

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: September 12, 2023

CASE NO(S):

OLT-22-003642

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant/Appellant:	First Capital Holdings (Ontario) Corporation
Subject:	Application to amend the Zoning By-law – Refusal or neglect to make a decision
Description:	To permit two, 21-storey towers and a 9-storey midrise building
Reference Number:	19 244758 NNY 16 OZ
Property Address:	801 York Mills Rd. & 1855 Leslie Street
Municipality/UT:	Toronto/Toronto
OLT Case No.:	OLT-22-003642
OLT Lead Case No.:	OLT-22-003642
OLT Case Name:	First Capital Holdings (Ontario) Corporation v. Toronto (City)

Heard: July 31, 2023 in Writing

APPEARANCES:

Parties

Counsel

First Capital Holdings (Ontario) Corporation	Denise Baker
City of Toronto	Ray Kallio
York Mills Leslie Residents Inc.	Conner Harris

DECISION DELIVERED BY KURTIS SMITH AND ORDER OF THE TRIBUNAL

[Link to Final Order](#)

INTRODUCTION

[1] This matter proceeded as a Settlement Hearing in writing as a result of the resolution reached between the Parties. This matter is an Appeal brought forward by First Capital Holdings (Ontario) Corporation (“Applicant”) regarding the properties municipally known as 801 York Mills Road and 1855 Leslie Street (“Subject Site”) in the City of Toronto (“City”). The Appeal arises following a non-decision by the City in relation to a Zoning by-law application, originally seeking to develop two 21-storey towers atop a six-storey podium and a nine-storey midrise building on the Subject Site.

[2] The written materials before the Tribunal were:

- a. Exhibit 1 - Affidavit of Lindsay Dale-Harris (42 Pages)
- b. Exhibit 2 - Affidavit of Tom Kasprzak (38 Pages)
- c. Exhibit 3 - Document Book (553 Pages)
- d. Exhibit 4 - Participant Statement of Stephen Nitikman
- e. Exhibit 5 – Participant Statement of Tyson Chu
- f. Exhibit 6
 - i. York Mills Leslie Residents Inc. (“YMLRI”) July 11, 2023, Email, Conditions Request
 - ii. YMLRI August 10, 2023, Letter, Additional Conditions Request
- g. Exhibit 7 – First Capital Holdings (Ontario) Corporation correspondence, August 18, 2023

[3] To support the Settlement Plan the Tribunal, based on their *Curriculum Vitae* and Acknowledgement of Expert’s Duty forms, qualifies Ms. Dale-Harris and Mr. Kasprzak to provided written opinion evidence in land use planning and urban design, respectively.

SUBJECT SITE CONTEXT

[4] The Subject Site is approximately 1.12 hectares, having frontage along Leslie Street, 25 metres (“m”), Scarsdale Road, 71 m, and York Mills Road, 118 m. The portion of the site known at 801 York Mills Road is currently occupied by a three-storey office building and single storey building that currently houses two restaurants. The balance of the site, known as 1855 Leslie Street, is currently vacant but was previously the location of a veterinary clinic. Access to the Subject Site is provided along York Mills Road and Scarsdale Road.

SETTLEMENT PLAN

[5] Ms. Dale-Harris and Mr. Kasprzak provided written material with a fulsome overview of the Settlement Plan, which can be found in Exhibit 1, Page 6, and Exhibit 2, Page 5-7.

[6] The Settlement Plan before the Tribunal is comprised of three buildings: two 15-storeys towers atop a five-story podium and a five-storey (15 m) townhouse block. The site will have 492 vehicular parking spaces and 474 bicycle parking spaces. In total the plan will have 470 units, of which 30 will be townhouses and the remaining being divided 55.5% one-bedroom units, 30.5% two-bedroom units and 12.7% three-bedroom units. The Settlement Plan includes 994 square metres (“sq m”) of park space, 901 sq m of outdoor amenity area and 1,145 sq m of indoor amenity space. In addition to the above there will be retail uses at grade.

EVIDENCE AND ANALYSIS

[7] Ms. Dale-Harris provided the Tribunal with her written opinion to support her findings that the revised Settlement Plan have regard for matters of provincial interest, are consistent with the Provincial Policy Statement (“PPS”), conform to the Growth Plan

for the Greater Golden Horseshoe (“Growth Plan”) and conform to the Toronto Official Plan (“TOP”).

