



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

Port Lands OPM LPAT Appeals - Request for Direction Report

Date: June 19, 2020

To: City Council

From: City Solicitor

Wards: Ward 14

REASON FOR CONFIDENTIAL INFORMATION

This report concerns litigation that affects the City of Toronto. This report contains advice or communications that are subject to solicitor-client privilege.

SUMMARY

The Port Lands Official Plan Modification (the "Port Lands OPM" or "OPM") was endorsed by City Council in December of 2017. The Port Lands OPM modifies OPA 257, referred to as the Central Waterfront Secondary Plan (the "CWSP"). OPA 257 was an amendment to the former City of Toronto Official Plan. The CWSP was appealed in 2003 and is not yet in force for the Port Lands geography.

Several appellants of the CWSP, including public agencies, existing industries, and private owners with development aspirations, have raised issues with the Port Lands OPM. A six-week hearing for the Port Lands OPM is scheduled to be heard by the Local Planning Appeal Tribunal (LPAT) commencing on September 1, 2020. This is the first phase of the hearing, which is dealing only with land use and transportation issues. Subsequent hearing phases will address the balance of the issues.

The purpose of this report is to seek instructions that would potentially resolve or narrow the scope of some issues for the hearing. City Planning has been involved in the preparation of this report.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential recommendations contained in Confidential Attachment 1.
2. City Council authorize the public release of the confidential recommendations and Confidential Appendix A, once adopted by City Council.
3. City Council direct that the remainder of Confidential Attachment 1 and Confidential Appendices B and C are to remain confidential at the discretion of the City Solicitor, as they contain information that is subject to solicitor-client and settlement privilege.

FINANCIAL IMPACT

There are no financial implications from the adoption of this report.

DECISION HISTORY

On December 5, 6, 7 and 8, 2017, City Council considered clause PG24.6, which included, amongst other matters pertaining to the Port Lands Planning Initiatives, instruction for the City Solicitor to request the Ontario Municipal Board (now LPAT) to modify the former City of Toronto Official Plan and CWSP substantially in accordance with the Port Lands OPM, and to implement the Port Lands OPM at the on-going Ontario Municipal Board (now LPAT) hearing on the CWSP as appropriate.

For more information, see the Council consideration and Report for Action at the following links:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.PG24.6>

<https://www.toronto.ca/legdocs/mmis/2017/pg/bgrd/backgroundfile-107844.pdf>

COMMENTS

The Port Lands Planning Framework and OPM

The Port Lands Planning Framework (the "Framework") is a comprehensive, 50-plus year vision for the Port Lands. It provides a context for change and establishes new policy direction for the area. The Framework, in combination with various Environmental Assessments undertaken in the area, formed the basis for the policy directions in the Port Lands OPM. The Framework and resulting Port Lands OPM were the result of extensive consultation with all relevant stakeholders and the public undertaken over several years, beginning in November 2013 and culminating in Council's adoption of the Framework and endorsement of the OPM in December 2017.

The Port Lands OPM is the statutory policy document and modification of the CWSP that implements the direction and recommendations of the Port Lands Planning Framework. Planning applications and zoning by-law amendments within the Port Lands will be required to conform to the Port Lands OPM. The Port Lands OPM includes changes to the CWSP. Policies specific to the Port Lands are included in the OPM as a Site and Area-Specific Policy amendment to the CWSP.

The Appeals

There are presently 15 active parties to the Port Lands OPM appeals. They include: public agencies, including the Toronto District School Board (TDSB), Hydro One Networks Inc. (HONI), Toronto Hydro, Ontario Power Generation (OPG), the Toronto Port Authority (Ports Toronto) and Waterfront Toronto; industry players with an existing presence in the Port Lands, including Lafarge Canada Inc. (Lafarge) and CRH Canada Group Inc. (CRH); as well as private owners with development aspirations.

The LPAT Proceedings

Four pre-hearing conferences ("PHC") have been held in respect of the Port Lands OPM hearing. The first PHC (November 2018) confirmed the parties and participants and required the parties to submit issues.

The second PHC (June 2019) determined that the hearing would be phased, with four phases in total. Phase One will deal with issues related to Land Use and Transportation. Subsequent phases will address Built Form, Urban Design Standards and Heritage (Phase Two); Affordable Housing, Parks, Community Infrastructure and Servicing (Phase Three); and Sustainability and Biodiversity (Phase Four). An LPAT decision on the Phase One hearing is expected to result in reduced issues for subsequent phases, as many issues in subsequent phases are contingent upon the land use policies and street network that will be determined in Phase One.

The third PHC (December 2019) confirmed a procedural order and issues list for the Phase One hearing, which is scheduled for six weeks starting September 1, 2020.

On April 1, 2020, the parties exchanged witness lists in accordance with the procedural order for the hearing, but before witness statements could be exchanged in early May, COVID-19 intervened. A fourth PHC was convened (May 26, 2020 via teleconference) and confirmed that notwithstanding difficulties arising from COVID-19 restrictions, the parties would continue to work towards the September 1, 2020 hearing. The Tribunal imposed a July 8, 2020 date for the exchange of witness statements.

A fifth PHC is scheduled for July 2, 2020.

The City has worked with the various parties throughout 2019 to streamline and scope the issues for the hearing. There are approximately 60 issues to be adjudicated in the first phase, in the following thematic areas:

- General hydro-electric infrastructure
- Land Use, with the most significant issues being:
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- Residential uses proposed in some of the districts reserved for employment uses
- Parks designations (promenades, surrounding the Hearn, the river)
- Designations and permissions for industrial operations and port areas
- Designation of a hydro corridor and a utility district
- Land use compatibility
- Expansion and protection of industry
- Relocation of existing uses
- Municipal comprehensive review requirements
- Minimum non-residential requirements
- Retail requirements
- Integrated planning
- Transportation network - streets and alignments
- Goods movement and truck access
- ROW widths
- Interpretation and holding provisions

The most significant of the issues for the City is the desire for residential, hotel and long term stay permissions in employment-focussed areas (e.g. Media City, Turning Basin Districts and the Hearn). Many of the parties also have land use compatibility concerns which are largely related to how the OPM's mitigation policies should be applied.

The street network issues are related to specific street segments and include the Broadview Avenue extension, the Basin Street extension/realignment, the Unwin Avenue realignment in the vicinity of the Hearn and Port Lands Energy Centre and a portion of the Don Roadway alignment near the Ship Channel. A number of parties have also expressed concerns with various planned right-of-way widths. Goods movement (truck access, truck routes and rail) is a common issue for industrial operations. Concerns have also been raised around future and existing hydro-electric infrastructure.

Over the course of 2019 and the first half of 2020, City staff have engaged in without prejudice discussions with the appellants to try and resolve or narrow some of the issues in advance of the hearing.

Conclusion

The City Solicitor requires instructions. This report is about litigation before the LPAT and contains advice or communications that are subject to solicitor-client privilege. Attachment 1 to this report contains confidential information and should be considered by Council in camera.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

Confidential Attachment 1 - Confidential Report from City Solicitor
Confidential Appendix A – Confidential Information
Confidential Appendix B – Confidential Information
Confidential Appendix C – Confidential Information