



TO: GENERAL COMMITTEE

SUBJECT: AUTHORIZATION TO NEGOTIATE LIMITING DISTANCE AND ENCROACHMENT AGREEMENTS WITH DEBUT WATERFRONT RESIDENCES – 55 DUNLOP STREET WEST

PREPARED BY AND KEY CONTACT: M. PROWSE, CHIEF ADMINISTRATIVE OFFICER, EXT. 4368

CHIEF ADMINISTRATIVE OFFICER APPROVAL: M. PROWSE, CHIEF ADMINISTRATIVE OFFICER

RECOMMENDED MOTION

1. That the Director of Legal Services be authorized to negotiate and register the following agreements with Barrie Waterfront Developments Holdings Inc. (Debut Waterfront Residences):
 - a) a Limiting Distance Agreement which will establish a Limiting Distance Area on the property of 24 Maple Street (current Transit Terminal) where no new building or structure may be constructed within 5 metres of the north property line abutting 55 Dunlop Street West, with such agreement to be subject to the approval of the Chief Building Official; and
 - b) Encroachment agreements to allow for a minimal encroachment onto City property to facilitate canopies over the entrances to the site, subject to the approval of the Director of Transit and Parking Strategy.
2. That as the benefits of these agreements accrue to Debut Waterfront Residences, Debut Waterfront Residences shall be required to pay:
 - a) An amount of \$10,000 to the City as compensation for the constraining of municipally owned lands, as well as administration fee of \$600 to fully recover the cost of the City staff time associated with the preparation of the Limiting Distance Agreement;
 - b) The City's standard encroachment application fee of \$525 and annual encroachment fees of \$68.25 for each encroachment onto City lands;
 - c) The City's costs associated with preparing any reference plans that may be required to delineate the land subject to the Limiting Distance Agreement or Encroachment Agreements; and
 - d) To provide insurance for any encroachments over City property.
3. That the Mayor and City Clerk be authorized to execute the Limiting Distance Agreement on behalf of the City as abutting landowner, and the Chief Building Official be authorized to execute the Limiting Distance Agreement on behalf of the City as the approval authority.
4. That the Mayor and City Clerk be authorized to execute the Encroachment Agreements on behalf of the City.

PURPOSE & BACKGROUND

5. The purpose of this report is to seek authorization for the Director of Legal Services to negotiate and register two types of agreements required by Debut Waterfront Residences to facilitate their development at 55 Dunlop Street West. As part of the recommendation, Debut Waterfront Residences would be required to pay standard encroachment application and annual fees, as well as a fee to address the constraint imposed on the City's future development of the Transit Terminal site and to recover the staff time in preparing a Limiting Distance Agreement.
6. Debut Waterfront Residences is a mixed-use, high-rise development consisting of two 32-storey residential towers comprised of 495 units (Phase I and II), including a 6-storey podium (with ground floor retail/commercial uses and parking on levels 2-6). The development includes a pedestrian arcade that will connect the Dunlop Street frontage with the existing transit terminal and waterfront. A building permit was issued on October 25, 2022.
7. The building façade in the podium area is designed to maintain a street-oriented pedestrian scale of development. The main building entrances are designed as prominent features to be clearly identified from the street and encourage pedestrian use. The design includes a high level of transparency to avoid blocking light and views.
8. The existing City of Barrie Transit Terminal is located immediately south of the subject lands with Simcoe Street beyond, including the Spirit Catcher Park, transient marina and Heritage Park, fronting Kempenfelt Bay.
9. In order to facilitate the design of the development, Debut Waterfront Residences has requested from the City a Limiting Distance Agreement and Encroachment Agreements.

Limiting Distance Agreements

10. The purposes of the Ontario Building Code (the "OBC") include health, safety, and the fire protection of buildings. In relation to those purposes and among other things, the OBC provides for specifications and requirements that protect against the risk of fire being transmitted from a building on one property to a building on another property. Some of those specifications and requirements relate to the required distance between a building and the property line of the property upon which the building is located.
11. That distance is referred to as the limiting distance in the OBC. The required limiting distance is dependent on several factors, including the percentage of unprotected openings (such as windows and doors) on the exposing building face, in relation to their distance from the property line.
12. The default position set in the OBC is for the required limiting distance for an exposing building face to be measured to the property line of the property. This is meant to ensure that a property owner who proposes the building has all of the necessary property rights to ensure that there will be no buildings erected in the required limiting distance area.

