

**123 Wynford Drive - Official Plan and Zoning By-law
Amendment - Request for Direction for OLT Hearing**

Date: March 7, 2024

To: City Council

From: City Solicitor

Wards: Ward 16 - Don Valley East

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 29, 2022, an Official Plan and Zoning By-law Amendment application was submitted to permit the redevelopment of the lands at 123 Wynford Drive (the "Property") with two residential towers having proposed heights of 55 storeys and 48 storeys. The proposed overall gross floor area was 78,660 square metres, with a floor space index of 10.5 times the lot area. The application (the "Application") was deemed complete on August 4, 2022. A resubmission (the "Resubmission") was made by the applicant on April 6, 2023. On April 20, 2023, the Applicant appealed City Council's failure to make a decision on the Application within the applicable statutory timeframe to the Ontario Land Tribunal (the "OLT").

On July 19, 2023, City Council stated its intention to designate the Property under Part IV, Section 29 of the *Ontario Heritage Act*. Heritage Designation By-law 810-2023 ("By-law 810-2023") in respect of the Property was enacted on September 14, 2023. On November 1, 2023, the Applicant appealed By-law 810-2023, after the OLT had already scheduled a hearing on the Applicant's *Planning Act* appeals. On February 5, 2024, the Applicant withdrew its appeal of By-law 810-2023. On February 8, 2024, the Applicant applied for a Heritage Permit (the "Heritage Permit Application"). The Heritage Permit Application was deemed incomplete on February 14, 2024 and remains incomplete. Heritage Planning staff intend to submit a report in respect of the Heritage Permit Application to the meeting of the Toronto Preservation Board scheduled for May 7, 2024; to be considered by North York Community Council at its meeting scheduled for May 8, 2024; and then to be considered by City Council at its meeting scheduled for May 22-24, 2024.

For reasons set out in Confidential Attachment 1 this matter is urgent and cannot be deferred.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council rescind its decision on item 2023.NY7.7 - 123 Wynford Drive - Official Plan and Zoning By-law Amendment Application - Appeal Report.
2. City Council adopt the recommendations contained in Confidential Attachment 1 to this report.
3. City Council authorize the public release of the confidential recommendations contained in Confidential Attachment 1, if adopted by City Council.
4. City Council direct that all other information contained in Confidential Attachment 1 is to remain confidential, as it contains advice which is subject to solicitor-client privilege and litigation 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

In June 2020, the City Planning Division initiated the Growth Plan Conformity and Municipal Comprehensive Review ("MCR"), which includes the delineation of approximately 180 potential Major Transit Station Areas (MTSAs) to meet Provincial minimum intensification requirements. A subset of MTSAs will be identified as Protected Major Transit Station Areas (PMTSAs), where the Council-approved inclusionary zoning policy framework can be implemented. The report can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.PH14.4>

On March 25, 2022, the Planning and Housing Committee approved for consultation 97 MTSA/PMTSAs, of which Wynford Station was identified as a MTSA with a proposed minimum density target of 200 people and jobs per hectare. The report can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.PH32.7>

On September 13, 2021, in the context of a Preliminary Report about Zoning By-law Amendment and Plan of Subdivision Applications related to 1 to 3 Concorde Gate and 10 to 12 Concorde Place, North York Community Council directed Staff to undertake a Focused Area Study of the area bound by the Don Valley Parkway to the west, the CPR rail to the north, Eglinton Avenue East to the south, and the Charles Sauriol Conservation Area to the east. 123 Wynford Drive is in the Focused Area Study area.

North York Community Council's decision is available at the following link:

<https://secure.toronto.ca/council/agenda-item.do?item=2021.NY26.10>

On July 19, 2023, City Council stated its intention to designate the property at 123 Wynford Drive under Part IV, Section 29 of the *Ontario Heritage Act*; and on September 6, 2023 passed Designation By-law 810-2023. City Council's decision is available at the following link:

<https://secure.toronto.ca/council/agendaitem.do?item=2023.PH5.10>

and the Designation By-law is available here:

<https://www.toronto.ca/legdocs/bylaws/2023/law0810.pdf>

On September 7, 2023, North York Community Council considered an Appeal Report about the Official Plan and Zoning By-law Amendment Applications in respect of 123 Wynford Drive (the "Appeal Report"), and adopted staff's recommendation to direct the City Solicitor and appropriate City staff to attend the Ontario Land Tribunal in opposition to the Applications, and to continue discussions with the Applicant in an attempt to resolve outstanding issues. City Council adopted the item without amendment and without debate at its meeting on October 11, 2023. The Appeal Report and City Council's decision are available at the following link:

<https://secure.toronto.ca/council/agenda-item.do?item=2023.NY7.7>

COMMENTS

This report has been prepared in consultation with staff from City Planning including Community Planning, Heritage Planning and Urban Design Staff, and other Divisional Staff.

