

Committee of the Whole (2) Report

DATE: Tuesday, September 22, 2020

WARD: 4

**TITLE: SITE DEVELOPMENT FILE DA.17.015 1966711 ONTARIO INC.
3201 HIGHWAY 7
VICINITY OF HIGHWAY 7 AND INTERCHANGE WAY**

FROM:

Nick Spensieri, Deputy City Manager, Infrastructure Development

ACTION: DECISION

Purpose

To seek approval from the Committee of the Whole for amendments to the conditions of site plan approval approved by Council on June 19, 2018 for Site Development File DA.17.015 (Icona Hospitality Inc.). The Owner proposes to amend the site plan conditions originally approved to authorize the cash payment of \$1.2 million dollars towards the City's capital reserve for the Public Art Program within the Vaughan Metropolitan Centre ("VMC") in lieu of the onsite public art installation.

Report Highlights

- The Owner proposes to provide a \$1.2 million dollar cash contribution towards the City's capital reserve for the Public Art Program within the VMC in lieu of the onsite public art installation required by the conditions of approval approved by Vaughan Council on June 19, 2018 in respect of DA.17.015, to be paid prior to issuance of the first building permit for the Development, other than a building permit solely for excavation and shoring.
- Staff support this request given that the VMC Culture and Public Art Framework outlines several priority public art locations across the VMC's public realm that are currently unfunded.

Recommendations

1. THAT the original conditions of site plan approval for Site Development File DA.17.015 (Icona Hospitality Inc.) be amended and approved by Council as set out in Attachment 2 such that the Owner is required to make a \$1.2 million dollar cash contribution in lieu of the on-site public art installation;
2. THAT Vaughan Council authorize the timing for payment of the \$1.2 million dollar cash contribution be paid prior to issuance of the first building permit for the Development, other than a building permit solely for excavation and shoring;
3. THAT the Section 37/Section 45(9) Density Bonusing Agreement required as a condition of site plan approval be drafted in a form satisfactory to the Deputy City Manager, Administrative Services and City Solicitor, before being executed by the Mayor and City Clerk; and
4. THAT the execution and registration of the Section 37/Section 45(9) Density Bonusing Agreement in a form that is consistent with the as amended conditions of site plan approval as set out in Attachment 2 will satisfy the conditions of approval issued by the Committee of Adjustment with respect to the requirement to execute and register a Section 45(9) Agreement to permit the bonusing for increased building height of the South Tower.

Background

The 1.17 ha Subject Lands (the “**Subject Lands**”) are located at the southeast corner of Highway 7 and Interchange Way (3201 Highway 7) as shown on Attachment 1 and are currently developed with a 6-storey hotel (Hilton Garden Inn).

The Owner has appealed Vaughan Official Plan 2010 (“VOP 2010”) as it applies to the Subject Lands, and therefore, OPA #500 (Vaughan Corporate Centre Plan, as amended), remains in-effect on the Subject Lands.

On September 7, 2016, the Owner filed an Appeal (File No. 111184) to the then Ontario Municipal Board (“**OMB**”), now the Local Planning Appeal Tribunal (the “**LPAT**”) pursuant to Section 17(40) of the Ontario *Planning Act* for the Approval Authority’s (York Region) failure to make a decision within 180 days of the Vaughan Official Plan 2010 (“**VOP 2010**”), specifically the Vaughan Metropolitan Centre Secondary Plan (the “**VMCSP**”) regarding the Subject Lands. The appeal has not been resolved to date and, as such, the Application remains subject to the in-effect policies of OPA #500 (Vaughan Corporate Centre Plan), as amended by OPA #663 (The Avenue 7 Plan). In accordance with Council Recommendation No. 4 from the Technical Report as endorsed by Vaughan Council on June 19, 2018, the Owner is required to resolve their Appeal #164 to VOP 2010 regarding the Subject Lands to the satisfaction of the City Solicitor prior to the execution of the Site Plan Agreement. This condition of approval is not being modified.

