



## REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

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

**Date:** October 25, 2023

**To:** City Council

**From:** City Solicitor

**Ward:** Ward 17 – Don Valley North

### REASON FOR CONFIDENTIAL INFORMATION

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

### SUMMARY

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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 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. The parties and OLT have agreed that the site plan appeal will be held in abeyance pending a determination on the Official Plan and Zoning Appeals.

On July 19 and 20, 2023, City Council accepted a Without Prejudice Settlement Offer in respect of the Appeals dated July 4, 2023 (the "Settlement Offer") and directed the City Solicitor to attend at the OLT in support of the Settlement Offer, and to request that the OLT withhold its Order until certain pre-conditions had been met. As authorized by City Council, the Settlement Offer and instructions to the City Solicitor have been made public.

Subsequent to the July City Council meeting, the applicant has revised their plans in order to incorporate elements of the Settlement Offer, including the provision of a direct pedestrian connection and limitations of balcony projections requested by City staff. At

the same time, the applicant made further changes to the plans, replacing an area that was previously shown as a potential day care space on the west tower ground floor and mezzanine with residential units, and making minor refinements to floors 35-38 of the east tower.

In light of these recent changes, the City Solicitor requires further direction for the upcoming hearing. This matter is urgent and cannot be deferred as it is the last opportunity to get instruction from City Council in advance of the anticipated settlement hearing. This report has been prepared with input from City Planning.

## **RECOMMENDATIONS**

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The City Solicitor recommends that:

1. City Council adopt the confidential instructions to staff in Confidential Attachment 1 to this report from the City Solicitor.
2. City Council authorize the public release of the confidential instructions to staff in Confidential Attachment 1 to this report from the City Solicitor if adopted.
3. City Council direct that the balance of Confidential Attachment 1 remain confidential as it contains advice that is subject to solicitor-client privilege.

## **FINANCIAL IMPACT**

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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**

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On July 19 and 20, 2023, City Council considered a Supplementary Request for Direction Report from the City Solicitor dated July 5, 2023. The Report outlined the decision history for the applications in detail. It can be found here: [www.toronto.ca/legdocs/mmis/2023/cc/bgrd/backgroundfile-238404.pdf](http://www.toronto.ca/legdocs/mmis/2023/cc/bgrd/backgroundfile-238404.pdf)

At the July 19 and 20, 2023 City Council meeting, City Council accepted the Without Prejudice Settlement Offer dated July 4, 2023 (the "Settlement Offer") and directed the City Solicitor to attend at the OLT in support of the Settlement Offer, and to request that the OLT withhold its Order until certain pre-conditions had been met. The Council Decision Document can be found here: <https://secure.toronto.ca/council/agenda-item.do?item=2023.NY6.4>

## COMMENTS

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Since the time of the July 5, 2023 Supplementary Report from the City Solicitor which was considered at the July 19, 2023 meeting of City Council (Item NY6.4), the applicant has made revisions to the June 2023 Without Prejudice Settlement Plans, which include:

- replacing the private daycare use with residential dwelling units;
- modifying the massing of the east tower, between levels 35 and 38;
- increasing the residential unit count by 16 units;
- increasing the amenity space provided by 187 square metres;
- increasing the overall gross floor area; and
- limiting the extent of balconies.

The revisions are illustrated on the revised plans attached as Public Attachment 2 to this Report and set out in more detail in the Revisions Table attached as Public Attachment 3 to this Report.

### **Provincial Policies**

The PPS requires planning authorities to identify appropriate locations and promote opportunities for intensification and redevelopment where this can be accommodated taking into account existing building stock or areas, and the availability of suitable existing and planned infrastructure and public service facilities to meet projected needs. The Growth Plan supports the achievement of complete communities that are designed to support healthy and active living and meet people's daily needs throughout an entire lifetime. The policies encourage a range and mix of housing options to serve all sizes, incomes, and ages of households. The Growth Plan also speaks to major transit station areas being planned and designed to be transit-supportive to achieve multi-modal access to stations and connections to nearby major trip generators by providing connections to local and regional transit services to support transit service integration.

### **Replacement of Daycare Space with Housing**

Since the July 2023 Without Prejudice Settlement offer, the applicant has removed the daycare space from the proposal and replaced the space with residential dwelling units. With the Community Benefits Charge being capped at 4 percent, and the direct transit connection being secured as an in-kind CBC benefit, the daycare would not have been secured as a community benefit.

## **Built Form**

The applicant has made a revision to the massing of the East Tower between levels 35 and 38, at the north elevation. The applicant has revised the tower massing of these floors so that the tower is more regularly shaped with a rectangular tower floorplate. The area of tower floorplate of the east tower has remained the same. To address staff concerns regarding balcony protrusions on the West Tower, the applicant has revised the proposal to limit the balcony protrusions.

## **Unit Count**

With the changes to the east tower and the removal of the daycare space, the overall residential unit count has increased by 16 dwelling units. The overall unit count has changed from the 783 dwelling units proposed in the June 2023 Settlement Offer to 799 dwelling units. Since the July 2023 Settlement Offer, the applicant has revised their unit breakdown and has added more 2-bedroom units to the unit mix and has left the number of 3-bedroom units unchanged from 94 units.

## **Amenity Space**

As a result of the increase in the number of dwelling units proposed, the amount of amenity space has increased by 187 square metres. The amenity space ratio of 1.5 square metres per dwelling unit for each indoor and outdoor amenity space remains unchanged.

## **Gross Floor Area and Density**

The overall density proposed has increased from 7.65 times the lot area to 7.79 times the lot area. The overall gross floor area proposed has increased by 1,164 square metres.

## **Transit Connection**

The provision of the pedestrian tunnel connection as an in-kind benefit remains unchanged from the July 2023 Settlement Offer, and has now been incorporated into the Revised Plans dated October 16, 2023.

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**

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Wendy Walberg  
City Solicitor

## **ATTACHMENTS**

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1. Public Attachment 1 – Letter from Davies Howe LLP dated October 23, 2023
2. Public Attachment 2 – Architectural Plans and Drawings prepared by Dialog, dated October 16, 2023, showing revisions in red
3. Public Attachment 3 – 1181 Sheppard Block 1 – Revisions Table
4. Confidential Attachment 1 – Confidential Information