Background

Following the appeal of City Council's failure to make a decision on the Application within the applicable statutory timeframe to the Ontario Land Tribunal (the "OLT"), the OLT conducted Case Management Conferences on August 10, 2023 and October 24, 2023. The OLT scheduled a nine-day hearing, to commence on May 9, 2024, and issued a Procedural Order which permitted the Applicant to deliver a revised proposal by no later than January 5, 2024.

On January 19, 2024, the Applicant advised the OLT and the parties to the OLT hearing, including the City, that it intended to seek approval of a revised proposal (the "Revised Proposal"), and submitted updated materials in that respect. The Correspondence and Architectural Plans submitted as parts of the Revised Proposal are attached respectively to this report as Public Appendix "A" and Public Appendix "B".

The purpose of this report is to request further instructions for the OLT hearing that is scheduled to commence on May 9, 2024.

Site and Surrounding Area

The site is located at 123 Wynford Drive. The rectangular site is 12,138 square metres in size, has a frontage of 76 metres on Wynford Drive, and a depth of 147 metres. The site slopes south from Wynford Drive with 4,673 square metres of the site located below top-of-bank.

The property is designated under Part IV of the *Ontario Heritage Act*, and includes ravine lands, a designed landscape and a two-storey building, which is currently vacant. The site was previously used as a cultural centre (Noor Cultural Centre (2001-2021), and the Japanese Canadian Cultural Centre (1964-2001)).

The McDonald's head office (1 McDonald Place) is located north of Wynford Drive. Further north of the site is a mix of office buildings and residential development in tower form. To the east of the site is a residential building consisting of two towers having heights of 25 metres. Further east is a commercial retail plaza and residential development in tower form.

The Don Valley Parkway is to the west of the site. Further west is the Aga Khan Cultural Centre and employment uses.

The Don Valley Hotel and a residential tower having a height of 34 Storeys exist to the south of the site. On June 22, 2023, the OLT approved, with the City's consent, a Zoning By-law Amendment for the Don Valley Hotel property (175 Wynford), which would permit four residential towers with heights varying between 47 and 54 storeys sited atop five- and six-storey podiums comprised of a hotel, retail uses, community uses, and a day care. The OLT's decision is available here: <https://www.omb.gov.on.ca/e-decisions/OLT-21-001257-JUN-22-2023.pdf>

The Revised Proposal

The Revised Proposal reduces the overall height of Building A by 3 storeys and 10 metres, while increasing the overall height of Building B by 8 metres. The proposed tower floorplate of Building B remains at 800 square metres, and the tower floorplate of Building A has increased to 826 square metres from the time of the Resubmission.

The setback from the first two storeys of Building A to the property line along Wynford Drive remains at 2 metres. This setback is covered with a canopy and terraces. At the base level, the setback from the edge of the tower to the edge of the podium has increased from 3.6 metres to 4.6 metres.

The setback from Building B to the eastern property line has increased from 6.3 metres to 7.8 metres. The setback from the tower of Building B to the edge of the heritage building has been reduced from 14.2 metres to 10 metres. A setback of 1.5 metres has been introduced along the second level on the east and west sides of Building B.

The proposed residential gross floor area has decreased, and the proposed non-residential gross floor area has increased, resulting in an overall gross floor area reduction, and a reduced proposed floor space index of 9.3 times the area of the lot.

The number of residential dwelling units has increased by 66 units, and the unit mix has changed such that fewer family-sized units are now proposed.

Grade-related outdoor amenity space has been added along Wynford Drive between the main driveway entrance and ramp to the underground parking garage and the edge of the property. Additional outdoor amenity spaces have been proposed at the rear of both buildings, partially within the 3 metre maintenance buffer from stable top of bank. The ramp and loading space along the frontage of the ravine has been replaced with indoor amenity space.

