



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

2500 Don Mills Road – Official Plan Amendment and Zoning By-law Amendment - Ontario Land Tribunal Hearing - Request for Directions

Date: July 12, 2024

To: City Council

From: City Solicitor

Wards: Ward 17 – Don Valley North

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 April 19, 2022, the applicant filed an application, in respect of 2500 Don Mills Road (the "Site"), for Official Plan and Zoning By-law Amendments (the "Application"). The Zoning By-law Amendment intended to permit 30- (96.06 metres) and 39-storey (123 metres) towers on a shared podium, containing a total of 823 residential units and some non-residential space. The Official Plan Amendment proposed amendments to Section 4.2.10 of the Sheppard East Corridor Secondary Plan to increase the planned density for the Site from 3.99 times the area of the lot to 7.35 times the area of the lot, and to plan for the delivery of public streets not only through the Subdivision process, but also by way of the Site Plan Control process.

The applicant appealed City Council's neglect or failure to make a decision on the Application (the "Appeal"), to the Ontario Land Tribunal (the "OLT") on February 6, 2023.

The City Solicitor requires further directions for the upcoming OLT hearing, which is scheduled to commence on October 21, 2024.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential instructions to staff contained in the Confidential Attachment 1 to this report from the City Solicitor.

2. City Council authorize the public release of the confidential instructions to staff contained in Confidential Attachment 1 Confidential Appendix "A", Confidential Appendix "B", and Confidential Appendix "C" 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 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

On April 19, 2022, the City received the Application.

On February 6, 2023, the applicant made the Appeal to the OLT. The OLT conducted two Case Management Conferences on May 1, 2023 and July 21, 2023. The OLT granted party status to the three landowners within the Don Mills-Leith Hill-Sheppard Avenue East Block, and to Cadillac Fairview, which owns 1800 Sheppard Avenue East (Fairview Mall). A hearing is scheduled for fifteen days, commencing on October 21, 2024.

On June 14, 2023, City Council directed the City Solicitor and appropriate staff to oppose the Application in its current form and to continue working with the applicant to resolve issues outlined in the report from the Director, Community Planning, North York District. City Council's decision can be found here:

<https://secure.toronto.ca/council/agenda-item.do?item=2023.NY5.10>

The Site is Located in the Sheppard East Subway Corridor Secondary Plan Area

The Site is subject to the Sheppard East Subway Corridor Secondary Plan (the "Secondary Plan"). The Sheppard East Subway Corridor Secondary Plan is available on the City's website at:

[9 - Sheppard East Subway Corridor Secondary Plan \(toronto.ca\)](#)

The Secondary Plan has been subject to ongoing review since 2018.

<https://secure.toronto.ca/council/agenda-item.do?item=2022.NY29.27>

The Site is located within the Don Mills Node of the in-force Secondary Plan, which focuses new development on the *Mixed Use Areas* designations north of Sheppard Avenue East (which includes the Site), and other lands relating to Sheppard Avenue East and the Don Mills subway station. Comprehensive re-development is promoted in the 'key development areas'. The Secondary Plan objectives include locating the highest densities closest to the rapid transit stations and to a lesser extent along arterial

road frontages. The Secondary Plan seeks to shape the height and mass of development to a pedestrian scale by framing the street with buildings at a size roughly equivalent to the street width. The implementation policy of the Secondary Plan requires a Context Plan for Key Development Areas in the Sheppard East Subway Corridor to ensure co-ordinated incremental development in conformity with the Secondary Plan. The Context Plan for this Development Area was developed in conjunction with Official Plan and Zoning By-law applications made for 1650 Sheppard Avenue East and 2600 Don Mills Road, with the participation and consent of the owner of 25 Leith Hill Road, and the consent of the previous owner of the Site.

