

**100 Davenport Road – Ontario Land Tribunal Hearing
– Request for Directions**

Date: May 30, 2023

To: City Council

From: City Solicitor

Wards: Ward 11 - University-Rosedale

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 October 28, 2021, a Zoning By-law Amendment application was submitted to permit a 19-storey mixed-use building containing 42 dwelling units at 100 Davenport Road (the Site). On July 13, 2022, the Applicant appealed the application to the Ontario Land Tribunal (OLT) due to Council not making a decision within the 120-day time frame in the *Planning Act*.

The City Solicitor urgently requires further direction for this matter as a with-prejudice settlement offer has been made that expires at the end of the City Council meeting commencing June 14, 2023. A second Case Management Conference is scheduled for July 4, 2023. There is an upcoming OLT hearing scheduled for 10 days commencing October 23, 2023.

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 March 10, 2016 Toronto City Council refused an application for a 39-storey mixed use building on the Site. The owner appealed the application to the OLT and reduced the proposed height to 29-storeys. On October 29, 2019 the OLT dismissed the appeal. A detailed decision history of the previous application is available in the report from Planning staff dated March 17, 2017, which can be found at: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.TE23.13>

On October 28, 2021, a new Zoning By-law Amendment application was submitted to permit a 19-storey mixed-use building containing 42 dwelling units on the Site. On July 13, 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 November 2, 2022. A second Case Management Conference is scheduled for July 4, 2023. A ten day hearing is scheduled to commence on October 23, 2023.

An Appeal Report on the application was adopted by City Council on February 7, 2023, 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. The Report can be found at: <https://secure.toronto.ca/council/agenda-item.do?item=2023.TE2.7>

On May 29, 2023, the City received a With Prejudice, not confidential, settlement offer from the applicant's lawyers, Kagan Shastri Demelo Winer Park LLP, which is attached as Public Attachment 1 (the "Settlement Offer"). The Settlement Offer contains revised plans (the "Revised Plans"). The Settlement Offer is open until the end of the City Council meeting commencing on June 14, 2023. Should City Council accept the Settlement Offer, the applicant intends to present the Revised Plans to the OLT for approval; otherwise, the offer will become null and void.

In response to the concerns raised by City staff with the applicant, the Revised Plans include a number of modifications. The differences between the original submission and the Settlement Offer are summarized below:

	Original Submission	Settlement Offer
Height	19-storeys	19-storeys
Streetwall height		
Davenport	7-storeys	3-storeys
McAlpine Street	4 to 5-storeys	3-storeys
Blackmore Street	5 to 7-storeys	1 to 7-storeys
McAlpine Street sidewalk width	3.5 metres	4.0 metres

COMMENTS

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

Wendy Walberg
City Solicitor

ATTACHMENTS

1. Public Attachment 1 - With Prejudice Settlement Offer from Kagan Shastri Demelo Winer Park LLP dated May 29, 2023 and revised architectural plans

2. Confidential Attachment 1 - Confidential Information
100 Davenport Road- Zoning By-law Amendment Application - Ontario Land Tribunal Hearing - Request for Directions