

3401 Dufferin Street and 1 Yorkdale Road – Official Plan Amendment and Dufferin Street Secondary Plan – Ontario Land Tribunal Hearing – Request for Directions

Date: May 31, 2023

To: City Council

From: City Solicitor

Wards: Ward 8 – Eglinton Lawrence

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 May 30, 2017, the City received an Official Plan Amendment and Zoning By-law Amendment application by Oxford Properties Group (the "Applicant") for the Yorkdale Shopping Centre site (the "Site") to permit a long-term mixed use development plan for portions of the Site. The existing Yorkdale Shopping Centre is to remain on Site and in operation. The proposed development is intended to occur in a phased manner over the next 30 years and beyond. This proposal introduces new streets, parks and open spaces, internal pedestrian connections, new residential uses in the form of mid-rise buildings and tall buildings, additional commercial and office uses, and a hotel.

The Applicant appealed City Council's neglect or failure to make a decision on its application for the Official Plan Amendment portion of the application to the Ontario Land Tribunal (the "OLT") on April 6, 2022.

Following appeal to the OLT, the Official Plan Amendment application was revised by way of resubmission to City Planning in May, 2022 (the "[Revised OPA](#)").

On May 29, 2023, the Applicant filed a revised Official Plan Amendment with the OLT, consisting of policies it intends to request the OLT approve, in the event of a contested hearing with the City (the "With Prejudice OPA").

The Applicant also has an outstanding appeal of the Dufferin Street Secondary Plan (the "DSSP") which currently includes a portion of the Site.

The appeal of the site specific Official Plan Amendment and the appeal of the DSSP are scheduled to be heard together before the OLT at a two-week long hearing scheduled to commence September 18th, 2023.

The City Solicitor requires further directions for the upcoming OLT hearing.

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 and Confidential Appendix "A" if adopted by City Council.
3. City Council direct that Confidential Appendix "B" and 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 May 30, 2017, the City received an Official Plan Amendment and Zoning By-law Amendment application to permit a long term, mixed use plan for the Yorkdale Shopping Centre site, including a range of retail, office, hotel and residential uses. The Preliminary Report can be found at:

<https://www.toronto.ca/legdocs/mmis/2017/ny/bgrd/backgroundfile-107476.pdf>

On July 23, 2018, City Council adopted the recommendations of a Request for Interim Directions Report, which directed staff to continue the review of the May, 2017 application, to oppose the current form of the application at the OLT, and to continue discussions with the Applicant. City Council's decision is available here:

<https://secure.toronto.ca/council/agenda-item.do?item=2018.MM44.114>

On April 6, 2022, the Applicant appealed City Council's neglect or failure to make a decision on the Official Plan Amendment to the OLT. The Zoning By-law Amendment was not appealed. The OLT held the first Case Management Conference on September 30, 2022, with a subsequent Case Management Conference on February 16, 2023. A hearing is scheduled for September 18 to 29, 2023. In a decision dated September 30, 2022, the Ontario Land Tribunal (OLT) ordered that the Applicant's appeal of the DSSP and the appeal of its Official Plan Amendment application be heard together.

A Request for Direction Report on the application was adopted by City Council on December 14, 2022 directing the City Solicitor and appropriate City staff to attend the OLT hearing to oppose the Revised OPA, 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=2023.NY1.3>

Dufferin Street Secondary Plan

On December 9, 2015, City Council adopted the DSSP (Amendment 294 to the City of Toronto Official Plan), as amended by North York Community Council as well as the accompanying Dufferin Street Urban Design Guidelines. City Council also endorsed the Dufferin Street Transportation Master Plan and the Infrastructure and Stormwater Master Plan. City Council directed staff to use the Dufferin Street Urban Design Guidelines, as well as the Transportation Master Plan and Infrastructure and Stormwater Master Plan in the evaluation of all new and current development proposals and public initiatives. The decision of City Council can be found here:

<https://secure.toronto.ca/council/agenda-item.do?item=2017.NY25.5>

The DSSP was appealed to the OLT by seven appellants, including the owner of the Site.