[8] In addition to Ms. Dale-Harris, the Tribunal received the written opinion of Ms. Kaspzak that the proposal represents good urban design and will make a positive contribution to the general area. Moreover, the Settlement Plan conforms with the urban design policies in the City and has appropriate regard for the relevant urban design guidelines, specifically the City’s Tall Building Design Guidelines.

[9] As provided in her affidavit, it is the opinion of Ms. Dale-Harris that the proposed development provides an appropriate level of intensification for a site designated mixed-use and which is located along an arterial road with existing transit services. More specifically, Ms. Dale-Harris opined that the Settlement plan promotes intensification and a range of housing choices within the built-up urban area that is well-served by municipal infrastructure.

[10] From an urban design standpoint, Mr. Kaspzak and Ms. Dale-Harris are of the opinion that the Settlement Plan is in keeping of the neighbourhood character and provides an appropriate building height, massing, setback and transition that is compatible with the surrounding built form environment. The design of the structure limits the shadow impacts onto the surrounding properties and proposed podium height and massing compliments the adjacent street frontages.

YMLRI Request

[11] On July 11, 2023, YMLRI communicated (Exhibit 6A) to the Tribunal that they wish to seek the following conditions to be included with any approval of the settlement:

- a. Consultation with YLRI about the location of replacement trees on the development site, to occur at the time of submission of a site plan application;

- b. Consultation with YMLRI with respect to the development of a construction management plan (and the details thereof), to occur at the time of submission of a site plan application; and
- c. Consultation with YMLRI with respect to the installation and location of a privacy fence at the rear of the development site, to occur at the time of submission of a site plan application.

[12] Ms. Dale-Harris opined that the above requested conditions are not in the original or revised issues list and are simply not appropriate conditions as part of a rezoning process. She further wrote that “Matters of tree removal and/or replacement, construction management matters and fence installation are matters for consideration through the site plan approval or building permit process and will be addressed by the City of Toronto at the appropriate time.”

[13] Ten days following the hearing date on August 10, 2023, YMLRI submitted Exhibit 6B requesting the Tribunal to consider including the following conditions:

- a. The applicant be required, at the time of making a site plan application, to consult with YMLRI with respect to the location of replacement trees on the site;
- b. The applicant be required, at the time of making a site plan application, to consult with YMLRI with respect to the details of a construction management plan with respect to construction on the site; and
- c. The applicant be required to consult with YMLRI with respect to the details of a privacy fence to be installed at the rear of the property.

[14] Given the late nature of the submissions of the YMLRI, the Tribunal provided Counsel for the Applicant, Ms. Baker, the opportunity to respond.

[15] As provided in Exhibit 7, Ms. Baker states:

It is submitted that the submission of the YMLRI should be given no weight by the Tribunal. The YMLRI is a party in this matter, however they chose to not fulfill the obligations associated with being a party, namely they refused to have their planner attend the expert witness meetings, and they filed no evidence in this hearing, despite maintaining issues on the issues list. Notwithstanding this, the solicitor for the YMLRI has purported to enter evidence by way of letter dated August 10, 2023, which is more than two months after the deadline for which evidence was to be provided. In addition, when the matter was converted to a settlement hearing, any evidence associated with the settlement hearing could have been provided up to 10 days in advance of the settlement hearing date.

Participant Statements

[16] The Tribunal was in receipt of two Participant Statements in opposition to the Proposal from: (1) Stephen Nitikman, of 39 Hurlingham Crescent (Exhibit 4), and (2) Tyson Chu, resident of 22 Hurlingham Crescent (Exhibit 5). These statements raised a handful of concerns including traffic, property values, trees/landscaping, loss of employment lands and concerns of administrative process.

[17] Nearly all of the concerns were addressed by the Expert Witnesses of the Applicant. However, due to the late submission of one of the Participant Statements, Counsel for the Applicant addressed the Participant Statement concerns in a letter dated August 18, 2023 (Exhibit 7) as well.

[18] The issues raised and the positions taken by the Participants were taken into consideration by the Tribunal in making its findings in this Decision.

