



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

200 University Avenue - Official Plan Amendment, Zoning By-law Amendment and Site Plan Control Applications - Appeal Report

Date: July 10, 2024

To: City Council

From: City Solicitor

Wards: Ward 10 - Spadina-Fort York

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 June 23, 2022 an Official Plan and Zoning By-law Amendment application was submitted seeking permission for a mixed-use development that includes the retention of the existing 16-storey heritage building proposed for office and retail uses, with a 35-storey addition above proposed for residential uses, for a total of 51 storeys.

On September 8, 2022 a Site Plan Control application was submitted. On December 13, 2022 the applicant appealed these applications to the Ontario Land Tribunal ("OLT") due to Council's failure to make a decision within the time frames prescribed by the *Planning Act*.

City Council subsequently designated the existing building on site under Part IV of the *Ontario Heritage Act* through the adoption of by-law 744-2023. The applicant made application to permit alteration and demolition of portions of the designated property, which City Council refused and has been appealed to the OLT.

Following six (6) days of mediation the applicant submitted a With Prejudice Settlement Offer on June 20, 2024. The details of this offer are set out in this report as Public Attachment 1 and Public Attachment 2. The City Solicitor requires further direction for the upcoming OLT hearing relating to the Official Plan and Zoning By-law amendment appeals.

This report should be considered along with a confidential report from the City Solicitor dated June 21, 2024 to the Toronto Preservation Board that discusses the heritage conservation strategy of the Settlement Offer (Item PB20.5), which has been forwarded to City Council for consideration at its meeting of July 24-26, 2024:
<https://secure.toronto.ca/council/agenda-item.do?item=2024.PB20.5>

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 Confidential Appendix "A" and the confidential recommendations contained in 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

As further detailed below, the with prejudice settlement offer contemplates delivering 20 affordable rental housing units at 200 University Avenue, which may be eligible for incentives in the form of foregone revenues of approximately \$1,971,967 under the City's Rental Housing Supply Program (formerly known as the City's Open Door Affordable Program).

These incentives include exemptions from development charges and parkland dedication fees, if not already paid or exempted by Provincial legislation at the time of permit issuance, a waiver of all planning and building permit fees, and exemption from municipal and school taxation over a 40-year term. Based on applicable fees, charges, and tax exemption estimates, the average of these incentives is \$130,838 per unit, for a total additional investment of approximately \$2,616,751 in City incentives is proposed, as outlined in Table 1 below.

The estimated value of incentives is based on current rates. The value of City incentives provided may fluctuate depending on the timing of development applications. On June 1, 2024, the affordable rental exemption in the *Development Charges Act* (DCA) came into force, which provides an exemption to development charges, the community benefits charge, and parkland dedication, for units that meet the Provincial Affordable Residential Units Bulletin, and subject to an agreement with the City to secure affordability for 25 years. Development charge rates were updated on June 6, 2024 to reflect the Bill 185 changes to the DCA to repeal the Bill 23 5-year phase-in.

Table 1: City's Rental Housing Supply Program (formerly known as the City's Open Door Affordable Program) Incentives and Exemption of Municipal and School Taxation for 200 University Avenue

Affordable Rental Housing Units	Estimated Affordability Period	Estimated Development Charges*	Estimated Planning Fees and Charges**	Estimated Total Value of Incentives	Estimated Net Present Value of Property taxes
20	40	\$1,534,394	\$437,573	\$1,971,967	\$644,784

*Estimate updated to current rates based on total DCs exempted. Actual value of the DC exemption is based on rates and policies in effect at the time of permit issuance.

**Includes estimated 2024 building permit fees of \$35,705, Planning fees of \$101,868 and parkland dedication fees of \$300,000 calculated using 2024 property tax rates.

At current 2024 rates, the value of the annual property tax exemption is estimated at \$27,895. The net present value of this tax relief over the 40-year term that the incentives would be in effect is estimated at \$644,784 as summarized in Table 2 below.

