

**15, 19, 21 and 23 Toryork Drive – Ontario Land  
Tribunal Hearing – Request for Directions**

**Date:** April 28, 2023

**To:** City Council

**From:** City Solicitor

**Wards:** Ward 7 - Humber River-Black Creek

**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 September 21, 2021, the City received Official Plan Amendment, Zoning By-law Amendment and Draft Plan of Subdivision applications (the "Application") for 15, 19, 21 and 23 Toryork Drive (the "Site") to permit the construction of four buildings resulting in a total gross floor area of 97,000 square metres, containing 1,177 residential units and 870 square metres of non-residential gross floor area, an onsite park and a POPS.

The applicant appealed City Council's neglect or failure to make a decision on the Application (the "Appeal") to the Ontario Land Tribunal (the "OLT") on March 16, 2022.

The City Solicitor requires further directions for the upcoming OLT hearing scheduled for 15 days commencing on July 24, 2023. This matter is urgent as the City Solicitor is required by the Procedural Order to meet certain exchange dates in advance of the scheduled hearing and a With Prejudice Settlement Offer has been received by the City Solicitor which expires at the end of the May 10, 2023 City Council meeting.

**RECOMMENDATIONS**

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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 the Confidential Attachment 1 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 at the discretion of the City Solicitor, as it contains advice 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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On January 5, 2022, the Etobicoke York Community Council adopted the Preliminary Report on the Application, authorizing staff to conduct a community consultation meeting. The decision document can be found here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.EY29.5>

A Request for Direction Report on the Application was adopted by City Council on July 19, 2022 directing the City Solicitor and appropriate City staff to attend the OLT hearing to oppose the appeal of the Application, and to continue discussions with the applicant in an attempt to resolve outstanding issues. The Request for Direction Report can be found at:

<https://secure.toronto.ca/council/agenda-item.do?item=2022.EY33.14>

Additional decision history for the Site can be found in the Request for Direction Report at the link above, including previous approvals for development permissions for the Site through the Committee of Adjustment. Details of these approvals are provided in the comments, in response to City Council direction arising from Recommendation 9 in Item 2022.EY33.14.

City staff have engaged with the applicant in a series of without-prejudice discussions over the past year.

On April 19, 2023, the City received a With Prejudice, not confidential, settlement offer from the applicant's lawyers, Aird and Berlis LLP, which is attached as Public Attachment 1 along with a supplementary settlement offer dated April 26, 2023, attached as Public Attachment 2 (together, the "Settlement Offer"). The Settlement Offer contains revised plans (the "Revised Plans"), which is attached as Public Attachment 3. The Settlement Offer with the Revised Plans are referred to as the "Revised Proposal".

In response to the concerns raised by City staff with the applicant, the Revised Proposal includes a number of modifications as described in the Comments section below.

## COMMENTS

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### Revised Proposal

The Revised Proposal consists of three development blocks (Block 1, Block 2, and Block 3) and one park block (Block 4), as well as a public road, two privately-owned publicly-accessible spaces (POPS), and a private access easement. Four predominately residential towers (Tower A - 38 storeys, Tower B - 36 storeys, Tower C - 26 storeys, Tower D - 29 storeys) with active at-grade, non-residential uses will be developed through a phased development approach, starting with Block 2 (Tower B, Tower C). An infrastructure and servicing-related Holding provision ("H") will be placed on Block 1 (Tower A) and Block 3 (Tower D). A total of 1,275 residential units will be constructed on-site. While the basic elements of the Revised Proposal (in terms of the three proposed development blocks containing four predominately residential towers, park, and road) are in line with the original proposal (September 2021), the Revised Proposal incorporates a number of key modifications that respond to City staff's comments, including:

