

Sherway Area Secondary Plan - City-initiated Official Plan Amendment and 25 The West Mall (Sherway Gardens Mall) - Official Plan Amendment Application – Ontario Land Tribunal Hearings – Request for Directions

Date: October 31, 2024

To: City Council

From: City Solicitor

Wards: Ward 3- Etobicoke-Lakeshore

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 October 29 and 30, 2019, City Council adopted Official Plan Amendment 469 ("OPA 469"), which, among other matters, created Chapter 6, Section 43, Sherway Area Secondary Plan (the "Secondary Plan"). The Secondary Plan was appealed to the Ontario Land Tribunal (the "OLT") by nine appellants. On March 9, 2022 and February 8, 2023, City Council provided instructions to the City Solicitor regarding the appeals which, following implementation of those instructions at the OLT by the City Solicitor, completely resolved most appeals, and significantly scoped the remaining appeals of OPA 469. One of the nine appeals has also been withdrawn.

On July 11, 2019, the owner of 25 The West Mall (the "Site"), which property accommodates Sherway Gardens Mall, applied for a site-specific Official Plan Amendment to the plan for the redevelopment of the lands peripheral to the shopping centre. City Council's neglect or failure to make a decision on that application was appealed to the OLT on January 25, 2022.

The City Solicitor requires further directions for the upcoming OLT hearing event related to the site-specific Official Plan Amendment for the Site on December 9, 2024. City Council's consideration of this matter is urgent and should therefore 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, Confidential Appendix "A" and Confidential Appendix "B" 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

Sherway Area Secondary Plan

On September 10, 2013, Etobicoke York Community Council deferred adoption of the recommendations of a staff report dated August 23, 2013, which sought direction to undertake a review and update of the planning policy framework for the Sherway Area, to its October 17, 2013 meeting. The Community Council decision can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EY26.8>

On October 17, 2013, Etobicoke York Community Council adopted the recommendations of the August 23, 2013 staff report and also requested the Director, Community Planning, Etobicoke York District, report to the November 19, 2013 meeting of Etobicoke York Community Council, with a preliminary study terms of reference. The City Council decision to adopt Community Council's recommendations can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EY28.4>

On November 19, 2013, Etobicoke York Community Council adopted the preliminary study terms of reference from the Director, Community Planning, Etobicoke York District, as the basis for preparing and issuing a formal study terms of reference for the City-initiated Sherway Area Study. The City Council decision to adopt Community Council's recommendations can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.EY29.8>

On December 13, 2016 City Council adopted the recommendations of the Request for Directions Report on the City-initiated Sherway Area Study, which directed staff to update the existing planning framework for the Sherway Area with a Secondary Plan based on the key findings of the Study, bring forward Urban Design and Streetscape Guidelines for the Sherway Area, and finalize the Transportation and Servicing Master Plans. The Request for Directions Report can be found here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EY18.8>

On October 29 and 30, 2019, City Council adopted Official Plan Amendment 469, which contains the Sherway Area Secondary Plan. City Council also adopted the Sherway Area Urban Design and Streetscape Guidelines. City Council's decision may be found here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.EY9.1>

By-law 1535-2019, adopting OPA 469, may be found here:

<https://www.toronto.ca/legdocs/bylaws/2019/law1535.pdf>

On March 9, 2022, City Council directed the City Solicitor and appropriate staff to request the OLT modify and partially approve OPA 469. City Council's decision may be found here:

<https://secure.toronto.ca/council/agenda-item.do?item=2022.CC41.5>

On February 7 and 8, 2023, City Council accepted a without prejudice settlement offer to settle the appeal of OPA 469 by Amexon Realty Inc. and directed the City Solicitor to request that the OLT modify and partially approve OPA 469. City Council's decision may be found here:

<https://secure.toronto.ca/council/agenda-item.do?item=2023.CC3.12>

On July 19, 2023, City Council accepted without prejudice settlement offers to settle the appeals of OPA 469 by Calloway REIT (Etobicoke) Inc., Calloway REIT (Etobicoke-Index) Inc., and 690 Evans Ave Dev Nominee Inc., and directed the City Solicitor to request that the OLT modify and partially approve OPA 469. City Council's decision may be found here:

<https://secure.toronto.ca/council/agenda-item.do?item=2023.CC8.11>

25 The West Mall

On July 11, 2019, the City received an application to amend the Official Plan in respect of the Site, to increase the amount of residential development on the Site, eliminate the requirement for public streets on the Site and delete the parkland dedication policies applicable to the Site. The application was deemed complete on May 20, 2020. On December 3, 2019, Etobicoke York Community Council adopted the recommendations of a Preliminary Report. The decision of Etobicoke York Community Council and the Preliminary Report are available here:

<https://secure.toronto.ca/council/agenda-item.do?item=2019.EY11.3>

COMMENTS

Sherway Area Secondary Plan

OPA 469 was appealed to the OLT by nine appellants. The OLT has conducted five Case Management Conferences in respect of these appeals. One appeal has been withdrawn, five appeals have been resolved by way of modification and partial approval of OPA 469, two appeals have been partially resolved and adjourned pending receipt of a decision by the Minister of Municipal Affairs and Housing with respect to Official Plan Amendment 591 (employment lands conversion requests), and one appeal has been significantly scoped on consent, and adjourned, as set out in the following table:

	Appellant	Property Address	Status of Appeal
1	Amexon Realty Inc.	710-703 Evans Avenue	Settled - see OLT decision dated June 22, 2023
2	Calloway REIT (Etobicoke) Inc., Calloway REIT (Etobicoke-Index) Inc.	165-179 North Queen Street and 98 Index Road	Partially settled - see OLT decision dated August 25, 2023. Site specific portion of the appeal adjourned pending decision by the Minister of Municipal Affairs and Housing on OPA 591-Conversion Request 91
3	690 Evans Ave. Dev Nominee Inc.	690 Evans Avenue	Settled - see OLT decision dated August 25, 2023
4	Cadillac Fairview Corporation Limited	25 The West Mall	Adjourned - see OLT decision dated April 11, 2023
5	FIMA Development	200 Sherway Drive	Settled - see OLT decision dated September 9, 2022
6	FIMA Development	1750-1900 The Queensway and 290-300 North Queen Street	Settled - see OLT decision dated September 9, 2022
7	Home Depot of Canada Inc.	193 North Queen Street	Settled - see OLT decision dated September 9, 2022
8	Queen's Walk Inc.	2217 The Queensway	Withdrawn February 2, 2022

	Appellant	Property Address	Status of Appeal
9	2130254 Ontario Inc.	51 Manstor Road	Adjourned pending decision by the Minister of Municipal Affairs and Housing on OPA 591- Conversion Request 63 - see OLT decision dated September 9, 2022

The OLT Webpage regarding the OPA 469 proceedings, where all of the above-noted OLT decisions can be found is available here:

<https://jus-olt-prod.powerappsportals.com/en/e-status/details/?id=b6224660-c573-ec11-8943-000d3ae8e2b2>

25 The West Mall

The Site is located within the Secondary Plan boundaries, in the Sherway Gardens Precinct. The Secondary Plan, as adopted, anticipated that the Sherway Gardens Mall would continue to operate as a regional retail destination. The Secondary Plan designated the lands surrounding the mall *Mixed Use Areas A - Residential, Mixed Use Areas B - Office Commercial* and *Mixed Use Areas C - Retail*. It was anticipated that over time, the surface parking lots surrounding the mall would be redeveloped with a mix of uses to create a walkable and more hospitable pedestrian environment. The lands where the existing shopping centre is located were designated *Mixed Use Areas C-Retail* to maintain the retail focus of this part of the precinct.

The Secondary Plan envisioned three possible park locations within the Sherway Gardens Precinct. The Secondary Plan also protected for a transit hub at the northwest portion of the Site, in keeping with the location, conceptually identified in the 1993 approved Environmental Assessment (which approval has not lapsed), to allow for the extension of the Bloor-Danforth subway line from Kipling Station. A multi-use trail accommodating pedestrian and cycling infrastructure was envisioned along the entire Queensway frontage of the site. The Secondary Plan anticipated that the existing internal private ring road would be designed to City standards and dedicated as public street(s) through redevelopment.

In the Preliminary Report, staff identified a number of matters to be assessed in evaluating the site specific Official Plan Amendment, including: the appropriate level of intensification for this site, the proposed housing mix, the proposal not to provide a network of public streets across the site, the appropriateness of a built form proposal consisting primarily of tall buildings, and the proposal to reduce the number of parks in the Sherway Gardens Precinct.

On October 28, 2021, a resubmission of new and updated material in support of a proposed masterplan development was made.

On January 25, 2022, the applicant appealed its site-specific Official Plan Amendment application to the OLT, citing City Council's failure or neglect to make a decision within the statutory timeframe set out in the *Planning Act*. The OLT has conducted two Case Management Conferences in respect of the appeal. The appeal of the site-specific Official Plan Amendment application, and the appeal by the owner of OPA 469 have not been consolidated.

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

Laura K. Bisset, Director, Planning & Administrative Tribunal Law; Tel: (416) 392-8782; Email: laura.bisset@toronto.ca

Daniel Elmadany, Solicitor, Planning & Administrative Tribunal Law; Tel: (416) 397-5709; Email: daniel.elmadany@toronto.ca

SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

1. Confidential Attachment 1 - Confidential Information
2. Confidential Appendix "A" - Confidential Information
3. Confidential Appendix "B" - Confidential Information