Site Development Application File DA.17.015 (Icona Hospitality Inc.) was approved by Vaughan Council on June 19, 2018.

On June 19, 2018, Vaughan Council endorsed Staff's recommendation to approve a high-rise mixed-use development proposal consisting of two, 55-storey residential towers (1248 units), a 46-storey mixed-use building including 17-storeys for a hotel and 29-storeys (385 units) for residential uses and a convention centre (the "**Development**"). Staff's recommended conditions of site plan approval adopted by Vaughan Council on June 19, 2018 (the "**Original Conditions of SP Approval**") included a requirement for the Owner to successfully obtain approval of a Minor Variance Application from the Vaughan Committee of Adjustment to vary Zoning By-law 1-88 for the increased building height for the 46-storey south tower and to establish conditions in relation to Section 37 community benefits pursuant to subsection 45(9) of the *Planning Act*, and that such community benefits be secured through the execution of a Section 37 Agreement prior to the execution of the Site Plan Agreement and final approval of the site plan drawings.

Minor Variance Application File A136/18 was approved by Vaughan Committee of Adjustment on June 27, 2019 subject to certain conditions.

Minor Variance Application File A136/18 was considered by the Vaughan Committee of Adjustment (the "**Committee**") at its meetings on January 10, 2019, January 24, 2019 (as adjourned) and on June 27, 2019. On June 27, 2019, the Committee approved Minor Variance File 136/18 to seek relief from By-law 1-88 to permit site-specific amendments to facilitate the construction of the Development (the "**MV Decision**"). A Notice of Decision regarding the MV Decision was issued by the Committee on July 5, 2019 and Condition 2 of the MV Decision requires the Owner and the City to execute and register an agreement to secure those matters set out in the conditions regarding community benefits in accordance with the City of Vaughan's Guidelines for the Implementation of Section 37 of the *Planning Act* and Section 37 of the *Planning Act* to the satisfaction of the City.

On July 17, 2019, the City received an appeal from an adjacent landowner (RI Vaughan Ltd.) in respect of the MV Decision to approve the application. On August 9, 2019, the LPAT confirmed a withdrawal of the appeal and the MV Decision became final and binding on June 27, 2019.

To date, the Owner has not yet fulfilled its conditions of approval related to Site Development File DA.17.015 and Minor Variance File A136/18; however, the Owner has been working with staff to resolve all outstanding matters. Details regarding the

proposed revisions to the community benefits will be further discussed in the Analysis and Options section of this report below.

Previous Reports/Authority

[Item 32, Report No. 21, of the Committee of the Whole, Site Development File DA.17.015 adopted without amendment by the Council of the City of Vaughan on June 19, 2018](#)

Analysis and Options

The proposal is consistent with the Provincial Policy Statement (2020).

The Provincial Policy Statement 2020 (the “PPS”), provides policy direction on matters of provincial interest related to land use planning and development. The PPS is applied province-wide and provides direction to support strong communities, a strong economy and a clean, safe, liveable, and healthy environment. The proposal to amend the Original Conditions of SP Approval is consistent with the PPS.

The proposed Development continues to utilize the Subject Lands efficiently, and takes advantage of existing and protects for planned infrastructure within the built-up area, and reduces land consumption and servicing costs and efficiently uses land and resources within a designated Urban Growth Centre (a “UGC”) that supports higher-order transit investments. The proposed modifications related to the community benefits do not impact the Development proposal, but do provide for a cash contribution upfront to the City, which allows the City to secure funding for public art to be located in the VMC’s public realm, following the priority public art locations outlined the VMC Culture and Public Art Framework.

The provision of the cash contribution for an off-site public art piece allows the City to lead the commissioning process to contribute to the placemaking and evolving identity of the downtown. The proposal to amend the Original Conditions of SP Approval maintains consistency with the policies of the PPS and contributes to a healthy, liveable and safe community.