A stand-alone glass pavilion is now proposed between Building A and Building B, as well as a 5 metre wind screen. The pavilion provides access to the indoor amenity level at the lower level in Building A. The pavilion and wind screen block views and vantage points from Wynford Drive to the only location the natural heritage system and the ravine could have been perceived in relation and adjacent to the existing heritage building.

The ramp to the underground parking garage has been moved to the east of the existing heritage building and accesses the underground parking for the entire site from under the existing heritage building.

The proposal would incorporate four levels of below-grade parking garage with a total of 358 spaces, of which 293 are residential and 65 are visitor. The number of vehicular parking spaces has been reduced from the date of the Resubmission. A total of 1,204 bicycle parking spaces are proposed. The main loading and vehicle access are now proposed to be relocated to the east side of Tower B, to allow for additional retail space along Wynford Drive and the Don Valley Parkway, and continuous amenity space along the adjacent ravine.

The table below outlines the changes between the Application, the Resubmission and the Revised Proposal.

	July 29, 2022 Application	April 6, 2023 Resubmission	January 19, 2024 Revised Proposal
Site Area - Gross	12,138 square metres	12,138 square metres	12,138 square metres
Ravine land	4,674 square metres	4,674 square metres	4,044 square metres
Conveyed Lands	0 square metres	0square metres	262 square metres
Site Area - Net	7,464 square metres	7,464 square metres	7,832 square metres

	July 29, 2022 Application	April 6, 2023 Resubmission	January 19, 2024 Revised Proposal
Gross Floor Area - Non-Residential	0 square metres	313 square metres	539 square metres
Gross Floor Area - Community Space	0 square metres	0 square metres	415 square metres
Gross Floor Area - Residential	78,660 square metres	73,706 square metres	71,864 square metres
Total Gross Floor Area	78,660 square metres	74,019 square metres	72,820 square metres
Density (net)	10.5x	9.9x	9.3x
Building A Height	55 storeys (175 metres, excluding 6 metre mechanical penthouse)	55 storeys (175 metres, excluding 6 metre mechanical penthouse)	52 storeys (165 metres excluding 6 metre mechanical penthouse)
Building Height	48 storeys (150 metres, excluding 6 metre mechanical penthouse)	48 storeys (150 metres, excluding 6 metre mechanical penthouse)	48 storeys (158 metres excluding 6 metre mechanical penthouse)
Building Podium	2-8 storeys	2-8 storeys	6 storeys
Tower B Podium	2-storey designated heritage building	2-storey designated heritage building	2-storey designated heritage building
Tower A Floorplate	874 square metres	800 square metres	826 square metres
Tower B Floorplate	887 square metres	800 square metres	800 square metres
Overall Unit Count	1,128 dwelling units	1,126 dwelling units	1,192 dwelling units
Studio dwelling units	0 units (0 percent)	53 units (5 percent)	52 units (4 percent)

	July 29, 2022 Application	April 6, 2023 Resubmission	January 19, 2024 Revised Proposal
One-bedroom dwelling units	660 units (59 percent)	702 units (62 percent)	756 units (63 percent)
Two-bedroom dwelling units	321 units (28 percent)	228 units (20 percent)	236 (20 percent)
Three-bedroom dwelling units	147 units (13 percent)	143 units (13 percent)	143 (8.2 percent)
Vehicular parking	463 parking spaces (351 residential, 112 visitor)	455 parking spaces (345 residential, 110 visitor/non-residential)	358 spaces (293 residential, 65 visitor)
Bicycle parking	1,159 bicycle parking spaces (1,035 long term spaces, 124 short term spaces)	1,148 bicycle parking spaces (1,027 long term spaces, 124 short term spaces)	1,204 bicycle parking spaces (1,073 long term spaces, 121 short term spaces)

The Heritage Conservation Strategy proposed in connection with the Revised Proposal, which is attached to this Report as Public Appendix "C", includes demolition of the existing designated heritage building, with the exception of the north-west concrete pilon, by way of the disassembly, temporary relocation and then reassembly of more than half of the building onto a new structure, and the destruction of the remainder. The ground floor level is proposed to be raised by 3.75 metres in height to accommodate vehicular and pedestrian access from Wynford Drive and to allow service access at the basement level of the east elevation of Building B.

