



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

294-300 Sherbourne Street – Ontario Land Tribunal Hearing – Request for Directions

Date: July 4, 2023

To: City Council

From: City Solicitor

Wards: Ward 13 - Toronto Centre

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 2, 2021, the City received Official Plan Amendment and Zoning By-law Amendment applications for 294-298 Sherbourne Street to permit the construction of a 10-storey student residence with 7-storey tower element stepped back 3 metres from a 3-storey podium on vacant, non-contributing designated properties within the Garden District Heritage Conservation District. On December 13, 2021, Heritage Permit applications were submitted to erect the above-noted structure on 294-298 Sherbourne Street.

The applicant appealed City Council's neglect or failure to make a decision on its application for the Official Plan Amendment and Zoning By-law Amendment to the Ontario Land Tribunal (the "OLT") on January 14, 2022. On April 6, 2022, the applicant appealed Council's refusal of the Heritage Permit application under Section 42 of the *Ontario Heritage Act* to the OLT (cumulatively, the "appeals").

On June 12, 2023, the owner submitted a with-prejudice settlement offer with respect to the appeals, and on June 23, 2023 the owner submitted a with-prejudice addendum to the settlement offer (the "Settlement Offer"). The Settlement Offer includes a new Heritage Permit application under Section 42 of the *Ontario Heritage Act* to alter the on-site heritage resource located at 300 Sherbourne Street, which property was acquired by the owner and incorporated into a new development proposal and conservation strategy.

The City Solicitor requires further directions for an upcoming OLT hearing scheduled to commence on September 18, 2023. Given the City Council summer recess, this matter is urgent and cannot be deferred.

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 January 14, 2022, the applicant appealed City Council's neglect or failure to make a decision on the Official Plan and Zoning By-law Amendment applications to the OLT. On April 6, 2022, the applicant appealed Council's refusal of the Heritage Permit application under Section 42 of the *Ontario Heritage Act* to the OLT. The OLT held the first Case Management Conference on May 31, 2022. A hearing is scheduled for September 18-October 6, 2023.

A Request for Direction Report on the application was adopted by City Council on March 9, 2022 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. Also on March 9, 2022, City Council refused an application to construct a new building at 294-298 Sherbourne Street under Section 42 of the *Ontario Heritage Act* and recommended that City Council authorize staff to attend the Ontario Land Tribunal hearing in opposition to the appeal. The Request for Direction Report can be found at: <https://secure.toronto.ca/council/agenda-item.do?item=2022.TE31.21>

The Heritage report can be found at:

<https://secure.toronto.ca/council/agenda-item.do?item=2022.TE31.18>

On June 23, 2023, the City received the Settlement Offer from the applicant's lawyers, Aird & Berlis LLP, which is attached as Public Attachment 1. The Settlement Offer contains revised plans (the "Revised Plans"). The Settlement Offer is open until the end of the City Council meeting commencing on July 19, 2023. Should City Council accept the Settlement Offer, the applicant intends to present the Revised Plans to the OLT for approval; otherwise, the Revised Plans will form the basis of a contested hearing scheduled to commence on September 18, 2023.

In response to the concerns raised by City staff with the applicant, the Revised Plans include a number of modifications. As noted herein, the Settlement Offer incorporates an additional property at 300 Sherbourne Street. The modifications are set out below:

| | Original Application | Settlement Offer Plans dated June 21, 2023 |
|---|---|---|
| Site Area (square metres) | 1,274 | 1,848 |
| Gross Floor Area (square metres) | 5,251 | 12,920 |
| Floor Space Index | 4.45 | 7.0 |
| Tower Floor Plate (square metres) | 537 square metre GCA (floors 4-10) | 638 square metre GCA (floors 4-17) |
| Building Height (storeys) | 10-storey | 20-storey |
| Tower Setback to Neighbourhoods Designated Property (metres) | North 5.5 South 8.1 West 7.5 East 7.7 metres to property line | North 10 South 10 West 10 East 14.3 metres to property line |
| Tower Stepbacks from Podium Edge (metres) | North 5.5 South 8.1 West 0 East 3.00 | North 3 South 8.8 West 2.7 East 10 |
| Amenity space (square metres) | 1,114 | 1,914 |
| Overall Dwelling Room Mix | | |
| Studio bed | 93 (61 percent) | 76 (31 percent) |
| Studio plus bed | 35 (23 percent) | 0 (0 percent) |
| Two bed units | 25 (20.9 percent) | 120 (50 percent) |
| Four bed units | 0 (0 percent) | 196 (19 percent) |
| Total beds | 178 | 392 |

| | | |
|--|----------------------|----------------------|
| Parking Vehicle Bicycle Loading | 2 154 0 Type G | 4 223 1 Type G |
| Pedestrian Realm (curb to building face in metres) | 6.225 | 6.75 |

