



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

26-34 Nipigon Avenue – Ontario Land Tribunal Hearing – Request for Directions

Date: September 24, 2024

To: City Council

From: City Solicitor

Wards: Ward 18 - Willowdale

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 27, 2023, the City had a pre-application consultation with the applicant in respect of the site located at 26-34 Nipigon Avenue (the "Site").

On September 6, 2023, the City received Official Plan and Zoning By-law Amendment applications for the Site to permit the construction of a 50-storey mixed use building containing 569 residential units and a residential gross floor area of 38,099.89 square metres, for an overall density of 17.0 times the area of the lot (the "Applications").

On January 31, 2024, City staff submitted a Refusal Report to North York Community Council in respect of the Applications. The Refusal Report was considered at the City Council meeting of March 20 and 21, 2024, wherein City Council adopted staff's recommendations without amendment.

On April 22, the applicant appealed City Council's refusal of the Applications (the "Appeal") to the Ontario Land Tribunal (the "OLT"). However, pursuant to City Council's instructions to staff to use mediation, conciliation, or other dispute resolution techniques to attempt to resolve the Applications, the City Clerk did not forward the Appeal to the OLT until July 8, 2024.

On July 24, 2024, Metrolinx served the registered owners of the Site with Notices of Application for Approval to Expropriate Land in respect of the entirety of the Site for the planned Yonge North Subway Extension project.

On September 10, 2024, the OLT held a first case management conference ("CMC") in respect of the Appeal. Metrolinx sought and was granted party status to the appeal. The OLT scheduled a second CMC for October 23, 2024.

On September 23, 2024, the City received a with prejudice settlement offer from the applicant's lawyers, Goodmans LLP, which is attached as Public Attachment 1 (the "Settlement Offer"). The revised plans associated with the Settlement Offer are attached as Public Attachment 2. The Settlement Offer will remain open until the end of the City Council meeting scheduled to commence on October 9, 2024.

The City Solicitor requires further directions in advance of the second CMC. This matter is urgent and should not be deferred.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the recommendations contained in Confidential Attachment 1 to this report from the City Solicitor.
2. City Council authorize the public release of 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

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

The Refusal Report in respect of the Applications were adopted at the City Council meeting of March 20 and 21, 2024, and can be found here:

<https://secure.toronto.ca/council/agenda-item.do?item=2024.NY11.10>

COMMENTS

Settlement Offer

The revised plans associated with the Settlement Offer propose, among other things, the following:

- a north/south mid-block connection with a width of 7.5 metres and an increase in on-site tree-planting from six trees to 15 trees;
- a reduced tower height of 48 storeys (from 50 storeys);
- a reduced tower floorplate of 750 square metres (from 812 square metres), including through the provision of an 8.5-metre east tower setback, with no wrap-around balconies;
- a 7.5-metre setback to the north property line for any residential gross floor area;
- a 5.5-metre setback to the east property line;
- two vehicle spaces for pick-up/drop-off and two vehicle spaces for car-share;
- a minimum of 92.9 square metres (1,000 square feet) of commercial space on the ground floor;
- a proposed unit mix that includes a minimum of 10 percent of the units as three-bedroom units and 30 percent of the units as two-bedroom units; and
- a minimum amount of combined indoor and outdoor amenity at a ratio of 4.0 square metres per unit, including a minimum of 2.0 square metres per unit of indoor amenity space, with opportunities for pet amenities at-grade.

The table below provides a comparison of the original and revised proposals for the Site.

Category	Refusal Report (Dated Jan. 31, 2024)	Settlement Offer (Dated Sep. 23, 2024)
Floor Space Index	17.0	15.3
Gross Floor Area (GFA)	<ul style="list-style-type: none">• 38,687 square metres total• 0 square metres Non-Residential GFA• 38,687 square metres Residential GFA	<ul style="list-style-type: none">• 35,687 square metres total• 92.9 square metres Non-Residential GFA• 35,780 square metres Residential GFA

Category	Refusal Report (Dated Jan. 31, 2024)	Settlement Offer (Dated Sep. 23, 2024)
Indoor Amenity	3.0 square metres/unit	2.6 square metres/unit
Outdoor Amenity	1.2 square metres/unit	1.4 square metres/unit
Units	569 dwelling units <ul style="list-style-type: none"> • 3 Studio (0.53 percent) • 366 One-bedroom (64.3 percent) • 143 Two-bedroom (25.1 percent) • 57 Three-bedroom (10 percent) 	512 dwelling units <ul style="list-style-type: none"> • 0 Studio (0 percent) • 280 One-bedroom (54.7 percent) • 181 Two-bedroom (35.4 percent) • 51 Three-bedroom (10 percent)
Tower Height (excluding Mechanical Penthouse)	50 storeys (159.5 metres)	48 storeys (150.6 metres)
Tower Floorplates (Gross Construction Area)	812 square metres	750 square metres
Resident Parking	98	62
Visitor Parking	30	27
Pick-up/Drop-off Parking	2	2
Car Share Parking	2	2

Other Matters

Additionally, through the Settlement Offer, the owner had agreed to:

- withdraw any appeal and/or party status for the Yonge Street North Secondary Plan (OPA 615) (By-law 1016-2022) in Case OLT-22-004346; and
- the imposition of conditions that address the remaining City issues to staff's satisfaction.

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 Goodmans LLP, dated September 23, 2024
2. Public Attachment 2 - Revised Plans by Kirkor Architects and Planners, dated September 17, 2024
3. Confidential Attachment 1 - Confidential Information