

1-3 Concorde Gate and 10-12 Concorde Place – Zoning By-law Amendment – OLT Appeal – Request for Directions

Date: May 31, 2023

To: City Council

From: City Solicitor

Wards: Ward 16 - Don Valley East

REASON FOR CONFIDENTIAL INFORMATION

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

SUMMARY

On July 15, 2021, the City received a Zoning By-law Amendment application for the lands at 1-3 Concorde Gate and 10-12 Concorde Place (the "Site"). The application sought to permit the redevelopment of the Site with five residential buildings consisting of nine towers ranging in height from 40 to 52 storeys.

The applicant appealed City Council's neglect or failure to make a decision on its application for the Zoning By-law Amendment (the "Appeal"), to the Ontario Land Tribunal (the "OLT") on January 28, 2022.

A with prejudice offer to settle the appeal of the Zoning By-law Amendment was provided to the City on March 16, 2023 (the "March 16 Offer"). City Council did not accept the March 16 Offer at the March 29-31 City Council meeting.

A revised With Prejudice offer to settle the appeal of the Zoning By-Law Amendment was provided to the City on May 29, 2023 (the "Settlement Offer"). The City Solicitor requires instructions on the Settlement Offer, which will expire on the completion of the City Council meeting which commences on June 14, 2023. A two week hearing commencing June 19, 2023 is scheduled at the OLT. This matter is urgent and cannot be deferred.

A Plan of Subdivision application was also received on July 15, 2021, and was similarly appealed on January 28, 2022 due to the City's non-decision. The Applicant has advised that if the Settlement Offer is accepted, the Applicant will request that the Draft

Plan of Subdivision appeal be held in abeyance and will work with City staff to resolve the remaining draft plan of subdivision issues in order to finalize a set of draft plan of subdivision conditions.

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 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

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

On July 15, 2021, the City received a Zoning By-law Amendment application to permit the redevelopment of the Site with five residential buildings consisting of nine towers ranging in height from 40 to 52 storeys. On the same date, a Plan of Subdivision application was submitted in order to create development blocks and new public infrastructure, including two new public parks and a new public street. The Preliminary Report considered at North York Community Council can be found at: <https://www.toronto.ca/legdocs/mmis/2021/ny/bgrd/backgroundfile-170169.pdf>

A Request for Direction Report on the application was adopted by City Council on September 13, 2021 directing the City Solicitor and appropriate City staff to attend the OLT hearing to oppose the Zoning By-law Amendment application, and to continue discussions with the applicant in an attempt to resolve outstanding issues. City Council's Decision and the link to the Request for Direction Report can be found at: [Agenda Item History - 2021.NY26.10](#)

On January 28, 2022, the applicant appealed City Council's neglect or failure to make a decision on the Zoning By-law Amendment to the OLT. The OLT held the first Case Management Conference on July 13, 2022. A hearing was initially scheduled for June 12 to 29, 2023, but the first week of hearing has now been released, such that the hearing is now scheduled for June 19-29, 2023.

COMMENTS

On March 16, 2023, the City received a with prejudice settlement offer from the applicant's lawyers, Kagan, Shastri, DeMelo, Winer & Park LLP (the "March 16 Offer"). City Council refused the March 16 Offer at its meeting of March 29 to 31, 2023.

The City Solicitor has received a further With Prejudice Settlement Offer (the "Settlement Offer") containing revised plans (the "Revised Plans"). The Settlement Offer is open until the end of the City Council meeting commencing on June 14, 2023. The Applicant has provided the Revised Plans to the OLT, and intends to proceed with the June 19 to 29 Hearing, on the basis of the Revised Plans, should the Settlement Offer not be accepted.

In response to the concerns raised by City staff with the applicant, the Revised Plans include a number of modifications detailed below:

Site Organization

The east-west portion of the new public street has shifted south, but has generally maintained the same configuration creating a new linkage between Concorde Gate and Concorde Place. The buildings are organized to front a public street – either Concorde Gate, Concorde Place, or the new street.

The proposal continues to provide two public parks, with the location of the north park being revised. The north park has been moved from its original location which was fronting Concord Place and will now front the new public street in a location midway between Concorde Place and the north-south segment of the new public street.