1. The residential Gross Floor Area (GFA) is reduced from 96,130 square metres to 93,163 square metres;
2. The non-residential GFA is increased from 870 square metres to 1,024 square metres;
3. The density (Floor Space Index) is reduced from 6.2 FSI to 6.0 FSI;
4. The height of Tower C is reduced from 27 storeys to 26 storeys;
5. An improved mix of 1, 2, and 3-bedroom units is proposed, and the number of larger 2-bedroom units is increased from 342 to 418 units, and increased minimum unit sizes;
6. The park is increased from 1,630 square metres to 1,813 square metres. The Settlement Offer proposes the owner will design and construct above base park improvements, subject to Council authorizing a development charge credit against the Parks and Recreation component of the development charges;
7. The introduction of a second POPS, with the overall area increased from 613 square metres to 935 square metres total to be secured through Site Plan Control approval;
8. A private access easement is dedicated to provide alternate access to other landowners in the block;

9. The number of Bicycle Parking spaces is increased from 941 spaces to 968 spaces;
10. The Residential Amenity Space is increased from 4,780 square metres to 5,408 square metres representing a rate of 4 square metres of amenity space per unit (2 square metres for each indoor and outdoor space);
11. The overall public realm is improved, including the location of loading and servicing entrances, overall site permeability, and arrangement of active at-grade uses;
12. The overall site design is improved, including appropriate setbacks and tower separation distances;
13. A servicing-related Holding provision is placed on Block 1 (Tower A) and Block 3 (Tower D) as detailed in the Settlement Offer;
14. The Draft Plan of Subdivision application and related appeal is proposed to be adjourned in order for the City and the applicant to prepare and finalize the conditions;
15. Commitments to secure various studies and standards through the Site Plan Control process;
16. A number of conditions to the issuance of the Final Order are proposed to be imposed in any approval by the OLT, as outlined in the Settlement Offer.

Aside from the built form changes and site organization, another aspect of the Settlement Offer is relating to a servicing solution for the orderly development of the Site.

In the FSR submitted with the Revised Proposal, site servicing for the four proposed towers and park block is dependent on the City completing construction of Road 2A that runs along the western edge of the Site. This includes the need for ongoing coordination between the applicant and various City divisions including Transportation Services, ECS, and the City's retained consultant RV Anderson. In order to fully service the Site as contemplated by the submitted FSR, the applicant must pay for the installation of additional servicing within the road right-of-way at the appropriate time, including an upgrade and connection to the City's already-planned storm sewer, and also adding a new water main and sanitary sewer within the new Road 2A and the new proposed public road on the Site. The Settlement Offer provides that the applicant will secure payment for the design work to incorporate the required servicing in Road 2A in advance of a final Order on the Zoning By-law.

An infrastructure and servicing-related Holding provision will be placed on Block 1 (Tower A) and Block 3 (Tower D) as they are completely dependent on Road 2A for storm, water, and sanitary servicing under the currently submitted FSR. Options for a revised FSR are outlined in the Settlement Offer as well.

Additionally, if a looped water main is established from Toryork Drive to service Block 2 (Tower B, Tower C) through additional technical work acceptable to City staff, development on Block 2 may proceed in advance of the others, as the servicing for Block 2 are not reliant on Road 2A. This situation is accounted for in the Settlement Offer, requiring the Owner to submit a supplementary Functional Servicing Letter in the event they wish to proceed with construction of Block 2 in advance of the possible construction of Road 2A.

### **Previous Committee of Adjustment Approvals**

In the July 19, 2022 decision of Council on the Request for Directions Report, City Council included a recommendation to report on the Committee of Adjustment ("COA") decision that altered the densities on these lands. Staff have undertaken a review of the decision history of the various approvals of the COA and report here in response to the recommendation.

The COA previously granted variance approvals on the Site. First, a 2003 COA application sought, among other variances, a FSI variance of 5.8 times the lot area for portions of the Site, whereas the maximum FSI permitted on the Site was 2.5 (or 3.0, if certain community benefits are agreed to be provided, pursuant to Policy 3.5 of the Emery Village Secondary Plan). At the time, Community Planning recommended refusal of six of the requested variances, including the FSI variance. The COA conditionally approved the entire application in its decision issued on December 16, 2003 and no appeal of the decision was ever filed.

