



## REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

# 789-793 Don Mills Road and 10 Ferrand Drive - Official Plan Amendment and Zoning By-law Amendment Applications - Request for Direction Report

**Date:** December 9, 2023

**To:** City Council

**From:** City Solicitor

**Wards:** Ward 16 - Don Valley East

### REASON FOR CONFIDENTIAL INFORMATION

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This report is about litigation or potential litigation that affects the City or one of its agencies or corporations. This report contains advice or communications that are subject to solicitor-client privilege.

### SUMMARY

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On July 29, 2022, an Official Plan and Zoning By-law Amendment application and a Site Plan Control application (the "Applications") were submitted to permit the redevelopment of the land with four residential towers having proposed heights of 56, 49, 45, and 22 storeys, an on-site privately-owned publicly accessible space (POPS), and a public park at the corner of Ferrand Drive and Rochefort Drive. The applicant proposed to redevelop the lands in three phases; phase one consisting of the POPS with below grade parking in the existing conference centre; phase two consisting of two towers - Buildings A and B - of 56 and 49 storeys respectively, connected with a 4 to 11 storey podium; phase three consisting of two towers - Buildings C and D - of 45 and 2 storeys respectively, connected by a 4 to 7 storey podium. The total proposed residential gross floor area was 139, 068 square metres. The Applications were deemed complete as of September 16, 2022.

The applicant appealed the City's failure to make a decision on the Applications to the Ontario Land Tribunal (the "OLT") on February 21, 2023. Case Management Conferences were held on June 17, 2023, November 15, 2023, and November 1, 2024. A fourth CMC is scheduled for January 28, 2025.

The property was designated as having cultural heritage value or interest on July 19, 2023 through Designation By-law 743-2023 (the "Designation By-law"). The Owner appealed the designation by-law to the OLT on September 7, 2023. The first Case Management Conference in respect of this appeal was held on November 15, 2023,

and the second CMC on November 1, 2024. No hearing of this appeal has yet been scheduled.

The parties engaged in two days of mediation on September 8 and September 15, 2023. The parties also engaged in significant without prejudice discussions following mediation.

On December 5, 2024, the City Solicitor received a With Prejudice Settlement Offer, consisting of the correspondence attached to this report as Public Appendix "A" (the "With Prejudice Settlement Offer"), which proposes to modify the Applications. The owner has requested that City Council consider the With Prejudice Settlement Offer at its meeting scheduled to begin December 17, 2024.

The purpose of this report is to seek instructions on the With Prejudice Settlement Offer.

## **RECOMMENDATIONS**

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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, as it contains advice which is subject to litigation and 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 April 16, 2019, City Council adopted Official Plan Amendment 404 representing the Don Mills Crossing area covering lands generally bound by the CP Rail Corridor, Don Mills Road, Wynford Drive, Gervais Drive, Ferrand Drive, Rochefort Drive and a portion of the west branch of the Don River Valley. OPA 404 provides a comprehensive planning framework to guide the redevelopment around the Don Mills Road and Eglinton Avenue East intersection as a complete community with varied levels of intensification and land uses, opportunities to connect with nature, to enhance mobility

choice and support inclusive City building.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.PH4.1>

OPA 404 was appealed to the Local Planning Appeal Tribunal (LPAT Case PL190242) by two landowners. The Tribunal allowed the appeals in part and the OPA was modified and approved following a settlement between the appellants and the City.

<https://secure.toronto.ca/council/agenda-item.do?item=2020.CC24.12> and <https://www.omb.gov.on.ca/e-decisions/PL190242-DEC-04-2020.pdf>

In June, 2020, the City Planning Division initiated the Growth Plan conformity exercise 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. Aga Khan Park & Museum 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>

A pre-application consultation meeting for the proposed Official Plan Amendment and Zoning By-law Amendment application was held on March 2, 2022. The application was submitted on July 29, 2022 and deemed complete on September 16, 2022. On February 21, 2023, the applicant appealed City Council's failure to make a decision on the application, within the statutory timeframe, to the Ontario Land Tribunal.

On May 10, 2023, City Council stated its intent to designate the property at 789-793 Don Mills Road (including entrance address at 793 Don Mills Road) under Part IV, Section 29 of the *Ontario Heritage Act*. The applicant objected to the notice of intent to designate the property. On July 19, 2023, City Council considered the objection, affirmed its intention to designate the property, and enacted the Designation By-law. <https://secure.toronto.ca/council/agenda-item.do?item=2023.CC8.33>. On September 7, 2023, the Owner appealed the Designation By-law to the Ontario Land Tribunal.

On October 11, 2023, City Council considered an Appeal Report and directed the City Solicitor and appropriate City staff to attend the Ontario Land Tribunal in opposition to the application and to continue discussions with the applicant to attempt to resolve outstanding issues with the application.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.NY7.6>

## COMMENTS

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This report has been prepared in consultation with staff from City Planning, Transportation Services, and Parks, Forestry and Recreation.

The site is designated *Mixed Use Areas* in the Official Plan and *Mixed Use Areas A* and *Mixed Use Areas B* in the Don Mills Crossing Secondary Plan. The site is subject to Zoning By-law 7625, as amended. The site is zoned Industrial Office Business Park Zone - MO(11) and MO(22). The Industrial Office Business Park Zone permits a range of non-residential uses. Residential uses are not permitted in this zoning category. The site is not subject to Zoning By-law 569-2013.

An Official Plan Amendment is required to permit amendments to the Don Mills Crossing Secondary Plan, including amendments to the policies regarding heights, density, the provision of a public street, various built form policies, and housing policies. The Zoning By-law Amendment is proposed to amend Zoning By-law 7625, as amended, to vary performance standards including, but not limited to: permitting residential uses, building heights, building setbacks, floor space index, amenity space and parking space requirements.

The With Prejudice Settlement Offer makes the following changes to the Applications (from originally submitted and revised):

- the development phasing is modified to divide the site east from west and provide for two phases, each with two proposed towers. The With Prejudice Settlement Offer deals only with Phase 1 (Tower C and Tower D), and excludes the POPS and heritage resource, which shall be addressed in Phase 2;
- the height of Tower C has increased in height by three storeys (50 to 53-storeys), and Tower D has been reduced in height by seven storeys (45 to 38-storeys). The height of the base building of Towers C and D is proposed to range between one to six storeys. The portions of the base building for Towers C and D, which front the proposed parkland dedication, would have a maximum height of four storeys. The podium situated underneath Buildings C and D has been designed to maintain a minimum setback of 5.0 m from the proposed parkland;
- the floorplates of Tower C and Tower D would have a maximum size of 795 square metres, and would achieve a minimum tower separation of 25 metres from each other and a minimum setback, from the property line or the centre line of a public street of 12.5 metres;
- The proposed parkland dedication has been relocated from the northwest corner of the site to the northwest corner of Rochefort Drive and Ferrand Drive, and has an area of approximately 1,320 square metres, which is 10 percent of the proposed net site area (inclusive of both Phase 1 and 2). The relocation of the parkland allows for the potential conservation of the two-storey pavilion building in situ; and
- Foresters Lane is proposed as either a stratified public street or a private road with a public easement, both of which would allow access to the public and allow existing below-grade infrastructure (sanitary sewer, storm sewer and watermain) to remain in situ and in service.

## **CONCLUSION**

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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.

## **CONTACT**

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## **SIGNATURE**

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Wendy Walberg  
City Solicitor

## **ATTACHMENTS**

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1. Public Appendix "A" - With Prejudice Settlement Offer from Overland LLP, dated December 5, 2024
2. Confidential Attachment 1 - Confidential Recommendations and Confidential Information