



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

**Review of OMB Decision
OPA 72 – Request for Further Instructions**

Date:	May 25, 2011
To:	Planning & Growth Management Committee
From:	City Solicitor
Wards:	All Wards within the City
Reason for Confidential Information:	This report contains advice or communications that are subject to solicitor-client privilege.
Reference Number:	

SUMMARY

To update Council on ongoing litigation in connection with the motion seeking leave to appeal to Divisional Court of the Ontario Municipal Board (OMB) Decision issued on June 10, 2010 regarding Official Plan Amendment No. 72 (Growth Plan Conformity) and to seek further instructions.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential recommendations in Attachment 1; and
2. City Council authorize the public release of the confidential recommendations in Attachment 1 if adopted by Council.

Financial Impact

The financial impact is discussed in the Confidential Information Attachment 1 to this report.

DECISION HISTORY

City Council at its meeting of May 26 and 27, 2009, adopted Official Plan Amendment 72. OPA 72 was prepared by the Chief Planner and Executive Director, City Planning Division, as part of the conformity exercise required by the Minister of Municipal Affairs and Housing in connection with the Provincial Growth Plan of 2006. The final planning report containing the recommended changes to the Official Plan is contained at Item PG25.2.

A preliminary planning report identifying initial issues is found at Item PG23.5. A status report summarizing public consultation carried out by the City Planning Division is contained at Item PG24.7.

A number of appeals were made to OPA 72, and a motion was brought by Home Depot on a preliminary basis asserting that the City had adopted OPA72 under the incorrect section of the *Planning Act*. The OMB granted the motion of Home Depot in its Decision of June 10, 2010 and refused to approve OPA 72.

City Council authorized the seeking of leave to appeal to the Divisional Court at its meeting held on August 25, 26 and 27, 2010.

ISSUE BACKGROUND

The Growth Plan, released on June 16, 2006, establishes provincial targets for employment and population growth within each municipality and contains related policies to achieve these goals. In a report dated April 24, 2009, the City Planning Division brought forward a series of policy amendments that were intended to bring the City's Official Plan into conformity with the Growth Plan, as required by the *Places to Grow Act*.

In the report to City Council dated August 18, 2010 (CC52.5), the nature of the procedural challenge to the City's adoption of OPA72 was set out. Council adopted the staff recommendations to proceed to seek leave to appeal the OMB Decision on legal grounds. This matter is scheduled to come before the courts shortly.

However, since that time certain matters, including a key ruling of the Divisional Court on a policy of the Official Plan which was a major element of OPA 72, make it necessary to seek further instructions at this time from City Council on the leave application. The discussion of these considerations is dealt with in the confidential attachment to this report.

The City does remain under a statutory obligation to complete the process of amending its Official Plan to reflect the Provincial Growth Plan policies.

CONTACT

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SIGNATURE

Anna Kinastowski, City Solicitor

ATTACHMENTS

Attachment 1 - Confidential Information