The proposal conforms to A Place to Grow, Growth Plan for the Greater Golden Horseshoe (2019).

The *A Place to Grow, Growth Plan for the Greater Golden Horseshoe 2019 (the “Growth Plan”)* is intended to guide the development of land; encourage compact built form, transit supportive communities, diverse land uses, and a range of mix of housing types; and, direct growth to settlement areas that offer municipal water and wastewater

systems. The Growth Plan states that a focus for transit and infrastructure investment to support future growth can be provided by concentrating new development in these areas and creating complete communities with diverse housing types.

The Development conforms with Section 2.2.3 respecting UGCs in the Growth Plan. The Subject Lands are located within the VMC, the City's downtown and a designated UGC. The Development supports the UGC designation by providing a mix of uses that are located adjacent to Bus Rapid Transit along Highway 7 and approximately 185 m from the VMC Subway Station. The Development contributes to achieving a complete community and providing a high-quality of life by providing a range of residential apartment unit types, retail uses that are convenient and broadly accessible to the residents of the VMC, including public art and recreational opportunities through the provision of community benefits for public art and the future Edgeley Pond and Park. High-quality building designs and enhanced streetscapes promote the high-quality of life as vehicular dependence can be reduced given the proximity of the development to higher-order transit and the existing and planned land uses. The proposal to amend the Original Conditions of SP Approval conforms to the Growth Plan.

The proposal conforms to the York Region Official Plan 2010.

The Subject Lands are designated "Urban Area" by the York Region Official Plan 2010 (the "**YROP 2010**") and are located within a "Regional Centre". The Development conforms with policy Section 3.3, 3.3.4, and 4.0 respecting provisions for human services and contributing to economic vitality within the Region.

The proposal to amend the Original Conditions of SP Approval would facilitate the City's ability to secure a \$1.2 million cash contribution towards the City's capital budget for the Public Art Program for a future public art piece as part of a Section 37 community benefit for the increase in building height for the South Tower. The provision of public art community benefits provides the City with opportunities to offer human services, which are vital in establishing a complete community. The Development includes buildings that are oriented and designed to include the main entrances with access to Highway 7 which provides a pedestrian friendly urban form integrated with a high-quality streetscape. The proposal and Development conform to the YROP.

The proposal conforms to the in-effect Official Plan, being OPA #500 (the "Vaughan Corporate Centre Plan"), as amended a) Vaughan Corporate Centre Plan (OPA #500), as amended.

The Subject Lands are designated “Corporate Centre Node” and are identified as a “Gateway Site” by in-effect OPA #500 (Vaughan Corporate Centre Plan) as amended by OPA #663 (Avenue 7 Plan). This designation permits hotels, convention centres, civic uses, all types of retail, medium and high density residential uses and townhouse and apartment dwelling units, together with unlimited building height at a “Gateway Site” and no Floor Space Index (“FSI”) limit on any individual site.

The Development remains unchanged and conforms to the use, height, density and design policies of the Official Plan and protects for a 33 m wide right-of-way for Interchange Way and two future 22 m wide local roads along the south property line (east-west) and along the east property line (north-south). The proposed revisions to the Original Conditions of SP Approval conform to the in-effect OPA. As noted previously, the Owner is required to resolve their appeal (Appeal #164) to Vaughan Official Plan 2010, to the satisfaction of the City Solicitor prior to the execution of the Site Plan Agreement.

The proposal conforms to the Vaughan Metropolitan Centre Secondary Plan (the “VMCSP”).

The Subject Lands are designated “Station Precinct” with a maximum FSI of 5.0 times the area of the lot and maximum building height of 30-storeys by the VMCSP. The Subject Lands are located within a “Landmark Location” in accordance with By-law 1-88 which allows for unlimited building height for a majority of the site, save and except the South Tower. In accordance with the Minor Variance File A136/18 Notice of Decision issued on July 5, 2019, a maximum building height of 152.2 m and 159.5 m to the top of the mechanical penthouse for the South Tower (for all other locations outside of a Landmark Location) is permitted. As the Development remains unchanged, the Development conforms to the VMCSP.