More particularly, on July 28, 2020, City Council adopted Official Plan Amendment 490 ("OPA 490") which amended Schedule 2 of the Official Plan to identify a new street network through the Sheppard - Don Mills – Leith Hill Block. OPA 490 was not appealed and is in force and effect. OPA 490 may be found here:

<https://www.toronto.ca/legdocs/bylaws/2020/law0625.pdf>

On January 29, 2021, the former Local Planning Appeal Tribunal (the "LPAT") approved Official Plan Amendment 476 ("OPA 476") through By-law 381-2023(LPAT), along with Zoning By-law Amendments for the lands at 1650 Sheppard Avenue East, and at 2600 Don Mills Road. The LPAT decision approving OPA 476, can be found here:

<https://www.omb.gov.on.ca/e-decisions/pl170649-Jan-29-2021.pdf>

In fulfillment of a pre-condition to the issuance of the LPAT's final order on the Zoning By-law Amendments for 1650 Sheppard Avenue East and 2600 Don Mills Road, a Draft Plan of Subdivision application was jointly submitted by the owners of 1650 Sheppard Avenue East, 2600 Don Mills Road, and 25 Leith Hill Road, to implement the block's proposed new public streets, parkland dedications, and required municipal infrastructure in accordance with the Context Plan. The Draft Plan of Subdivision Application continues to be reviewed by City staff as application 21 211396 NY 17 SB.

The Sheppard - Don Mills – Leith Hill Block Context Plan and Urban Design Guidelines can be found here:

<https://www.toronto.ca/legdocs/mmis/2020/ny/bgrd/backgroundfile-146677.pdf>

The Site is in a Delineated but Unapproved Major Transit Station Area

On July 22, 2022, City Council adopted Official Plan Amendment 575, which included the delineation of the Don Mills Major Transit Station Area (the "Don Mills MTSA") through Site and Area Specific Policy 731 ("SASP 731"). The Don Mills MTSA has a minimum population and employment target of 250 residents and jobs combined per hectare. Pursuant to SASP 731, the planned uses of land are as identified by the land use designations on Map 19 and associated land use permissions in Chapter 4 of the Official Plan, applicable Secondary Plans and Site and Area Specific policies. OPA 575 was submitted to the Minister of Municipal Affairs and Housing (the "Minister") for approval. No decision has been rendered by the Minister at the time of writing this Report. City Council's decision can be found at:

<https://secure.toronto.ca/council/agenda-item.do?item=2022.PH35.16>

COMMENTS

On April 19, 2022, the applicant filed the Application to permit 30- (96.06 metres) and 39-storey (123 metres) mixed-use towers, on a shared podium, containing a total of 823 residential dwelling units. The proposed 823 dwelling units consisted of 532 one-bedroom units (64.6 percent), 210 two-bedroom units (25.5 percent) and 81 three-bedroom units (9.8 percent). The Application proposed 50,082 square metres of residential gross floor area and 982 square metres of at-grade commercial gross floor area. Vehicular Access was proposed through a private driveway directly adjacent to future Public Street B, which was identified in OPA 490.

On or about October 20, 2023, the applicant filed a revised Official Plan Amendment and Zoning By-law Amendment application (the "Revised Application"), which proposed to increase the height of the towers to 52 (171.15 metres) and 43 storeys (144.6 metres), containing 1,167 residential dwelling units. The proposed 1,167 dwelling units consisted of 1 studio units (~0 percent), 752 one-bedroom (64 percent), 291 two-bedroom (25 percent), and 120 three-bedroom (10 percent) units. The Revised Application proposed 71,838.6 square metres of residential gross floor area, and 1,036.5 square metres of non-residential gross floor area at grade. The Revised Application also included a 4-level below grade parking garage along the north portion of the Site, with a total of 310 residential stalls and 29 shared visitor and non-residential parking spaces. 794 long term and 82 short term bicycle spaces were proposed. Vehicular Access continued to be proposed by way of a private driveway adjacent to future Public Street B. The Application and Revised Application are available here: <https://www.toronto.ca/city-government/planning-development/application-details/?id=5087038&pid=437498>

