



## REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

### Appeals of City-wide Zoning By-law 569-2013 - Request for Direction

**Date:** January 23, 2020

**To:** City Council

**From:** City Solicitor

**Wards:** All

#### REASON FOR CONFIDENTIAL INFORMATION

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This report concerns litigation or potential litigation which affects the City or one of its agencies or corporations.

This report contains advice or communications that are subject to solicitor-client privilege.

#### SUMMARY

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The Conservatory Group appealed the regulations in the City-wide Zoning By-law 569-2013 dealing with mechanical penthouses. Staff have revised the mechanical penthouse regulations, following a series of without prejudice discussions with the appellant and the City Solicitor requires direction regarding these revisions.

#### RECOMMENDATIONS

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The City Solicitor recommends that:

1. City Council adopt the confidential recommendations in Confidential Attachment 1.
2. If the City Solicitor's confidential recommendation is adopted by Council, then City Council authorize the public release of:
  - a. the recommendation contained in Confidential Attachment 1 (with the remainder of Confidential Attachment 1 to remain confidential as it contains information that is subject to solicitor-client privilege), and
  - b. Confidential Appendix "A"

## FINANCIAL IMPACT

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The recommendations in this report have no financial impact.

## DECISION HISTORY

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The City-wide Zoning By-law was approved by City Council at its meeting on April 3 and 4, 2013 and enacted on May 9, 2013. The Council decision of Item 2013.PG21.1 - Final Report on the City-wide Zoning By-law can be found at this link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.PG21.1>

A total of 323 appeals were filed under Subsection 34(19) of the *Planning Act* from various appellants. Approximately 201 of these appeals have been settled or withdrawn. The majority of the remaining appeals are site specific. There are 45 appeals that have City-wide objections to regulations in By-law 569-2013 with many concerning specific uses or issues.

On May 3, 2016, City Council authorized the City Solicitor to proceed with settlements of By-law 569-2013 by way of motion if the settlement results in changes that in the opinion of the City Solicitor, in consultation with the Chief Planner and Executive Director, City Planning, are minor and substantially in accordance with Council's approved intent in By-law 569-2013. The Council decision of Item 2016.PG11.2 - Directions Report with Respect to By-law 569-2013 and Settlements can be found at this link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.PG11.2>

The most current Office Consolidation of the Chapters 1-800 of By-law 569-2013 (January 1, 2019) can be found at this link:

<https://www.toronto.ca/wp-content/uploads/2018/07/97ec-City-Planning-Zoning-Zoning-By-law-Part-1.pdf>

## COMMENTS

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This matter concerns the mechanical penthouse regulations in City-wide Zoning By-law 569-2013 specifically relating to Tall Buildings, as defined in the Official Plan and the Tall Building Design Guidelines (i.e. the portion of a building higher than 24.0 metres).

The mechanical penthouse regulations in City-wide Zoning By-law 569-2013 regulate the built form of mechanical penthouses which are, as indicated in By-law 569-2013, "elements for functional operation of a building." Examples of "elements for functional operation of a building" are: electrical, utility, mechanical equipment, enclosed stairwells, roof access, elevator shafts, chimneys, vents, and water supply facilities.

## **Existing Regulations and Origin**

Some buildings require rooftop mechanical equipment to perform various building functions. This is commonly referred to as a mechanical penthouse, and in Zoning By-law 569-2013, this is referred to as "elements for functional operation of a building." These buildings may have equipment on the roof, while others may have more substantive structures enclosing the equipment.

The zoning regulations in Zoning By-law 569-2013, for "elements for functional operation of a building" vary slightly depending on the zone or building type. Generally, mechanical penthouses may exceed the permitted maximum height by 5.0 metres, provided: they do not cover more than 30 percent of the roof area. If they are located within 6.0 metres of a street, they cannot exceed 20 percent of the width of main walls of the building facing the street.

The requirements in Zoning by-law 569-2013 for "elements for functional operation of a building" have their basis in regulations found in Section 4(2)(a) of former City of Toronto Zoning By-law 438-86. These were developed at a time when the predominant built form for tall buildings was bulky slab buildings with no podiums or base building. This design resulted in large building footprints. The resultant roof area could potentially accommodate large and bulky mechanical equipment and structures on the roof. The potential for large mechanical penthouses on the roof of these already large buildings raised concerns related to shadows from the additional massing, as well as the view of these elements from the public realm. As a result of these concerns, regulations were put in place that limited the height and floor area and also limited the width when a mechanical penthouse was in proximity to a street line. These regulations were intended to limit the massing on the roof, as well as the visual impact from the street.

## **Policies**

The Official Plan policies in 3.1.3 Built Form - Tall Buildings are intended to ensure that tall buildings fit within their existing and/or planned context and limit local impacts. Specifically related to mechanical penthouses is policy 1.c) which requires the integration of roof top mechanical systems into the design of the top of the building, in recognition of the role tall buildings have in "contributing to the skyline character."

To assist with implementation of Official Plan policy and provide specific design direction for tall buildings in Toronto, City Council adopted the Tall Building Design Guidelines (2013), which were in place when Zoning By-law 569-2013 was passed in May 2013. These Council-adopted guidelines include policies to provide design direction for tall buildings in Toronto. They were intended to establish a new, unified set of performance standards for the evaluation of tall building development applications in all areas of the city.

In recognition that tall buildings with large, elongated and slab-like, floor plates create inappropriate scale, wind at street level and cast long shadows, Policy 3.2.1 limits the tower floor plate to 750 square metres or less. The benefits of tall slender towers with compact floor plates are numerous. They "cast smaller, faster moving shadows,

improve access to sky view, permit better views between buildings and through sites, and contribute to a more attractive skyline." They can also be more energy efficient with respect to climate control and daylight. The maximum 750 square metre floor plate requirement is a key component of the Tall Building Guidelines, and its approach to a tall slender tower is reflected in many of the new tall buildings in Toronto.

Policy 3.3 of the Tall Building Design Guidelines directs that rooftop mechanical equipment should be integrated into the design and massing of the upper floors of tall buildings. This is intended to "avoid detracting from the form and elegance of the top," which should contribute to the quality and character of the skyline in recognition of the prominence of tall buildings.

## **CONTACT**

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Gabe Szobel, Solicitor, Planning and Administrative Tribunal Law, Tel. No. 416-392-8941, Fax. No. 416-338-1889, E-mail: [Gabe.Szobel@toronto.ca](mailto:Gabe.Szobel@toronto.ca)

Marc Hardiejowski, Solicitor, Planning and Administrative Tribunal Law, Tel. No. 416-392-4960, Fax. No. 416-338-1889, E-mail: [Marc.Hardiejowski@toronto.ca](mailto:Marc.Hardiejowski@toronto.ca)

Thomas Wall, Solicitor, Planning and Administrative Tribunal Law, Tel. No. 416-392-1561, Fax. No. 416-338-1889, E-mail: [Thomas.wall@toronto.ca](mailto:Thomas.wall@toronto.ca)

## **SIGNATURE**

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Wendy Walberg  
City Solicitor

## **ATTACHMENTS**

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Confidential Attachment 1 - Confidential Information

Confidential Appendix "A" - Proposed Revisions to the Mechanical Penthouse Regulations of City-wide Zoning By-law 569-2013