A tax exemption would have no net present impact to the City for the educational portion of taxes remitted to the Province.

Table 2: Value of Property Tax Exemption

Property Tax	Annual	NPV: 40 Years
City	\$21,628	\$499,921
Education	\$5,967	\$137,919
City Building	\$300	\$6,944
Total	\$27,895	\$644,784

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the information as presented in the Financial Impact Section.

DECISION HISTORY

On June 17 and June 18, 1991, City Council adopted the recommendation to include the property at 200 University Avenue, on the City of Toronto's Heritage Register.

On June 23, 2022 an Official Plan and Zoning By-law Amendment application was submitted seeking permission for a mixed-use development that includes the retention of the existing 16-storey heritage building on the site, with a 35-storey addition above for

a total of 51 storeys. On September 8, 2022 a Site Plan Control application was also submitted.

On December 13, 2022, the applicant appealed the applications to the Ontario Land Tribunal (OLT) citing City Council's failure to make a decision on the applications within the time period prescribed under the *Planning Act*.

On March 29, 2023, City Council stated its intention to designate the property at 200 University Avenue under Part IV, Section 29 of the *Ontario Heritage Act*.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.CC5.42>

An Appeal Report on the Official Plan amendment, Zoning By-law amendment and Site Plan Control applications was adopted by City Council at its meeting on July 19, 2023 directing the City Solicitor and appropriate City staff to attend the OLT hearing to oppose the Applications in their current form, and to continue discussions with the applicant in an attempt to resolve outstanding issues.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.TE6.27>

On July 19, 2023, City Council adopted item CC8.34 to enact by-law 744-2023 designating the property at 200 University Avenue under Part IV, Section 29 of the *Ontario Heritage Act* substantially in accordance with the Revised Statement of Significance: 200 University Avenue (Reasons for Designation) in consideration of the objections received by the City Clerk.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.CC8.34>

On November 8, 2023, City Council adopted item CC12.10 to refuse applications under Section 33 and 34(1) of the *Ontario Heritage Act* to alter and demolish heritage attributes of the designated heritage property at 200 University Avenue.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.CC12.10>

On December 13, 2023, the applicant appealed the heritage permit applications to the OLT.

A 10-day hearing is scheduled to commence on November 4, 2024.

COMMENTS

The following table summarizes the relevant development statics for the original proposal, which was appealed on December 13, 2022, and the Settlement Offer dated June 20, 2024:

Category	Original Proposal June 23, 2022	Revised Proposal June 20, 2024
Site Area (square metres)	1,754	1,754
Site Coverage	79.5 percent	79.5 percent

Category	Original Proposal June 23, 2022	Revised Proposal June 20, 2024
Building Height (storeys)	51	53
Building Height (metres) (including mechanical penthouse)	181 metres (including mechanical penthouse)	189 metres (including mechanical penthouse)
Gross Floor Area (square metres)	Residential: 35,316 Non-residential: 13,256 Total: 48,572	Residential: 49,052 Non-residential: 107 Total: 49,159
Floor Space Index	27.7 times the lot area	28 times the lot area
Dwelling Units	Total: 478	Total: 620
Affordable Rental Dwelling Units	N/A	Total: 20
Amenity Space (square metres)	Indoor: 1,583 Outdoor: 285 Total: 1,868	Indoor: 1,619 Outdoor: 286 Total: 1,905
Vehicle Parking	Residential: 56 Total: 56	Residential: 59 Visitor: 8 Total: 67
Bicycle Parking	Long-term: 457 Short-term: 91 Total: 548	Long-term: 621 Short-term: 76 Total: 697
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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 - With Prejudice Settlement Offer from Kagan Shastri DeMelo Winer Park LLP, dated June 20, 2024
2. Public Attachment 2 - Architectural Plans prepared by KPMB Architects, dated May 21, 2024
3. Confidential Attachment 1 - Confidential Information
4. Confidential Appendix "A" - Confidential Information