FINDINGS

[19] The Tribunal accepts the uncontested written evidence of Ms. Dale-Harris and Mr. Kaspzak and is satisfied that the Zoning By-law Amendment represents good planning, has regard for matters of provincial interest, is consistent with the PPS, conforms to the Growth Plan and TOP and has appropriate regard for the applicable guidelines. The Settlement Plan will provide an appropriate level of intensification on a mixed-use site and has been designed in such a way to compliment the neighbourhood character.

[20] The Tribunal accepts Ms. Dale-Harris opinion regarding the July 11, 2023, conditions requested by YMLRI. Additionally, the Tribunal concurs with the submissions of Ms. Baker regarding the YMLRI August 10, 2023, conditions request.

ORDER

[21] **THE TRIBUNAL ORDERS THAT** the Appeal is allowed in part, on an interim basis, contingent upon confirmation, satisfaction or receipt of those pre-requisite matters identified in paragraph 22 below and the Zoning By-law Amendment, set out in Attachment 1 to this Interim Order, is hereby approved in principle.

[22] The Tribunal will withhold the issuance of its Final Order, contingent upon confirmation of the City Solicitor of the following pre-requisite matters:

- a. the outstanding issues identified in the memorandum, dated September 7, 2022, from Engineering and Construction Services, have been addressed to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services;

- b. all encroachments within City easements have been addressed to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services;
- c. a revised parking and loading study has been submitted to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services, with the appropriate development standards to be secured in the implementing Zoning By-law;
- d. a Transportation Demand Management plan has been submitted to the satisfaction of the Chief Planner and Executive Director, City Planning;
- e. a revised Functional Servicing Report, Stormwater Management Report and Hydrogeological Review (the "Engineering Reports") are submitted to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services;
- f. appropriate legal mechanisms are in place requiring:
 - i. the design and the provision by the Owner of any upgrades or required improvements to the existing municipal infrastructure and/or new municipal infrastructure identified in the accepted Engineering Reports to support the development, all to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services, should it be determined that improvements or upgrades and/or new infrastructure are required to support the development, and that financial security has been provided by the Owner to secure same;
 - ii. transportation improvements in the area by the Owner, including signal modifications and/or upgrades, to the satisfaction of the Chief Engineer

and Executive Director, Engineering and Construction Services, and that financial security has been provided by the Owner to secure same;

- iii. the provision of such matters arising from the accepted Transportation Demand Management by the Owner, if required;
- iv. the provision of an access easement by the Owner in favour of the City in perpetuity, to be registered on title prior to condominium registration, with such access easement to include support rights as applicable, for public pedestrian and vehicular use of the L shaped private driveway with a minimum width of 9.1 metres on the north/south portion and 8.1 metres on the east/west portion, all to the satisfaction of the Chief Planner and Executive Director, City Planning, the General Manager, Transportation Services and the City Solicitor; such access easement shall include use associated with the property adjacent to the west (municipally known as 799 York Mills Road) to provide a future pedestrian and vehicular link to York Mills Road and Scarsdale Road;
- v. that prior to the first above-grade building permit, the Owner convey to the City, an on-site parkland dedication, having a minimum size of 994 square metres at the southeast corner of the site with frontage on Scarsdale Road, on terms to the satisfaction of the General Manager, Parks, Forestry and Recreation and the City Solicitor, in partial fulfilment of the parkland dedication requirement pursuant to Section 42 of the *Planning Act*;
- vi. that prior to the issuance of the first above-grade building permit, the Owner make a cash-in-lieu payment for the residual 97 square metres of the parkland dedication requirement, pursuant to Section 42 of the *Planning Act*; and

- vii. the Owner to design and construct the Above Base Park Improvements to the new park, contingent on the provision of a development charge credit against the Parks and Recreation component of the Development Charges.

[23] The Panel Member will remain seized for the purposes of reviewing and approving the final draft of the Zoning By-Law Amendment and the issuance of the Final Order.

[24] If the Parties do not submit the final drafts of the Zoning By-law Amendment, do not provide confirmation that all other contingent pre-requisites to the issuance of the Final Order set out in paragraph **22** above have been satisfied, and do not request the issuance of the Final Order, by **Wednesday, January 31, 2024**, then the Applicant and the City shall provide a written status report to the Tribunal by that date, as to the timing of the expected confirmation and submission of the final form of the draft Zoning By-law Amendment and issuance of the Final Order by the Tribunal. In the event the Tribunal fails to receive the required status report, and/or in the event the contingent pre-requisites are not satisfied by the date indicated above, or by such other deadline as the Tribunal may impose, the Tribunal may then dismiss the Appeal.

