to accept the space as an in-kind community benefit.

The With Prejudice Settlement Offer includes full replacement of the existing 58 rental dwelling units, including the replacement of 18 existing live/work rental units. At the request of City Planning staff, the applicant is proposing to provide 14 of the live/work replacement rental units on the ground floor of the proposed development so that they can continue to benefit from the industrial ceiling height (the remaining four live/work replacement rental units are replacing existing live/work rental units that do not rely on the industrial ceiling height). The rental replacement proposal includes replacement of 100 percent of the existing residential and live/work rental gross floor area, including the gross floor area of the loft spaces in the existing units. The With Prejudice Settlement Offer also includes a tenant relocation and assistance plan that would ensure existing tenants reserve the right to return to a replacement rental unit of a similar type and size and at similar rent as their existing unit, and that would provide tenants with rent gap payments and other financial assistance to mitigate hardship from having to relocate as the development is being constructed. A final report on the Rental Housing Demolition application will be considered by City Council after a tenant consultation meeting is held to review the impact of the proposal on existing tenants and after the OLT has issued an interim Decision on the Zoning By-law Amendment and Draft Plan of Subdivision appeals.

The With Prejudice Settlement Offer continues to contribute to the facilitation of the southerly extension of Ruttan Street, in co-ordination with the adjacent landowner at 1405-1409A and 229-231A Sterling Road through application 20 199975 STE 09 OZ. The With Prejudice Settlement Offer proposes to convey a 16.5-metre-wide strip of land along the western limit of the Site, towards the extension of Ruttan Street, which currently terminates in a cul-de-sac at the northern limit of the Site. The parcel of land needed to connect the development to Sterling Road is proposed to be conveyed as a condition of Site Plan Approval for the lands located at 1405-1409A Bloor Street West and 229-231A Sterling Road. As part of the With Prejudice Settlement Offer, the owner of 221-227 Sterling Road agrees to construct the Ruttan Street extension, provided that the City acquires the land to be conveyed by the owner of the adjacent property, prior to first occupancy of the final phase of development of 221 Sterling Road. If the adjacent Owner's parcel of land has not been conveyed prior to first occupancy of the final phase 221, 225 and 227 Sterling Road - Zoning By-law Amendment and Draft Plan of Subdivision Applications

of development of 221 Sterling Road, then the City would be entitled to draw on a letter of credit, delivered to the City by the Owner to secure the construction of the Ruttan Street extension through the subdivision process.

In addition to conveying land for the extension of Ruttan Street, the With Prejudice Settlement Offer proposes to convey land towards a new public park that would be located towards the southwestern limit of the Site. The new public park would have an approximate size of 1,580 square metres and would be comprised of the applicant's on-site parkland dedication (1,220.9 square metres). The new public park would have an approximate size of 1301.15 square metres and would be comprised of the applicant's on-site parkland dedication (939.5 square metres), 1405-1409A Bloor Street West and 229-231A Sterling Road's on-site parkland dedication (85.35 square metres), and 1405-1409A Bloor Street West and 229-231A Sterling Road's off-site parkland dedication (276.3 square metres). The assembly of the Site's parkland dedication requirements and the adjacent property's parkland dedication requirements would result in one consolidated new public park.

The With Prejudice Settlement Offer's facilitation of a co-ordinated approach to the southerly extension of Ruttan Street and a new consolidated public park would result in the delivery of public infrastructure required to support the proposed development as well as the proposed development on the adjacent property at 1405-1409A Bloor Street West and 229-231A Sterling Road.

CONCLUSION

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 and litigation privilege.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

1. Public Appendix "A" - Letter from Overland LLP dated April 26, 2023
2. Public Appendix "B" - Architectural Plans prepared by Turner Fleischer Architects Inc., dated February 1, 2023
3. Public Appendix "C" - Ultimate Road Condition Plan
4. Public Appendix "D" - Interim Road Condition Plan
5. Public Appendix "E" - Heritage Permit Application
6. Confidential Attachment 1 - Confidential Recommendations and Confidential Information
7. Confidential Appendix "A" - Confidential Information