The VMC Program supports the Owner’s proposal to provide a \$1.2 million cash contribution in lieu of a \$1.2 million on-site Public Art Contribution Piece.

Public Art is encouraged and considered an important element of the public realm, adding culture, beauty and interest. The VMCSP enables increases in building height or density in accordance with Section 37 of the *Planning Act* in return for the provisions of community benefits.

At the time of its Development applications, the Owner had retained a Public Art consultant to develop a Public Art Program for the Development with a budget of \$1.2 million, which would identify potential locations, scale, site lines, prominence, safety,

ownership and maintenance of public art on site. The Public Art Program would be subject to review by the Design Review Panel and subsequently to Vaughan Council for consideration.

In accordance with the Technical Report endorsed by Council on June 19, 2018, the City had supported the increased building height for the South Tower on the condition that a \$391,000 cash payment, and a \$1.2 million Letter of Credit in the form of Section 37 community benefits would be provided. The Owner agreed to provide these community benefits in exchange for the increased building height, and did not appeal the Conditions of Approval granted by the Vaughan Committee of Adjustment in connection to the permissions for increased building height (which reflected City Council's requirements as set out in the Technical Report).

As part of the discussions respecting the outstanding Site Plan and Development Agreements and the required Section 45(9) Agreement, the Owner has agreed to provide the \$1.2 million cash contribution payment towards the City's capital reserve for the Public Art Program in lieu of a \$1.2 million on-site contribution which was to be secured by a Letter of Credit. Staff support the amendments to the Original Conditions of SP Approval; the VMC Culture and Public Art Framework outlines a number of priority public art locations across the VMC's public realm that are currently unfunded, and this contribution can be utilized for those projects.

The City and the Owner will still be required to execute and register a Section 45(9) Agreement and make the above-noted cash contributions. The \$391,000 cash contribution towards an off-site community benefit regarding the iconic pedestrian bridge in the Edgeley Pond and Park is to be paid upon execution of the Section 45(9) Agreement, while Staff support the Owner's request to defer the receipt of \$1.2 million cash contribution towards the City's capital reserve for the Public Art Program within the VMC, to be paid prior to the issuance of the first above-grade building permit. Staff are also seeking confirmation that the execution and registration of a Section 45(9) Agreement that aligns with the as amended Conditions of Spite Plan Approval set out in Attachment 2 will satisfy the Committee's condition of approval regarding community benefits.

The \$1.2 million cash contribution will be allocated and devoted exclusively to the City's capital reserve for the Public Art Program, for a public art piece to be located in the VMC's public realm, and that follows the approved City Process outlined in the Vaughan Public Art Program. The City's Senior Art Curator and Planner will lead the commissioning process. Given the cash payment in lieu of the on-site public art piece, the VMC Program will no longer require the Owner to enter into a Public Art Agreement

or develop an on-site Public Art Program. The extent of the proposed modifications to the Original Conditions of SP Approval are reflected in Attachment 2.

Since Vaughan Council's ratification of its decision to approve this Development on June 19, 2018, the Province has enacted a number of amendments to the *Planning Act*, including amendments introduced through Bill 108, the *More Homes, More Choice Act*, and Bill 197, the *COVID-19 Economic Recovery Act, 2020* (the "Planning Act Amendments"). The Planning Act Amendments include the repeal and substitution of Section 37 of the *Planning Act* with a new statutory regime to govern how community benefits are to be determined and required of developments, all of which are to be set out in a future City-initiated community benefits charge by-law. The Planning Act Amendments further introduce a new Section 37.1 that sets out transitional provisions providing, in part, that where a development is the subject of a by-law passed under section 34 of the *Planning Act* that includes, under subsection 37(1) as it read on the day before the day that section 1 of Schedule 17 to the *COVID-19 Economic Recovery Act, 2020*, comes into force, any requirement to provide facilities, services or matters, it will not be subject to a new community benefits charge by-law that may be enacted by the municipality or otherwise approved by the Local Planning Appeal Tribunal (the "Transitional Rules"). The Transitional Rules do not expressly contemplate the transition of by-laws that are varied pursuant to Section 45 of the *Planning Act*, for which section 37 benefits have been paid for or secured through section 45(9) agreements. This may be an oversight on behalf of the drafters of the Planning Act Amendments.