The appeal by the Owner of 3130 Dufferin Street was adjourned *sine die* in May, 2017, to allow that Owner to implement a settlement achieved with the City and approved by the OLT. City Council's instructions to staff on this settlement are available here:

<https://secure.toronto.ca/council/agenda-item.do?item=2016.CC18.1>

This appeal remains outstanding as of the writing of this report.

On November 15, 2019, the OLT modified and partially approved the majority of the DSSP except as it applies to some of the policies that were still under appeal and as it applies to the Site, in order to dispose of three appeals to the DSSP. City Council's instructions to staff with respect to these modifications to the DSSP are available at the following links:

<https://secure.toronto.ca/council/agenda-item.do?item=2018.CC44.42>

<https://secure.toronto.ca/council/agenda-item.do?item=2019.CC5.13>

<https://secure.toronto.ca/council/agenda-item.do?item=2019.CC5.14>

On November 20, 2020, one of the then four outstanding appeals was withdrawn by way of correspondence to the OLT.

On May 12, 2021, the OLT further modified and approved the DSSP to resolve an appeal by the Building Industry and Land Development Association. The DSSP remains under appeal in its entirety as it relates to Block 14 (a portion of the Yorkdale site). City Council's instructions to staff with respect to the modifications to the DSSP to resolve the BILD appeal is available here:

<https://secure.toronto.ca/council/agenda-item.do?item=2020.CC22.12>

Lawrence Allen Secondary Plan

On November 30, 2011, City Council adopted the Lawrence-Allen Secondary Plan (Amendment 162 to the City of Toronto Official Plan), to allow for the revitalization of Lawrence Heights to proceed. At the same meeting, City Council adopted the Lawrence-Allen Community Services and Facilities Strategy, Transportation Master Plan, Urban Design Guidelines and Financial Strategy and endorsed the Infrastructure Master Plan. The subject lands are located within this Secondary Plan area. A copy of the Lawrence-Allen Secondary Plan can be found here:

<https://www.toronto.ca/wp-content/uploads/2017/11/907d-cp-official-plan-SP-32-LawrenceAllen.pdf>

The decision of City Council can be found here:

<https://secure.toronto.ca/council/agenda-item.do?item=2011.NY11.24>

Yorkdale Transportation Master Plan

On July 19, 20, 21 and 22, 2022, City Council endorsed the Yorkdale Transportation Master Plan and authorized the General Manager, Transportation Services to prepare the Yorkdale Transportation Master Plan based on the preferred street, transit, cycling and pedestrian network solutions, issue the Notice of Completion and put the Transportation Master Plan in the public record in accordance with the requirements of the Municipal Class Environmental Assessment process. City Council directed that further study, through the Environmental Assessment process, be conducted on two Preferred Solutions from the Yorkdale Transportation Master Plan and to report back on the outcome of the further study, and include recommendations on the preferred implementation phasing and prioritization for the Transportation Master Plan infrastructure improvements, and continue to work with Oxford Properties in combining their efforts to create an east-west cycling connection through the Yorkdale property that is mutually beneficial and agreed-upon. City Council's decision is available here:

<https://secure.toronto.ca/council/agenda-item.do?item=2022.IE31.10>

COMMENTS

On May 29, 2023, the Applicant provided a set of with prejudice policy modifications to the City for which it will seek the OLT's approval in the event of a contested hearing between the Applicant and the City (the "With Prejudice OPA"). The With Prejudice OPA is attached as Public Attachment 1 to this report.

The With Prejudice OPA generally provides as follows:

Land Use, Block Plan and Built Form

- Includes the entire Yorkdale Shopping Centre property as "Block 14" in the DSSP whereas presently only a portion of the lands are within the DSSP boundary;
- Retains the Mixed Use Areas designation for all of Block 14;
- Identifies a maximum density of 2.5 FSI for the site, and a maximum density of 1.25 FSI for residential uses;
- Includes a block master plan, setting out new streets, cycling connections, parks, privately owned public spaces, pedestrian connections and development blocks while recognizing that the existing Yorkdale Shopping Centre will be retained; all reflected in Maps;
- Establishes a block master plan centered around "Yorkdale Crescent", a radial design feature that connects the site through green and public spaces and streets;
- Reinforces the existing tall building and mid-rise building structure for the Dufferin Street frontage as established in the DSSP, permitting tall buildings (25 – 40 storeys) generally across the north portion of the site, and in the south west and south east corners of the site, with the tallest buildings at the north east corner closest to Hwy 401 and Allen Road ranging in height from 30 – 40 storeys;
- Provides direction for built form, including scale, step-backs, setbacks, shadowing, and pedestrian experience;
- Directs for active and retail areas for the site, generally along the edges of streets internal to the site and along Dufferin Street; and
- Requires Yorkdale Urban Design Guidelines be submitted with the first zoning by-law amendment.