[25] The Tribunal may, as necessary, arrange the further attendance of the Parties by Telephone Conference Call to determine the additional time lines and deadlines for the submission of the final form of the instrument(s), the satisfaction of the contingent pre-requisites and the issuance of the Final Order.

"Kurtis Smith"

KURTIS SMITH
MEMBER

Ontario Land Tribunal

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248
The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal ("Tribunal"). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

Attachment 1

APPENDIX 2

CITY OF TORONTO

BY-LAW No. ####-2023 (OLT)

To amend the City of Toronto By-law No. 569-2013, as amended, with respect to lands municipally known in the year 2023 as 801 York Mills Road and 1855 Leslie Street.

Whereas the Ontario Land Tribunal Decision issued on XX and Ontario Land Tribunal Order issued on XX in File OLT-22-003642, upon hearing an appeal under Section 34(11) of the Planning Act, R.S.O. 1990, c. P.13, as amended, has determined to amend By-law 569-2013, as amended, for the City of Toronto with respect to lands municipally known in the year 2023 as 801 York Mills Road and 1855 Leslie Street; and

Whereas the Official Plan for the City of Toronto contains provisions relating to the authorization of increases in height and density of development; and

Whereas pursuant to Section 37 of the *Planning Act*, a By-law under Section 34 of the *Planning Act*, may authorize increases in the height and density of development beyond those otherwise permitted by the By-law and that will be permitted in return for the provision of such facilities, services or matters as are set out in the By-law; and

Whereas subsection 37(3) of the *Planning Act* provides that where an owner of land elects to provide facilities, services and matters in return for an increase in the height or density of development, the municipality may require the owner to enter into one or more agreements with the municipality dealing with the facilities, services and matters; and

Whereas the owner of the aforesaid lands has elected to provide the facilities, services and matters hereinafter set out; and

Whereas the increase in height and density permitted beyond that otherwise permitted on the aforesaid lands by By-law 569-2013 as amended, is permitted in return for the provision of the facilities, services and matters set out in this By-law which is secured by one or more agreements between the owner of the land and the City of Toronto;

The Ontario Land Tribunal Orders:

1. The lands subject to this By-law are outlined by heavy black lines on Diagram 1 attached to this By-law.
2. The words highlighted in bold type in this By-law have the meaning provided in Zoning By-law No. 569-2013, Chapter 800 Definitions.
3. Zoning By-law No. 569-2013, as amended, is further amended by amending the zone label on the Zoning By-law Map in Section 990.11, respecting the lands subject to this By-law to: CR 1.0 (c1.0; r0.0) SS3 (x####), as shown on Diagram 2 attached to this By-law.

4. Zoning By-law No. 569-2013, as amended, is further amended by adding to Article 900.11 Exception Number CR ###, so it reads:

(###) Exception CR (x###)

The lands, or portion thereof as noted below, are subject to the following Site Specific Provisions, Prevailing By-laws and Prevailing Sections.

Site Specific Provisions:

- (A) On 801 York Mills Road and 1855 Leslie Street, shown on Diagram 1 attached to his By-law, if the requirements in Section 6 and Schedule A of By-law [Clerks to supply by-law #] are complied with, a **building, structure**, addition or enlargement is permitted in compliance with (B) to (Y) below;
- (B) For the purposes of this exception, the **lot** comprises the lands identified by heavy lines on Diagram 1 attached to By-law [Clerks to supply by-law #];
- (C) In addition to the uses permitted by Regulations 40.10.20.10(1) and 40.10.20.20(1), a **kenel** is a permitted use, but is restricted to a **premises** used for the boarding and training of dogs and cats and must be ancillary to a **retail store**;
- (D) Despite Regulation 40.5.40.10(1), the height of a **building or structure** is the distance between the Canadian Geodetic Datum of 138.69 metres and the elevation of the highest point of the **building or structure**;
- (E) Regulation 40.10.30.40(1), with respect to the permitted maximum **lot coverage**, does not apply;
- (F) Despite Regulation 40.10.40.1(1), residential use portions of a **mixed use building** may be located on the same floor level as non-residential use portions;
- (G) Despite Regulation 40.10.40.10(3), the permitted maximum height of a **building or structure** is the numerical value following the letters following the "HT" in metres on Diagram 3 of By-law [Clerks to supply by-law #];
- (H) Despite Regulations 40.5.40.10(3) to (8) and (E) above, the following equipment and **structures** may project beyond the permitted maximum height of a **building**:
 - (i) telecommunications equipment, heating and cooling equipment, air shafts, electrical, utility, mechanical penthouse, mechanical and ventilation equipment, enclosed stairwells, roof access, maintenance equipment storage, chimneys, vents, exhaust flues, garbage chute overruns, lightning rods, and window washing, maintenance and safety equipment may project to a maximum of 6.0 metres;