Phasing

The site will continue to be developed in three Phases. The sequencing of phasing has not changed since the time of the original application, with the first Phase of development to occur at the north-west corner of Concorde Gate and Concorde Place (Buildings 1A and 1B). The new public road, north park, and public school, will be constructed as part of Phase 2 of the development as outlined in the Settlement Offer.

The owner will submit a detailed Phasing Plan that will identify the infrastructure required during each phase to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services and the Chief Planner and Executive Director, City Planning, prior to the OLT issuing its Order on the Zoning By-law Amendment application.

The phasing of development and the public infrastructure to be delivered in each Phase of development will be secured as part of the Draft Plan of Subdivision and secured within the Subdivision Agreement.

Density and Built Form

The Settlement Offer reduces the overall number of towers from 9 to 8, reducing the overall gross floor area ("GFA") by 20,267 square metres to 286,737 square metres. The reduction of overall GFA results in a reduction to the overall density of the development to 9.54 times the gross site area.

The Settlement Offer Plans illustrate that the proposed building and tower locations are located in the same areas as the original application, with the exception of Building 3. Building 3 has been relocated to be closer to Concorde Place, and will be located to the north of the new public street. As part of the Settlement Offer, the proposed tower floorplates will not exceed 800 square metres, gross construction area. The Settlement Offer Plans also illustrate that the separation distances between towers will exceed the minimum identified in the Tall Buildings Guidelines and will range from between 27 metres to 32.7 metres when towers are proposed as part of the same building.

The building heights have also been revised since the time of the original application. Originally the building heights ranged between 40 and 52 storeys, with the tallest buildings located as part of Phase 1 - Building 1, fronting Concorde Place. The Settlement Offer Plans have reduced building heights, with the towers having heights that range between 42 and 47-storeys. There will be two towers with heights of 47-storeys which are proposed to be closest to the Don Valley Parkway on-ramp. The towers fronting Concorde Place will have heights of 42, 45, and 43-storeys, with the 45-storey tower located at the corner of Concorde Place and Concorde Gate.

Non-Residential Uses

The Settlement Offer also increases the amount of non-residential GFA for the development. The proposed non-residential GFA has been increased from 841 square metres to 2,044 square metres at a minimum. The majority of the minimum non-residential space will be located at grade in Building 1 and Building 4, fronting onto Concorde Place and Concorde Gate.

The Settlement Offer recognizes that since the TDSB has not received Ministerial Approval for the proposed elementary school, it may occur that the school is not delivered as part of the development. Should the TDSB not secure Ministerial Approval for the proposed school, the Settlement Offer secures an additional 3,251 square metres of non-residential gross-floor area for the development, for a total of 5,295 square metres of non-residential GFA.

Unit Mix

The Settlement Offer plans propose 1,062 2-bedroom units (27 percent) and 351 3-bedroom units (9 percent) for the development once completed. The number of 3-

bedroom units proposed for the development is appropriate and the unit mix will be secured in the zoning by-law amendment.

Public Street

The Settlement Offer includes the provision of a new 23.0 metre-wide, L-shaped public street, which would connect Concorde Place and Concorde Gate. Also, the Settlement Offer includes a widening of Concorde Gate to achieve a right of way width of 23.0 metres.

Parkland

Parks staff have identified that a parkland dedication requirement for this site is 2,651 square metres. The parkland dedication is required to be satisfied on-site, with any dedication shortfall being addressed through a cash-in-lieu of parkland payment, to the satisfaction of the General Manager, Parks, Forestry and Recreation.

The Settlement Offer includes the provision of 2 public parks as part of the application. The first park will be located within the northern portion of the site, and will be conveyed as part of Phase 2 of the development. The north park is rectangular in shape, with an area of 1,225 square metres, and will have frontage on the new public street. The Owner has agreed to design and construct above-base park improvements at the North Park as part of the development.

The second park will be located within the southern limit of the site, and will be conveyed within Phase 3 of the development. The south park is slightly irregular in shape, with an area of 1,319 square metres, and will have frontage on Concorde Place. Parks Development has indicated that they are satisfied with the size, location and configuration of the south park.