On or about May 17, 2024, the applicant filed further revised plans with the OLT, which will form the basis for its hearing position (the "OLT Plans"). The OLT Plans are very similar to the Revised Application, but show a minor decrease in residential gross floor area to 71,646.1 square meters, and consist of 1,167 residential dwelling units, of which one is proposed to be a studio unit (~0 percent), 752 are proposed to be one-bedroom units (64 percent), 294 are proposed to be two bedroom units (25 percent) and 120 are proposed to be three-bedroom units (10 percent). The parking and access arrangements do not appear to have changed as between the Revised Application and the OLT Plans.

The differences between the Original Application, Revised Application and OLT Plans are summarized generally below:

Category	April 19, 2022 Application	July 31, 2023 Revised Application	May 17, 2024 OLT Plans
Site Area	6,948.10 square metres		

Category	April 19, 2022 Application	July 31, 2023 Revised Application	May 17, 2024 OLT Plans
Total Residential Gross Floor Area (GFA)	50,082.1 square metres	72,875 square metres	72,682 square metres
Total Non-residential Gross Floor Area	982.4 square metres	1,036.5 square metres	1,036.5 square metres
Floor Space Index (FSI)	7.35 times the lot area	10.49 times the lot area	10.46 times the lot area
Building Height	30 + 39 storeys (plus 7 metres for Mechanical Penthouse)	43 + 52 storeys (plus 7 metres for Mechanical Penthouse)	43 + 52 storeys (plus 7 metres for Mechanical Penthouse)
Residential Units	Studio: (0 percent) 1-Bedroom: (64.6 percent) 2-Bedroom: (25.5 percent) 3-Bedroom: (9.8 percent) Total New Units: 823	Studio: (1 percent) 1-Bedroom: (64 percent) 2-Bedroom: (25 percent) 3-Bedroom: (10 percent) Total New Units: 1,167	Studio: (0 percent) 1-Bedroom: (64 percent) 2-Bedroom: (25 percent) 3-Bedroom: (10 percent) Total New Units: 1,167
Amenity Area	Indoor: 1,647.3 square metres (2 square metres/unit) Outdoor: 867.5 square metres (0.97 square metres/unit) Total: 2,512.8 square metres (2.97 square metres/unit)	Indoor: 1,751.1 square metres (1.5 square metres/unit) Outdoor: 1,750.9 square metres (1.5 square metres/unit) Total: 2,502.5 square metres (3 square metres/unit)	Indoor: 1,751.1 square metres (1.5 square metres/unit) Outdoor: 1,702 square metres (1.46 square metres/unit) Total: 3,453.1 square metres (2.95 square metres/unit)
Vehicular Parking	Visitor: 49 spaces Residential: 327 spaces Accessible: spaces Total: 376 spaces	Visitor: 29 spaces Residential: 310 spaces Accessible: spaces Total: 339 spaces	Visitor: 29 Residential: 310 Accessible: 10 Total: 339

Category	April 19, 2022 Application	July 31, 2023 Revised Application	May 17, 2024 OLT Plans
Bicycle Parking	Long-term: 741 spaces Short-term: 83 spaces Total: 824	Long-term: 794 spaces Short-term: 82 spaces Total: 876	Long-term: 794 spaces Short-term: 82 spaces Total: 876
Parkland Dedication	657 square metres	694.8 square metres	668.1 square metres

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.

There are procedural order deadlines occurring in advance of the next City Council meeting. On this basis and for reasons set out in Confidential Attachment 1, this matter is urgent and should not be deferred.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

1. Public Attachment 1 - Architectural Plans prepared by Wallman Architects, dated May 17, 2024

2. Confidential Attachment 1 – Confidential Information

3. Confidential Appendix "A" – Confidential Information
4. Confidential Appendix "B" – Confidential Information
5. Confidential Appendix "C" – Confidential Information