- (ii) equipment used for the functional operation of the **building** including cooling towers, elevator shafts, overruns and machine rooms, to a maximum of 7.5 metres;
 - (iii) trellis, pergolas, wheelchair ramps, structural/non-structural architectural columns/piers and unenclosed **structures** providing safety or wind protection to rooftop **amenity space**, and divider screens on a balcony and/or terrace may project up to a maximum of 4.0 metres;
 - (iv) architectural features, parapets, roof drainage components, and thermal and waterproofing assembly, elements and structures associated with **green roof**, planters, landscape features, and guard rails may project up to a maximum of 2.5 metres;
- (I) Despite Regulation 40.10.40.10(5), the required minimum height of the first **storey**, as measured between the floor of the first **storey** and the ceiling of the first **storey**, of a **building** on Block A is 3.0 metres;
 - (J) Despite Regulation 40.10.40.40(1), the permitted maximum **gross floor area** is 41,600 square metres, of which:
 - (i) the permitted maximum **gross floor area** for residential uses is 40,200 square metres; and
 - (ii) the permitted maximum **gross floor area** for non-residential uses 1,400 square metres;
 - (K) Despite Regulation 40.10.40.50(1), the **amenity space** required for a **dwelling unit** within a **building** on Block A may be located within a **building** on Block B, as referred to on Diagram 4 of By-law **[Clerks to supply by-law #]**;
 - (L) Regulations 40.10.20.100(1), (33) and 150.100.30.1(2), with respect to the size and location of an **eating establishment** or **take-out eating establishment**, do not apply;
 - (M) Regulation 40.10.20.100(1), with respect to the size and location of a **recreation use** for the purposes of a fitness, exercise or health club, does not apply;
 - (N) Regulation 40.10.20.100(5), with respect to the size of a beverage manufacturing use within a **retail store**, does not apply;
 - (O) Regulation 40.10.20.100(21), with respect to the size and location of an **outdoor patio**, does not apply;

- (P) Regulation 40.10.40.1(6), with respect to pedestrian access and location of entrances, does not apply;
- (Q) Despite Regulation 40.10.40.70(3), the required minimum **building setbacks** are shown on Diagram 3 of By-law [Clerks to supply by-law #];
- (R) Despite Clause 40.10.40.60 and (J) above, the following elements may encroach into the required minimum **building setbacks** as follows
 - (i) balconies, terraces, cornices, canopies, window sills, parapets, trellises, pillars, patios, decks, guardrails, vents, shafts, chimneys, mechanical fans, balustrades and railings, all of which may encroach to a maximum of 2.5 metres;
 - (ii) architectural, art and landscape features, light fixtures, pilasters and eaves, all of which may encroach to a maximum of 1.0 metres;
 - (iii) railings, stairs, wheelchair ramps, fences, screens, site servicing features, building maintenance units, window washing equipment, or bicycle parking; and underground garage ramps and associated structures;
- (S) Despite Regulation 200.5.1.10(2)(A), a maximum of 25% of the **parking spaces** may have a minimum dimension of:
 - (i) length of 5.1 metres;
 - (ii) width of 2.4 metres;
 - (iii) vertical clearance of 1.7 metres; and
 - (iv) the side of the parking space is obstructed is not required to be increased by 0.3 metres;
- (T) Despite Regulation 200.5.1.10(2)(D), where a **parking space** is limited by a wall or other permanent obstruction, 0.3 metres is not required for each side of the **parking space** that is obstructed;
- (U) Despite Regulation 200.15.1(1), an accessible **parking space** must comply with the following minimum dimensions:
 - (i) A length of 5.6 metres;
 - (ii) A width of 3.4 metres;
 - (iii) A vertical clearance of 2.1 metres; an