In addition to the on-site parkland dedications as described above, the Owner is required to provide cash in lieu of the 107 square metre shortfall of parkland dedication. As per Toronto Municipal Code Chapter 415-29, the appraisal of the cash-in-lieu will be determined under the direction of the Executive Director, Corporate Real Estate Management. Payment shall be made prior to the issuance of the first above-ground building permit for the Phase 1 lands to be developed.

In order to secure the parkland dedication, the Owner has agreed, prior to the issuance of the first above-grade building permit for each building within Phase 1 of the development, to provide to the City a Letter of Credit for the value of the parkland requirement for the subject building, to be held by the City until the park on the north parcel has been conveyed to the City as part of Phase 2. Prior to the issuance of the first above grade building permit on the site, the Owner shall make a cash-in-lieu payment for the residual 107 square metres of the parkland dedication requirement. Finally, the Owner shall register a Section 118 restriction on title for each of the future park blocks, therein prohibiting the transfer of such lands without the consent of the General Manager, Parks, Forestry and Recreation

The key modifications to the Revised Plans include:

1. Reduction in the proposed number of towers on site from 9 to 8, allowing for increased tower separation distances in line with the City's Guidelines. The 8 towers shall have floor plates of 800 square metres or less, with tower separation distances of 27 to 32.7 metres.
2. Tower heights have been reduced to a range between 42-47 storeys, reduced from a maximum height of 52 storeys in the original proposal.
3. A TDSB school has been included in the revised proposal as part of Phase 2 of the development. The school and its outdoor play area at grade will be located adjacent to the North park. The inclusion of the school in the proposal, although a specific community use, increases the total community use space from 437 square metres to 7,000 square metres.
4. A reduction in parking spaces from 2,143 to 587 spaces in view of the proximity to transit.
5. The amount of non-residential gross floor area has been increased from 9,050 square feet (841 square metres) to a minimum of 22,000 square feet (2,044 square metres), and to a maximum of 57,000 square feet (5,295 square metres) should the TDSB not receive ministerial approval for the proposed school.
6. In relation to the reduction in tower heights and the increased non-residential GFA, total residential GFA has been reduced from 307,004 square metres to 286,737 square metres.
7. Increased Right-of-Way from 20 metres to 23 metres to allow for cycling lanes.

Further to the Revised Plans, the Settlement Offer secures the following:

1. The Owner shall design and construct above-base park improvements at the North park in exchange for Development Charge credits. The specific upgrades and programming shall be determined in consultation with the local community and the local Ward Councillor, as per the normal process organized by Parks Planning.
2. Security with respect to the City's interest in the proposed public parks over the course of the phased development, by way of section 118 restrictions on title and the provision of letters of credit.
3. Greater clarity with respect to the intended non-residential uses and their locations. (See Appendix A of Public Attachment 1 - the Settlement Offer)
4. A Construction Management Plan, including the implementation of a Construction Liaison Committee to address concerns of local residents. (See Appendix B of Public Attachment 1 - the Settlement Offer)

5. The Owner has committed to study the feasibility of a private day-care facility, to be provided as a non-residential use should it prove feasible following study.

There are two other Parties to the OLT matter, the Toronto District School Board ("TDSB") and the Don Mills Residents Inc. ("DMRI").

On April 14, 2023, the TDSB wrote to the other Parties to advise that it would be supporting the Applicant's proposal should this matter go to a contested hearing. On May 1, 2023, the TDSB submitted an expert witness statement and related disclosure in support of the proposal.

The deadline for evidentiary submissions has elapsed and the DMRI has not submitted any expert evidence in opposition to the proposal.

Technical studies submitted with the Settlement Offer may be found [here](#).

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

Colin Dougherty, Solicitor, Planning and Administrative Tribunal Law, Tel. 416-392-3116, Fax 416-397-5624, Colin.Dougherty@toronto.ca

Mark Crawford, Solicitor, Planning and Administrative Tribunal Law, Tel. 416-392-8864, Fax 416-397-5624, Mark.Crawford@toronto.ca

SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

1. Public Attachment 1 - Letter from Kagan, Shastri, DeMelo, Winer & Park LLP dated May 29, 2023 containing With Prejudice Settlement Offer, including revised architectural plans prepared by Core Architects and dated February 23, 2023
2. Confidential Attachment 1 - Confidential Information