Phasing and Subsequent Applications

- Establishes a policy framework to guide approval and implementation of development in a phased manner over a 30-year build out with phases informed by the Yorkdale Transportation Master Plan, Yorkdale Development Infrastructure Master Plan Addendum, and the Parks and Recreation Facilities Master Plan to ensure that development is supported by the appropriate hard and soft services;
- Includes a Reference Phasing Diagram that generally sets out the different, non-sequential phases, coordinating necessary streets and parkland for each phase;

- Establishes a process for coordinated and comprehensive development of the site through subsequent subdivision and rezoning applications, requiring necessary reports and studies at the first phase to apply to the site as a whole (Block Master Plan), with updates and more detailed information for each subsequent phase (Block Plans); and
- Requires one or more applications for draft plan of subdivision prior to residential uses to secure new roads, parks and servicing infrastructure.

Housing

- Requires an affordable housing strategy for the entire site at the first zoning by-law amendment for the Site; and
- Includes unit type requirements, providing that 40 percent of units will contain 2 or 3 bedrooms.

Parks, Public Realm and Community Services and Facilities

- Requires a minimum of 1.52 hectares of on-site, unencumbered parkland and identifies three new parks that will be created through parkland dedication;
- Establishes principles for parkland dedication to occur commensurate with each phase of development, requiring frontage on and access from public streets, necessary setbacks, and consideration of the whole site when determining parkland dedication requirements;
- Establishes Privately-Owned Publically-Accessible Space ("POPS") including an urban plaza and requires coordination between POPS and adjacent development and/or parks;
- Provides for the submission of a public art strategy to be submitted with the first zoning by-law amendment for the Site;
- Establishes principles for the location of community facilities, requiring frontage on a public street, being in a highly visible location and having a relationship with other public or publicly accessible amenities such as parks, where possible;
- Protects for the potential of accommodating an on-site childcare facility, community recreation centre, public library and community agency space; and
- Provides that Community services and facilities will be considered and provided at the time of development of each Block Plan, where appropriate and based on needs identified through a Community Services and Facilities Study.

Transportation Network and Mobility

- Establishes a network of public streets, streets that will initially be private but that may become public in future should redevelopment of the existing shopping centre occur, and private streets;
- Provides for the process through which private streets are to become public as needed to support development relying on those streets;
- Requires internal pedestrian connections from the existing shopping centre to the TTC Yorkdale Subway Station and GO Bus Terminal, as well as other mid-block connections; and
- Identifies and protects for cycling facilities and infrastructure with the final design to be refined through development process and/or environmental assessment process.

Climate Mitigation and Resilience

- Requires a Sustainability Strategy and a Net Zero Emissions Strategy Report for all of Block 14 at first zoning by-law amendment for the site;
- Includes policy objectives aimed at sustainable design, climate resilience and minimizing energy demand;
- Incentivizes the implementation of green technology by enabling the repurposing of mechanical penthouses; and
- Establishes the need for a green streets approach to guide design of streets.

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.

City Council's consideration of this report is urgent as the City Solicitor requires updated instructions from Council at its meeting on June 14 to 16, 2023 in order to meet procedural deadlines in late June and early July, in preparation for the hearing scheduled to commence on September 18, 2023.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

1. Public Attachment 1 – With Prejudice Settlement Modifications to Official Plan Amendment and Dufferin Street Secondary Plan, dated May 29, 2023
2. Confidential Attachment 1 – Confidential Recommendations and Confidential Information
3. Confidential Appendix "A" – Confidential Information
4. Confidential Appendix "B" – Confidential Information