- (iv) a 1.5-metre-wide accessible barrier free aisle is not required for the entire length of an accessible **parking space**;
- (V) Despite Regulation 200.15.1(4), an accessible **parking space** located on Parking Level 1 is not required to be closest to a barrier-free passenger elevator that provides access to the first **storey** of the building or the shortest route from the required entrance to an elevator;
- (W) Despite Regulation 220.5.10.1(2), (3) and (4), a minimum of one (1) Type 'B' **loading space** and one (1) Type 'G' **loading space** must be provided and maintained on the **lot**;
- (X) Despite Regulations 230.5.1.10(10) and 230.40.1.20(1) long-term **bicycle parking spaces** and short-term **bicycle parking spaces** may be located in **stacked bicycle parking spaces** in an enclosed room;
- (Y) Despite regulations 230.5.1.10(4) and 230.5.1.10(5) **stacked bicycle parking spaces** must be provided and maintained with the following minimum dimensions:
 - (i) length of 1.6 metres;
 - (i) width of 0.2 metres; and
 - (ii) vertical clearance of 0.7 metres.

Prevailing By-laws and Prevailing Sections: (None Apply)

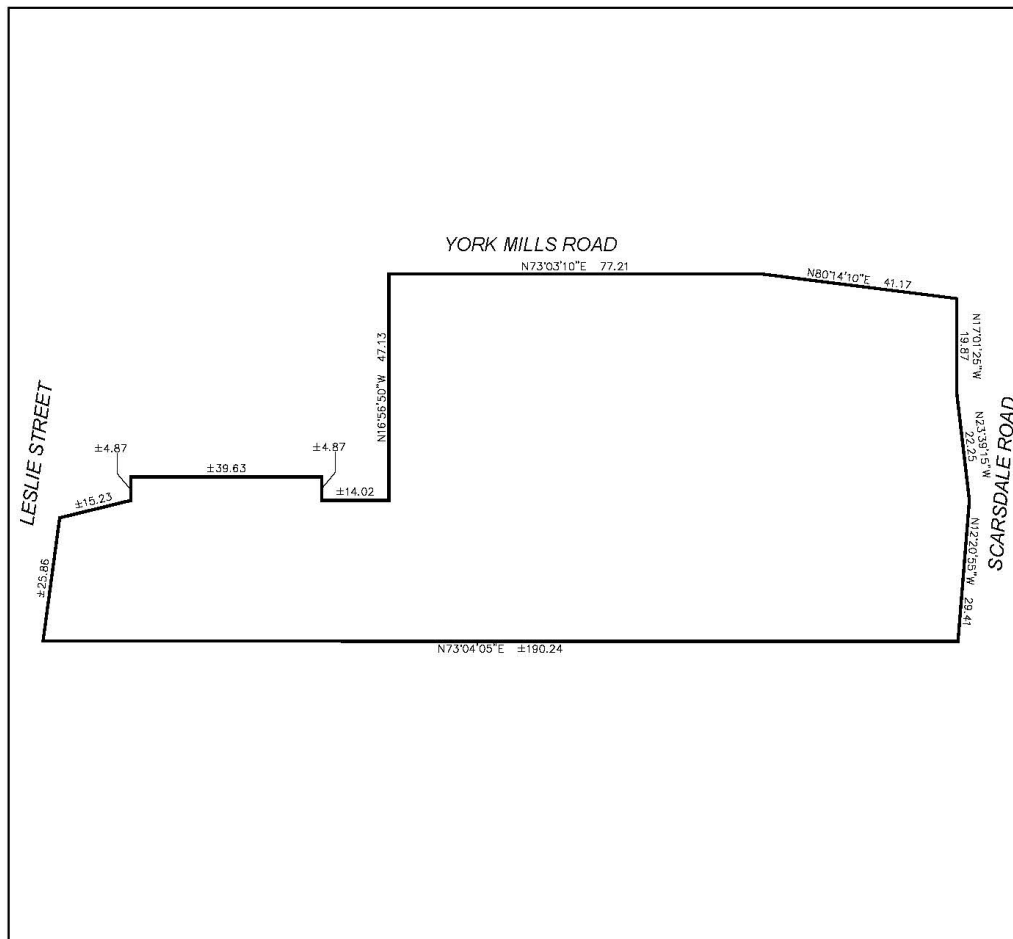
- 5. Despite any severance, partition or division of the lands, the provisions of this By-law shall apply as if no severance, partition or division occurred.
- 6. Section 37 Provisions:
 - (A) Pursuant to Section 37 of the Planning Act, and subject to compliance with this By-law, the increase in height and density of the development is permitted beyond that otherwise permitted on the lands shown on Diagram 1 attached to this by-law in return for the provision by the owner, at the owner's expense of the facilities, services and matters set out in Schedule A attached to this by-law and which are secured by one or more agreements pursuant to Section 37(3) of the Planning Act that are in a form and registered on title to the lands, to the satisfaction of the City Solicitor;
 - (B) Where Schedule A attached to this By-law requires the owner to provide certain facilities, services or matters prior to the issuance of a building permit, the issuance of such permit shall be dependent on satisfaction of the same; and
 - (C) The owner shall not use, or permit the use of, a building or structure erected with an increase in height and density pursuant to this By-law unless all provisions of Schedule A are satisfied.