Rescission of City Council Decision on Resubmission

In February, 2022, the Divisional Court rendered a decision in the case of *City of Toronto v. 445 Adelaide Street West Inc.* that has implications for the hearing procedures in the case at hand. In the 445 Adelaide Street West case, 445 Adelaide Street West Inc. ("445 Adelaide") applied to the City of Toronto for an amendment to the City's Zoning By-law to permit a 14-storey hotel on a property known as 445-451 Adelaide Street West. The existing buildings on the property were comprised of the John P. Jackson House and the adjacent Eliza Lennox Houses, which had been designated as having cultural heritage value, pursuant to Section 29, Part IV of the *Ontario Heritage Act*. 445 Adelaide proposed to demolish the designated structures to facilitate its proposed development.

The City failed to make a decision with respect to the re-zoning application within the applicable statutory timeframe, and 445 Adelaide appealed the non-decision to the then Local Planning Appeal Tribunal ("LPAT"). 445 Adelaide had not appealed the designation by-law to the OLT, nor had it applied to the City to demolish the designated buildings. As such, the only matter before the LPAT was the re-zoning appeal.

The City requested an adjournment of the LPAT hearing of the re-zoning appeal, so that the demolition permission process pursuant the Ontario Heritage Act could be followed. 445 Adelaide opposed the adjournment, and the LPAT determined that it would proceed with the re-zoning hearing. The LPAT allowed the appeal and permitted the hotel development. The LPAT withheld its final order under certain conditions were fulfilled, including: (a) the owner providing certain documentation about the Property to the satisfaction of the City's Senior Manager, Heritage Planning; and (b) the owner obtaining approval to demolish the buildings on the property. The City appealed to Divisional Court to request that the LPAT's decision be set aside.

The Divisional Court allowed the City's appeal, and made the following findings, which are binding on the LPAT's successor Tribunal, the OLT:

- the LPAT did not have jurisdiction to determine that the cultural heritage assets were devoid of cultural heritage value without having an appeal of the designation by-law or an appeal of a municipal refusal to issue a demolition permit before it; and
- in making the rezoning of the property conditional on the owner obtaining an Ontario Heritage Act demolition permit, the LPAT made a decision that conflicted with the purpose and operation of the Ontario Heritage Act and exceeded its jurisdiction.

In Agenda Item 2023.NY7.7, City Council adopted the following recommendation: "In the event that the Ontario Land Tribunal allows the appeals in whole or in part, City Council authorize the City Solicitor to request that the issuance of any final Orders be withheld until such time as the City Solicitor advises that:

- (h) the applicant has entered into a Heritage Easement Agreement to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor;
- (i) the owner has submitted a revised Heritage Impact Assessment that includes a conservation strategy for the on-site heritage resource and landscape at 123 Wynford Drive, to the satisfaction of the Chief Planner and Executive Director, City Planning;
- (j) the owner has submitted a Heritage Permit application to alter the property at 123 Wynford Drive, in accordance with Section 33 of the Ontario Heritage Act, to the satisfaction of the Chief Planner and Executive Director, City Planning;

(k) the owner has entered into a Heritage Easement Agreement with the City for the property at 123 Wynford Drive to the satisfaction of the Chief Planner and Executive Director, City Planning, including execution and registration of such agreement to the satisfaction of the City Solicitor; and

(l) the owner has provided a detailed Conservation Plan for the subject heritage property, prepared by a qualified heritage consultant, that is substantially in accordance with the conservation strategy set out in the revised Heritage Impact Assessment, to the satisfaction of the Chief Planner and Executive Director, City Planning."

CONCLUSION

The City Solicitor requires further instructions. This report is about litigation before the OLT and contains advice or communications that are subject to solicitor-client and litigation privilege. Confidential Attachment 1 to this report contains confidential advice and should be considered by Council *in camera*.

CONTACT

Jessica Amey, Solicitor, Planning & Administrative Tribunal Law; Tel: (416) 397-1890; Fax: (416) 397-5624; Email: jessica.amey@toronto.ca

Jyoti Zuidema, Solicitor, Planning & Administrative Tribunal Law; Tel: (416) 338-0800; Fax: (416) 397-5624; Email: jyoti.zuidema@toronto.ca

SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

1. Public Appendix "A" - Correspondence from Kirkor Architects and Planners, dated January 15, 2024
2. Public Appendix "B" - Revised Architectural Plans, dated January 15, 2024
3. Public Appendix "C" - Revised Heritage Conservation Strategy, dated January 15, 2024
4. Confidential Attachment 1 - Confidential Recommendations and Confidential Information