Encroachment Agreements

13. An encroachment agreement is a legally binding real estate document signed by neighbouring property owners when a property encroachment is found to exist. An encroachment agreement acknowledges and describes the encroachment, identifies the owner of the encroachment and states any agreed upon resolution.

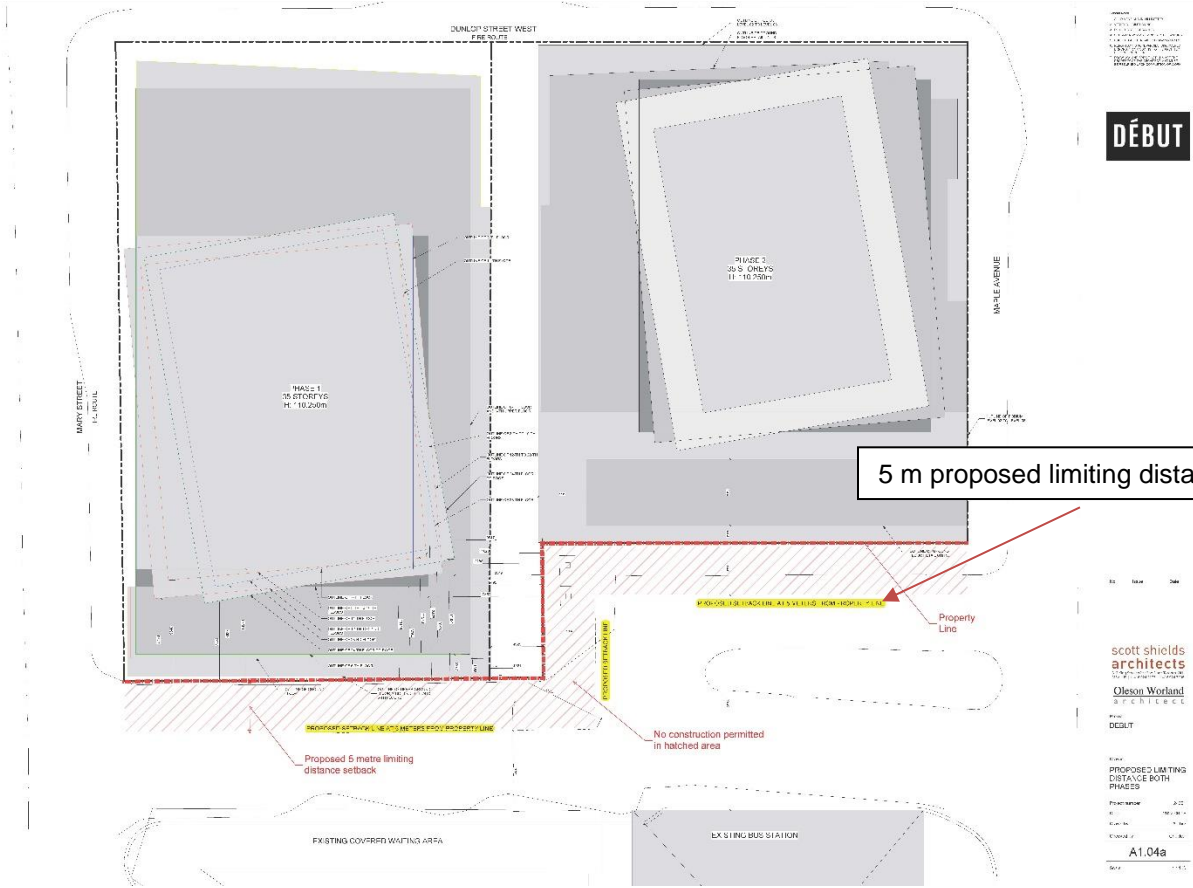
14. The encroachment may be on private property or municipally owned land. Typical types of encroachments include fences that may encroach onto a neighbouring property (versus being built on the specific property line), awnings or signs that overhang the City's municipal sidewalk, retaining walls, decks, sheds, etc.
15. Staff have delegated authority to negotiate encroachment agreements. These agreements tend to be very minor in nature (a few centimetres) if they are permanent or removable (such as a sign or awning).