The Planning Act Amendments do not preclude further exemptions to those set out in the Transitional Rules to a community benefits charge by-law that may be passed by a municipality. Provided that Council resolves to amend the conditions of approval, and provides that the Owner does enter into a Section 45(9) agreement with the City and pays the required cash contributions to the City, then Staff agree that it is reasonable and fair to exempt the Development from a future community benefits charge by-law that may be enacted that would otherwise apply to the site (provided that the Development is not increased). Staff also agree that if the Development is not exempt from a future community benefits charge by-law that it is reasonable and fair that the charges payable in respect of the Development thereunder should be fully satisfied by the payment of the community benefits associated with the Section 45(9) Agreement (provided that the Development is not increased).

Until the Planning Act Amendments are proclaimed to come into effect, the City will continue to operate under the current regime to apply community benefit charges under Section 37 of the *Planning Act*. In this case, and notwithstanding the Planning Act Amendments, it is Staff's opinion that additional community benefits charges under the

as amended but not yet in effect Section 37 of the Planning Act, should only be applicable if the Development is revised to include any additional building height and/or densities beyond the Committee of Adjustment and Vaughan Council approvals to date for the Subject Lands.

Financial Impact

There are no financial impacts associated with this report. Pursuant to the terms of a Section 45(9) Agreement being negotiated with the Owner, the City would obtain a \$1.2 million cash-contribution prior to the issuance of a building permit for the site, indexed from the date of registration of the agreement, but not including a permit for shoring and/or excavation, which monies would be allocated specifically to the Public Art reserve fund.

Broader Regional Impacts/Considerations

The proposed amendments to the Original Conditions of SP Approval have no impact on the Region of York. York Region Community Planning and Development Services Department previously advised that they have no objections to the Development, in principle. The Owner shall satisfy all requirements of York Region with respect to property requirements, streetscape encroachment, encroachment agreement(s), dewatering, erosion and sediment control, shoring, hoarding, crane swing, construction site management, median construction, access construction, boulevard restoration, fees and securities, streetscaping, a Transportation Demand Management Plan, Mobility Study, civil engineering works and construction within the Regional right-of-way and be required to enter into a Regional Site Plan Agreement. The Owner will be required to satisfy all conditions of approval of York Region prior to execution of the Site Plan Agreement.

Conclusion

The VMC Program is satisfied that the proposed modifications to the Original Conditions of SP Approval for Site Development File DA.17.015 as set out in Attachment 2 are consistent with the policies of the PPS, in conformity with to the Growth Plan and the York Region and VOP 2010, and that the changes will contribute to the continued evolution of the VMC. The proposed amendments are considered appropriate and conform to the policies of the VMCS.

For more information, please contact: Natalie Wong, Senior Planner at ext. 8866.

Attachments

1. Context and Location Map
2. Proposed Amendments to the Conditions of Approval for Site Development File DA.17.015 (Icona Hospitality Inc.)

Prepared by

Natalie Wong, Senior Planner VMC Program, Ext. 8866

Amy Roots, Senior Manager VMC Program, Ext. 8305

Christina Bruce, Director VMC Program, Ext. 8813

Approved by

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Nick Spensieri
Deputy City Manager
Infrastructure Development

Reviewed by

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Jim Harnum
City Manager