



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

1181 Sheppard Avenue East – Rezoning and Official Plan Amendment - Ontario Land Tribunal Hearing – Request for Directions

Date: July 5, 2023

To: City Council

From: City Solicitor

Ward: Ward 17 – Don Valley North

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 December 23, 2019, Official Plan and Zoning By-law Amendment applications were submitted for the property at 1181 Sheppard Avenue East (the "Site") in order to permit a mixed-use development comprised of a 22-storey tower with 39,033 square metres of office space, and a 25-storey residential tower (subsequently revised to 33 storeys) with 452 residential units connected by a 5-storey podium.

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 Ontario Land Tribunal ("OLT") on November 19, 2021 (the "Appeals"). A related site plan application was also filed on March 4, 2022 and appealed to the OLT on February 27, 2023.

On June 20, 2023, the applicant/appellant wrote to the City and the OLT advising that they intend to seek approval of revised plans at the OLT hearing of the Appeals which is scheduled to commence on October 2, 2023. The City Solicitor requires further direction for the upcoming hearing. This matter is urgent as it is the last opportunity to get instruction from City Council in advance of the hearing and established procedural exchange dates. This item 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 and Confidential Appendix "A" 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 December 23, 2019, Official Plan and Zoning By-law Amendment applications were submitted for the property at 1181 Sheppard Avenue East (the "Site") in order to permit a mixed-use development comprised of a 22-storey tower with 39,033 square metres of office space, and a 25-storey residential tower, which was subsequently revised on April 27, 2021 to increase the height of the residential tower to 33 storeys. The proposal included 39,033 square metres of office space and 452 residential units, as well as a pedestrian connection to the TTC's Leslie subway station and a potential daycare space.

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 Ontario Land Tribunal ("OLT") on November 19, 2021. A Site Plan Approval application was subsequently submitted in support of the proposal on March 4, 2022, and was appealed to the OLT on February 27, 2023.

A Request for Direction Report recommending that City Council direct the City Solicitor and City staff to attend the OLT in opposition to the Official Plan and rezoning applications and to continue discussions with the applicant in an attempt to resolve outstanding issues was adopted by City Council on July 19, 2022. The Request for Direction Report, which includes discussion of previous approvals on the Site, and discussion of policy considerations, can be found here:

[Agenda Item History - 2022.NY33.18 \(toronto.ca\)](#)

In March, 2023, the applicant submitted revised plans proposing redevelopment of the Site with two residential towers having heights of 33-storeys and 34-storeys, joined by a 5-storey mixed use podium. The revised proposal would have an overall gross floor area of 66,951 square metres, of which, 58,642 square metres would be residential gross floor area comprising 805 dwelling units, 1,410 square metres would be retail gross floor area, and 6,899 would be office gross floor area. A potential daycare of 800 square metres of gross floor area was proposed at grade as part of the development.

An Appeal Report from the Director, Community Planning, North York District recommending that City Council direct City Staff to continue discussions with the applicant in an attempt to resolve outstanding issues and to attend the Ontario Land Tribunal in opposition to the outstanding matters still in dispute (as identified in the report) was adopted by North York Community Council on June 20, 2023. This Report is supplementary to the Appeal Report, which can be found here:

[Agenda Item History - 2023.NY6.4 \(toronto.ca\)](#)

On June 20, 2023, the City received With Prejudice, not confidential, correspondence from the applicant's lawyer, Mark R. Flowers Professional Corporation of Davies Howe LLP, and an accompanying resubmission including revised plans and supporting materials. That correspondence is attached as Public Attachment 1, together with selected plans from the resubmission (the "With Prejudice Proposal"). The applicant/appellant intends to seek approval of the With Prejudice Proposal at the OLT hearing scheduled to commence in October.

The With Prejudice Proposal includes a number of modifications to the proposal, including:

- A slight reduction in the overall gross floor area and resulting FSI.
- Revisions to the proposed east tower, including the following:
 - reduction of the typical floorplate from 984 square metres (GCA) to 890 square metres (GCA);
 - increase in overall height from 104.6 metres to 120.4 metres, and from 33 to 38 storeys; and
 - provision of minimum 1.5 metre setbacks along the south and east elevations.
- Reduction in the overall height of the west tower from 104.6 metres to 100.8 metres, and from 34 to 32 storeys.
- Revised massing of the base building along the Sheppard Avenue East frontage.
- Relocation and widening of the pedestrian access path on the Concourse 1 Level.
- Revised staircase (POPS) from a straight design to a curved design.

A summary table comparing the statistics for the June 20, 2023 submission to the March 2023 proposal is included with Public Attachment 1.

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 Davies Howe LLP dated June 20, 2023 containing With Prejudice Proposal, including selection of revised architectural plans
2. Confidential Attachment 1 - Confidential Information
3. Confidential Appendix "A" - Confidential Information