A subsequent application was submitted to the COA on March 7, 2013 which proposed to maintain the variances conditionally approved in the 2003 decision but modify a condition of approval, as set out below:

#### *2003 Decision - Original Condition*

"The applicant entering into an agreement, satisfactory to the city solicitor, to secure the flagpole, the outdoor ice rink and the required public road connecting Toryork Drive to Finch Avenue West in accordance with section 37 requirements associated with this development."

#### *2013 Amended Decision - Modified Condition*

The applicant was to enter a Section 45 Agreement (the "Agreement"). The Agreement would secure a total contribution of \$5,250,000, most of which was to be paid in phases, and allocated as follows:

- The Emery Village Heritage and Cultural Plan; and
- Local area facilities, services and related public amenities in the general Emery Village Area, including but not limited to:
  - A portion of a proposed public road connecting Toryork Drive to Finch Avenue West;

- A proposed pedestrian bridge over Finch Avenue West, west of Weston Road;
- Parkland improvements; and
- Public square and streetscape improvements.

Four parties were contemplated to execute the Agreement. Three parties were each existing owners of separate parcels comprising the Site, and the other party was the City. The Agreement was prepared and subsequently executed by two of the owners; however, neither the other owner, nor the City, ever executed it. The Revised Proposal is not relying on the existing permissions authorized through the COA decisions.

The City Solicitor requires further instructions on this matter. This report is about ongoing litigation before the OLT and contains advice or communications that are subject to solicitor-client privilege.

## **CONTACT**

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## **SIGNATURE**

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Wendy Walberg  
City Solicitor

## **ATTACHMENTS**

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1. Public Attachment 1 - Letter from Aird and Berlis LLP dated April 19, 2023 containing a With Prejudice Settlement Offer
2. Public Attachment 2 - Letter from Aird and Berlis LLP dated April 26, 2023 containing a Supplementary With Prejudice Settlement Offer
3. Public Attachment 3 - Revised Architectural Plans - by Giannone Petricone Associates dated April 14, 2023.

4. Public Attachment 4 - Planning and Urban Design Rational Addendum dated April 2023, prepared by Bousfields Inc.
5. Public Attachment 5 - Environmental Noise Study dated April 18, 2023, prepared by SLR Consulting (Canada) Ltd.
6. Public Attachment 6 - Compatibility & Mitigation Study dated September 2, 2021, prepared by SLR Consulting (Canada) Ltd.
7. Public Attachment 7 - Pedestrian Wind Assessment dated April 18, 2023, prepared by SLR Consulting (Canada) Ltd.
8. Public Attachment 8 - Energy Strategy Report dated January 18, 2023, prepared by Opresnik Engineering Consultants Inc.
9. Public Attachment 9 - Draft Zoning By-law Amendment amending City-wide Zoning By-law 569-2013
10. Public Attachment 10 - Civil Response Cover Letter dated February 28, 2023, prepared by Fabian Papa & Partners
11. Public Attachment 11 - Functional Servicing Study & Stormwater Management Report dated February 28, 2023, prepared by Fabian Papa & Partners
12. Public Attachment 12 - Civil Drawings dated February 28, 2023, prepared by Fabian Papa & Partners
13. Public Attachment 13 - Tree Inventory & Preservation Plan dated April 18, 2023, prepared by Strybos Barron King Landscape Architecture
14. Public Attachment 14 - Landscape & Soil Volume Plan dated April 18, 2023, prepared by Strybos Barron King Landscape Architecture
15. Public Attachment 15 - Additional Transportation Analysis Letter dated April 13, 2023 (with Transportation Impact Study Addendum, dated March 2023, enclosed), prepared by Nextrans Consulting Engineers
16. Public Attachment 16 - Toronto Green Standard Checklist
17. Public Attachment 17 - Project Data Sheet
18. Confidential Attachment 1 - Confidential Information