ANALYSIS

Limiting Distance Agreement Request

16. In order to permit a greater percentage of unprotected openings as part of its development design, Debut Waterfront Residences is seeking permission from the City to use a portion of the Transit Terminal site in their required setback calculations in order to comply with regulations contained in the OBC.
17. Section 3.2.3.1.(11) of the OBC permits the City, as the abutting owner, to enter into a Limiting Distance Agreement, by which the City would identify a portion of the Transit Terminal site, and agree that no building(s) or structure(s) will be erected in this area.
18. Where a Limiting Distance Agreement is registered against the title of a property, the parties have agreed that no building, addition or other structure will be constructed within the limiting distance area. The agreement is an obligation that cannot be broken without the consent of all of the parties to the agreement. The municipality is also required to sign the agreements, even if municipal land is not directly impacted.
19. Limiting Distance Agreements are more commonly executed for properties in a downtown core such as Toronto's to allow for intensive development of a parcel of land.
20. In this circumstance, the Limiting Distance Agreement requested would have the effect of prohibiting the City from building a structure or adding to an existing structure within 5 m of the south property line of the Debut Waterfront Residences. It may also limit the amount of unprotected openings on any future building design, depending on their location.

21. The following image identifies the location of the requested Limiting Distance Area:



22. The City's immediately adjacent property is the existing Transit Terminal. There are no current challenges with the impact of the Limiting Distance Agreement on the City or Barrie Transit operations, as no changes would be required to current operations by entering into the agreement.
23. On February 14, 2022, City Council endorsed in principle the concept of a Barrie Bayside Market Area centred around the conversion of the existing Transit Terminal to a year-round market and the construction of a new building of at least 10,000 square feet nearby to house the Barrie Farmers' Market.
24. Staff were directed to hire consultant or a contract position to prepare a plan and recommend the prioritization and timelines associated with the conversion of the transit terminal into a permanent market and the construction of a new building to house the Barrie Farmers' Market, along with a number of other initial steps required for the project, including the development of a business case, a precinct plan with detailed designs, programming strategy, streetscape masterplan, etc. The capital costs of building the market were to be included in the City's capital budgets, beginning in 2023 based on information from the consultant's feedback.