City Planning Comments

The Settlement Offer is a substantive change from the original application. The proposed development site has been expanded to include the adjacent property to the north (300 Sherbourne Street). The proposed built form now includes the retention on-site of an existing heritage building at 300 Sherbourne Street and a proposed 20-storey building, both proposed to be used as a private student residence. Key aspects of the Settlement Offer that have changed compared to the original development proposal reviewed by City Council include:

- Site area has increased to include the adjacent 300 Sherbourne Street. The proposal now includes the retention on-site of the existing heritage designated building at 300 Sherbourne Street.
- Tower height has changed from 10 to 20 storeys with sculpting of the upper tower levels and mechanical areas to eliminate shadowing impacts on Allan Gardens.
- Tower setbacks to adjacent Neighbourhood designated areas has been increased to 10 metres to address compatibility and transition.
- Podium setbacks have been increased to 1.2 metres on the south side and the tower setback from the podium increased to 10 metres to respect the existing character of setbacks within the Garden District Heritage Conservation District.

Land Use

The Settlement Offer proposes to amend the Official Plan land use designation from Neighbourhoods to Apartment Neighbourhoods and to amend Garden District Site and Area Specific Policy 461 to permit the proposed massing. Staff have reviewed these proposed amendments in the context of prior approvals and existing policies.

There are precedents, including within the vicinity of this site, where Neighbourhoods have either been re-designated to permit larger developments or taller buildings have been permitted within those Neighbourhoods. Examples include both 295-349 George Street and 102 Shuter Street. Also, within the immediate context there are other tall buildings along both Sherbourne Street and within the existing Neighbourhood which pre-date the Official Plan.

Built Form

The Settlement Offer is for a 20-storey development including a 3-storey podium. The proposed 10 metre tower setbacks meet the general intent of ensuring an appropriate transition to adjacent Neighbourhoods designated lands and that appropriate light, view and privacy impacts have been addressed on those adjacent Neighbourhood designated lands. Additionally, the tower maintains a minimum 3 metre setback (2.7 metres on west side) to the podium edge while the podium provides a minimum 1.2 metre south setback.

Tower Height and Shadowing Impacts

The tower height and its associated mechanical area has been configured and sculpted to ensure there are no net new shadows on Allan Gardens during the protected times identified by Garden District Site and Area Specific Policy 461 (OPA 82). The proposed building would cast no net new shadows on Allan Gardens from 10:00 am - 6:00 pm March/September 21 and would not shadow the conservatory buildings during December.

Heritage

The conservation strategy proposed for 300 Sherbourne Street is consistent with the policies of the Garden District Heritage Conservation District Plan. While the proposed new construction at 294-298 Sherbourne Street does not meet all the policies of the Garden District Heritage Conservation District Plan, the proposal meets the objectives. The proposed 10 metre setback of the new tower from the east podium edge is significant and sufficient to conserve the scale, form and three-dimensional low-rise residential character of the adjacent heritage properties and the Sherbourne Street Character Sub-Area. The new construction is compatible with, and distinguishable from the onsite heritage building, conserves the cultural heritage values and attributes of the Sherbourne Street Character Sub-Area and the overall Garden District Heritage Conservation District.

Housing

The Settlement Offer proposes a student residence which would include a range of dwelling room unit sizes. The Official Plan and Downtown Plan do not include specific requirements for a student residence, however they do recommend at a general level that a range of housing options be provided.

Amenity Space

Standard amenity space requirements do not apply to a student residence. In lieu of the per unit requirements, the applicant has provided 1,537 square metres of indoor amenity space and 377 square metres of outdoor amenity space.

Parking and Loading

The Settlement Offer proposes 4 parking spaces and 223 bicycle parking spaces internal to the building. Loading is proposed within the building podium with access from the adjacent Glenholme lane.

Pedestrian Realm

The Settlement Offer proposes a minimum 6.75 metre pedestrian realm (curb to building face). This is consistent with the established character of the area and with the recommended minimum of 6 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 - Letter from Aird & Berlis LLP dated June 23, 2023 containing With Prejudice Settlement Offer, including revised architectural plans
2. Confidential Attachment 1 - Confidential Information