6

By-law No. XXXX-2023

Ontario Land Tribunal Decision issued on XX, 2023 and Order issued on XX 2023 in Tribunal
File OLT-22-003642.

City of Toronto By-law No. ____ - 2023 (OLT)



TORONTO City Planning Division

801 York Mills Road & 1855 Leslie Street, Toronto

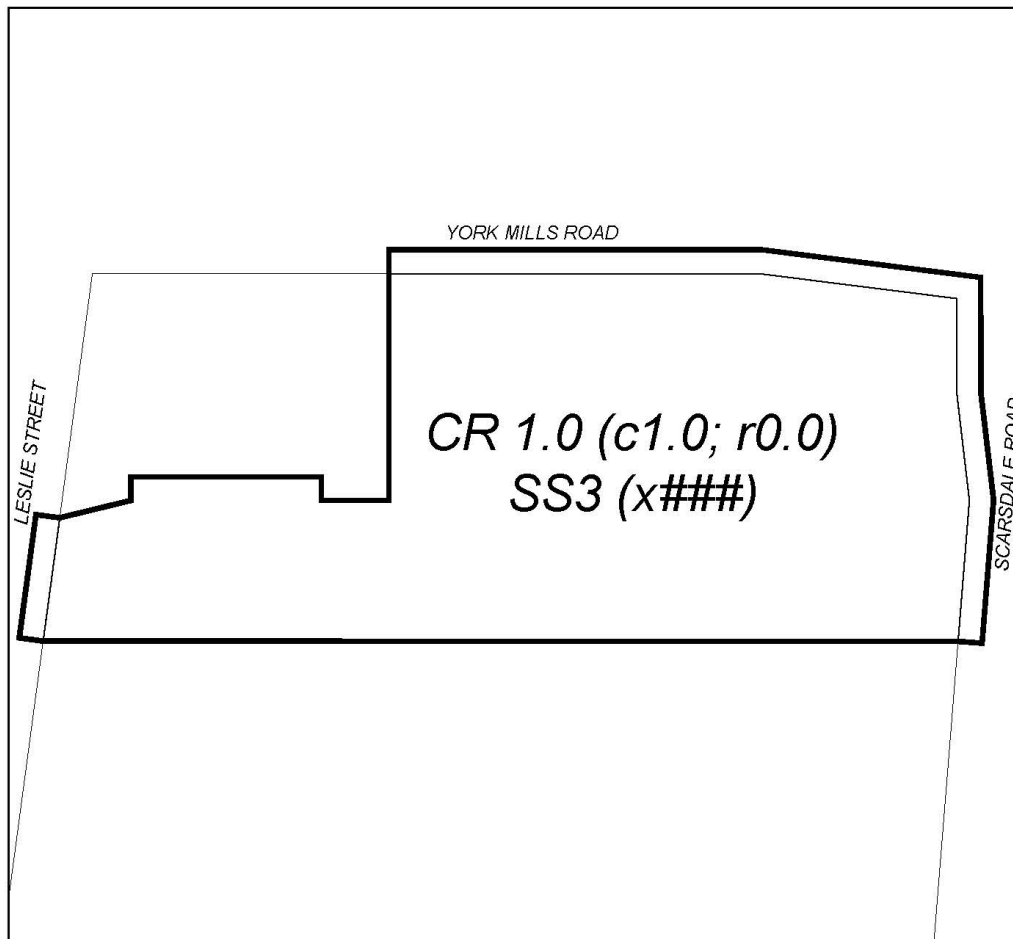
Diagram 1

File #19



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City of Toronto By-law No. ____ - 2023 (OLT)