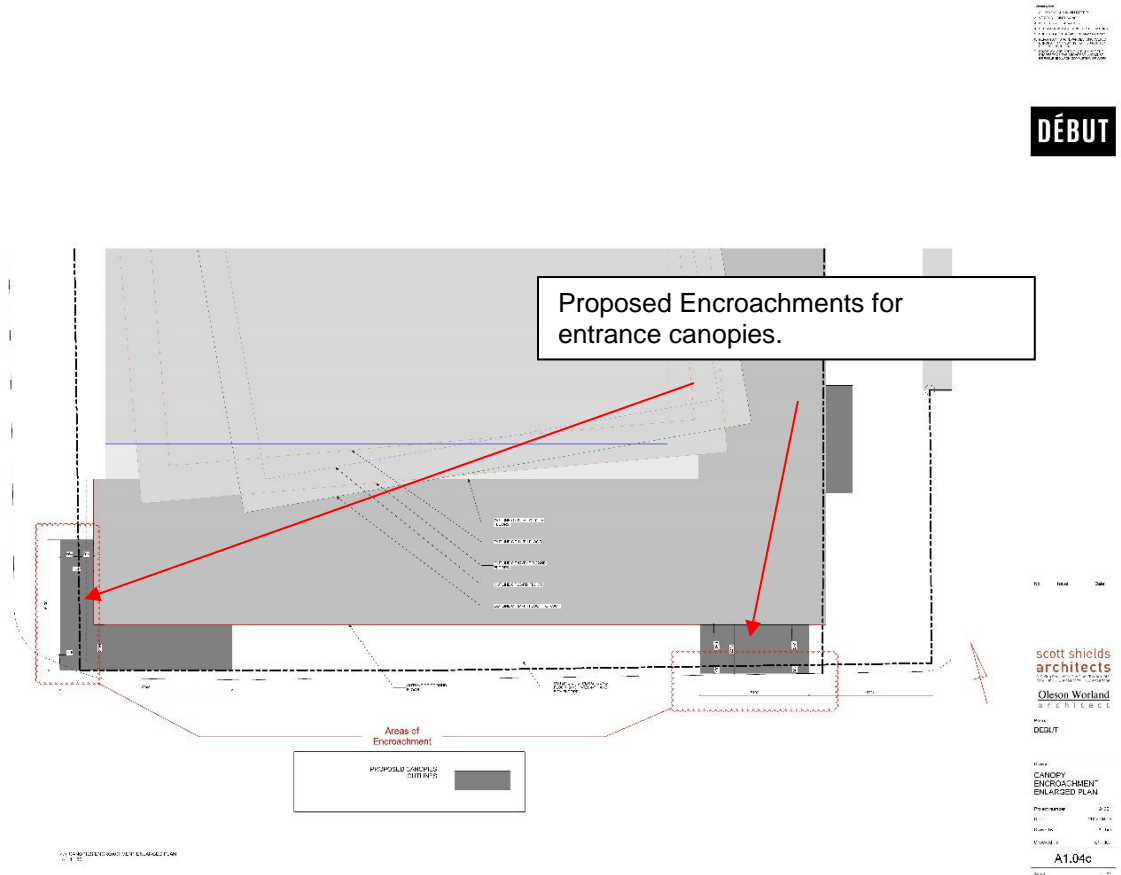
25. The completion of the Allandale Transit Mobility Hub will be required prior to any conversion or construction of the existing Transit Terminal. The site works and design for the Allandale Transit Mobility Hub are well underway. However, the construction of this project was delayed due to delays in ICIP funding approvals and the subsequent inflationary impacts on the project cost. Staff are currently awaiting further ICIP approvals prior to beginning the actual construction of the building. In the meantime, other necessary pre-construction work continues.

Proposed Limiting Distance Agreement Terms

26. It is anticipated that the Limiting Distance Agreement will contain the following provisions:
- a) An acknowledgment by both property owners that the limiting distance measurement will be applicable to the two properties for the purposes of the spatial separation requirements in the Code;
 - b) That the City, as the abutting landowner will not construct a building within the limiting distance measurement established in the agreement.
 - c) That no construction on either property will take place unless done so using the limiting distance measurement set out in the applicable agreement for the purposes of the OBC;
 - d) All openings in exposing building faces in any buildings constructed on the Debut Waterfront Residences' lands shall be constructed in compliance with the Code and the agreement;
 - e) That the City be indemnified for any liability arising out of the agreement;
 - f) That each agreement may only be removed from title on the consent of the City; and
 - g) Debut Waterfront Residences shall be responsible for all costs associated with the preparation and administration of the agreement.
27. It is proposed that Debut Waterfront Residences would compensate the City in the amount of \$10,000 as compensation for the constraint associated with any future development of the Transit Terminal by the City. As the Limiting Distance Agreement would not grant any rights to utilize the property and does not impact any current operations, the \$10,000 is deemed to be a reasonable amount of compensation. The City's provision of a Limiting Distance Area allows for a high quality architectural design that is pedestrian friendly and supported by the City's Development Services Department.
28. As noted above, Debut Waterfront Residences would also be responsible for the staff time preparing the agreement, estimated in the amount of \$600. As well, they would be responsible for the costs associated with preparing any required registered plans to delineate the land subject to the Limiting Distance Agreement.
29. The City is required to be a party to the Limiting Distance Agreement both as the adjacent property owner and as the approval authority responsible for issuing a building permit.

Encroachment Agreements

30. Debut Waterfront Residences also approached the City requesting two encroachments onto City lands, to address two canopies over entrances into their building. Based on the current design, the canopies would encroach 6.1 metres by 0.945 metres over the west side onto the City’s property and 5.1 metres by 0.4 metres on the south east side. The following image illustrates the encroachment requests:



scott shields architects
Oleson Worland ARCHITECT
DGBLT
CANOPY ENCROACHMENT ENLARGED PLAN
A1.04c

- 31. The proposed Encroachment Agreements would require that Debut Waterfront Residences provide insurance to the City and to maintain the encroachment in a state of good repair. Debut Waterfront Residences would be required to provide proof of renewed insurance on an annual basis.
- 32. As the encroachment would include a portion of the building(s) associated with the Proposed Development, the Encroachment Agreements would need to be administered by the City for the duration of the encroachment. In this case, that would likely be for the lifetime of the building.
- 33. It is proposed that there would be nominal consideration (\$1) given by the Debut Waterfront Residences to the City for the Encroachment Agreement. Through the Fees By-law, City Council has previously approved a standard encroachment application fee of \$525 and annual encroachment fees of \$68.25 for each encroachment onto City lands, that would also be applicable to this development.

ENVIRONMENTAL AND CLIMATE CHANGE MATTERS

34. There are no environmental or climate change matters directly related to the recommendation.

ALTERNATIVES

35. The following alternatives are available for consideration by General Committee:

Alternative #1 General Committee could choose not to authorize staff to finalize and arrange for the execution of Limiting Distance and Encroachment Agreements for 55 Dunlop Street.

Although this would avoid any impact on any future development of City's lands at 24 Maple Avenue and overhanging of canopies over sidewalks, this alternative is not recommended. The Limiting Distance Agreement is desirable in order to implement the provisions of the OBC, permitting construction of the proposed development as currently designed. The current design allows for a high quality architectural design that is pedestrian friendly. The Encroachment Agreements would also allow for the proposed development to proceed as designed.

Alternative #2 General Committee could choose not to provide Debut Waterfront Residences with a Limiting Distance Agreement and instead sell the portion of the lands that would be the Limiting Distance Area to Debut Waterfront Residences given the permanent constraint on any future re-development of the site by the City.

This alternative is available. It has not been recommended as the representative of Debut Waterfront Residences has indicated it is unwilling to pay the cost that would be associated with the land value.

Alternative #3 General Committee could choose to provide Debut Waterfront Residences with a Limiting Distance Agreement for nominal consideration (\$1) for the value of the area impacted.

This alternative is available. While Debut Waterfront Residences would prefer a lower/nominal consideration for the Limiting Distance Agreement, this would establish a precedent and if an agreement is executed, the land will be constrained in perpetuity. The \$10,000 fee is deemed to be reasonable compensation for this type of constraint.

Alternative #4 General Committee could choose to require Debut Waterfront Residences to pay a fee on a per square metre basis associated with the two canopies that encroach the air space/overhang the City's sidewalk given their permanent nature, rather than permitting the encroachments for nominal consideration.

This alternative is available. It has not been recommended as it is not in keeping with past practice for encroachments of air space above municipal property.

FINANCIAL

Limiting Distance Agreement

36. It is proposed that the Debut Waterfront Residences shall be responsible for a fee in the amount of \$10,000 to compensate the City for the potential constraint associated with any future re-development of the Transit Terminal. The fee has been proposed to reflect a reasonable amount of compensation for constraining the City's ability to construct buildings or other structures in this area in the future, while facilitating a higher quality architectural design on an adjacent property. Other municipalities such as Toronto have imposed a fee when a Limiting Distance Agreements impact the municipal property in perpetuity.
37. In addition, it is recommended that Debut Waterfront Residences pay a fee in the amount of \$600 to recover the staff time associated with the preparation of the Limiting Distance Agreement as well as any costs associated with the preparation of registered plans.

Encroachment Agreements

38. The City's standard encroachment application fee of \$525 and annual encroachment fees of \$68.25 for each encroachment onto City lands. Only nominal consideration has been proposed for the value of the impacted sidewalk, as is the practice with other encroachments.
39. Should a registered plan be required for the encroachments, Debut Waterfront Residences would be responsible for the costs associated with the preparation of those plans. Debut Waterfront Residences would also be responsible for insurance related to the encroachments.

LINKAGE TO 2022 - 2026 STRATEGIC PLAN

40. The recommendations included in this Staff Report are not specifically related to the goals contained in 2022- 2026 Strategic Plan.