801 York Mills Road & 1855 Leslie Street, Toronto

Diagram 2

File #19

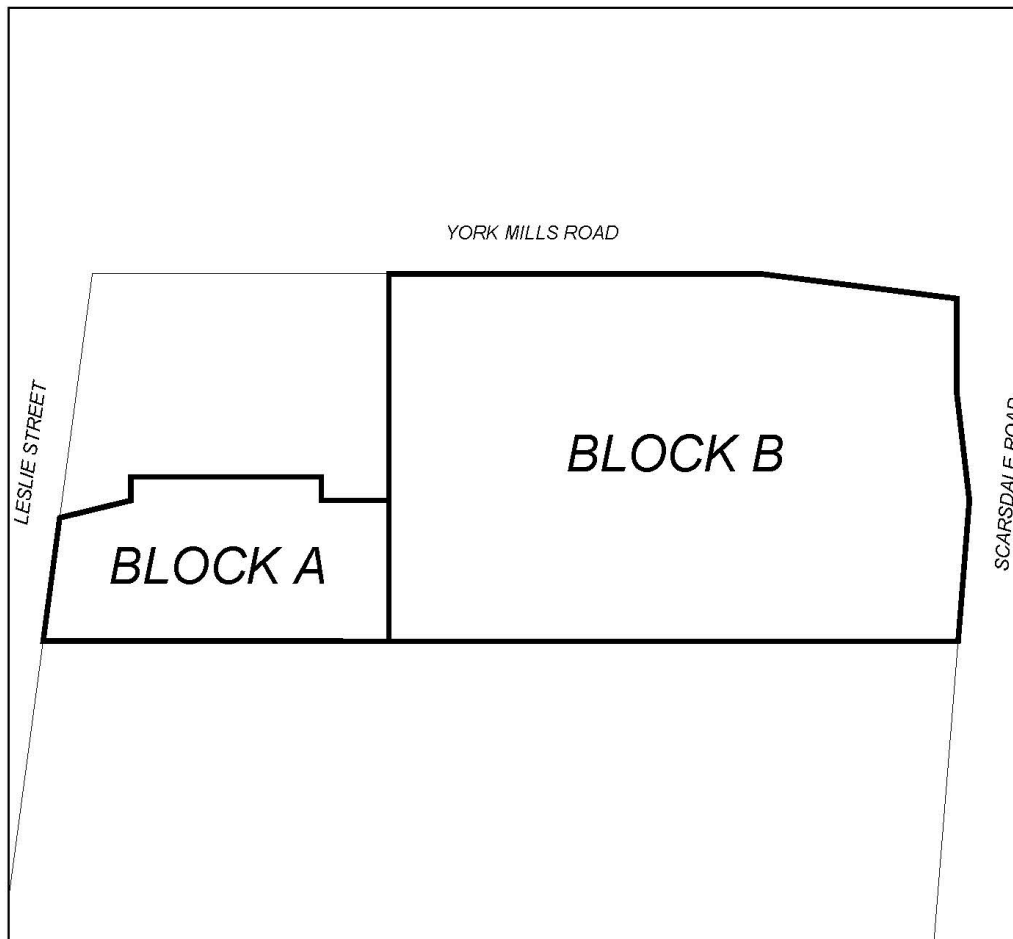


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City of Toronto By-law No. ____ - 2023 (OLT)



 **TORONTO** City Planning
Division

801 York Mills Road & 1855 Leslie Street, Toronto

Diagram 4

File #19 _____



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