



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

TOcore: Updating Tall Building Setbacks in the Downtown - City Initiated Official Plan Amendment and Zoning By-law Amendments - Update and Request for Directions for LPAT Hearing

Date: November 16, 2020

To: City Council

From: City Solicitor

Wards: 10, 11, 13, 14

REASON FOR CONFIDENTIAL INFORMATION

This report contains advice or communications that are subject to solicitor-client privilege. This report contains information regarding potential litigation.

SUMMARY

At its meeting of October 5, 6, and 7, 2016, City Council adopted the recommendations of the Final and Supplementary Reports on TOcore: Updating Tall Building Setbacks in the Downtown - City-Initiated Official Plan Amendment and Zoning By-law Amendment, as amended by Toronto and East York Community Council. It enacted By-law 1105-2016 ("OPA 352") and By-laws 1106-2016 and 1107-2016 (the "Amending By-laws"). These instruments were the outcome of a six-month study providing policy and updating the setback requirements for tall buildings in the Downtown.

There were over two hundred appeals of Council's decision to enact OPA 352 and the Amending By-laws made to the Ontario Municipal Board (the "OMB"), now continued as the Local Planning Appeal Tribunal (the "LPAT"), by numerous landowners and stakeholders.

The LPAT has conducted five Pre-Hearing/Case Management Conferences to date in relation to OPA 352 and the Amending By-laws, at which parties have been identified, and procedural directions have been issued, with the aim of rendering the eventual hearing of the appeals efficient and cost-effective. A sixth Case Management Conference is scheduled for December 3, 2020.

The purpose of this report is to request further instructions with respect to OPA 352 and the Amending By-laws.

City Planning has been involved in the preparation of this report.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council authorize the City Solicitor, in consultation with the Chief Planner, to request that the Local Planning Appeal Tribunal amend and partially approve Zoning By-laws 1106-2016 and 1107-2017 to reflect further additions to the Prevailing Lists, not previously authorized by Council, as omissions to the Prevailing Lists become known.
3. City Council adopt the recommendations contained in the Confidential Attachment 1 to this report.
4. City Council authorize the public release of the confidential recommendations contained in Confidential Attachment 1 and Confidential Attachment 2, if adopted by City Council.
5. City Council direct that all other information contained in Confidential Attachment 1 is to remain confidential, as it contains advice which is subject to solicitor-client privilege and litigation privilege.

FINANCIAL IMPACT

Adopting this report will have no financial impact beyond what has already been approved in the current year's budget.

DECISION HISTORY

At its meeting of December 9, 2015, City Council adopted the recommendations in the staff report entitled "TOcore: Planning Toronto's Downtown - Phase 1 Summary Report and Phase 2 Directions." This report summarized the work completed for Phase 1 of TOcore and provided directions for Phase 2. This report can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.TE12.43>

One of the recommendations of that report requested City Staff to begin stakeholder and public consultation on tower separation requirements for the Downtown and to bring forward a proposed Official Plan Amendment and/or Zoning By-law Amendment to Toronto East York Community Council in 2016. City Staff fulfilled this request by way of a Final Report dated May 27, 2016, and a Supplementary Report dated August 31, 2016.

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Toronto and East York Community Council commenced a statutory public meeting in relation to the Final and Supplementary Reports on June 14, 2016, but then adjourned it until September 7, 2016. The Final Report can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.TE17.14>

The statutory public meeting was continued on September 7, 2016. Staff's recommendations were adopted, as amended by Toronto and East York Community Council. City Council adopted the item without amendment on October 5, 2016. The Supplementary Report can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.TE18.7>

At its meeting of February 26, 2019, City Council adopted the City Solicitor's recommendation, among others, to request that the Local Planning Appeal Tribunal amend and partially approve the Amending By-laws for the purpose of making additions to the prevailing lists in Sections 12(2)(380)(8) and 600.10(3) of those Amending By-laws respectively. The City Solicitor's report and the City Council decision can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.CC3.3>

To give effect to City Council's February 26, 2019 decision, the City Solicitor brought a motion to the LPAT, which motion was allowed by the LPAT. The LPAT's decision can be found at the following link:

<http://www.omb.gov.on.ca/e-decisions/pl161316-Jul-22-2019.pdf>

COMMENTS

Status Update

The City Solicitor successfully brought a motion to the LPAT on November 29, 2018 and made further requests on November 1, 2019 that have allowed approximately one hundred and one (101) appeals to be adjourned or partially adjourned *sine die* to date, and for one (1) party to withdraw from the proceedings, with tower setback and separation issues to be determined by way of site specific processes that are already underway, either through the City Council approval process, or through the LPAT hearing process.

Approximately eight-five (85) appeals have been withdrawn or partially withdrawn, and three (3) parties have withdrawn from the proceedings. The City Solicitor has requested that thirty-six (36) additional appeals be withdrawn, on the basis that terms of adjournment, previously agreed to by these appellants, now call for their withdrawal. One (1) additional party to the proceedings has also been asked to withdraw on this basis. Should these appeals not be withdrawn voluntarily, the City Solicitor will make a motion to the LPAT to request their dismissal.

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At the Case Management Conference held on November 1, 2019, the City Solicitor requested that a Procedural Order and Issues List be issued by the LPAT, and that hearing dates be scheduled for the adjudication of all remaining appeals. A draft Procedural Order and Issues list were endorsed in principle by the LPAT, though not issued, and a six-week hearing was scheduled to commence on June 15, 2020. The hearing was cancelled as a result of the COVID-19 public health emergency. City Legal staff have requested that the hearing be re-scheduled. A sixth Case Management Conference is scheduled for December 3, 2020, to address procedural matters prior to the commencement of the hearing.

The City Solicitor and City Planning Staff have been working with the remaining appellants of and parties to OPA 352 and the Amending By-laws to scope and resolve issues.

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

Prevailing Lists

Staff are recommending that City Council provide standing authority to request that the LPAT amend and partially approve the Amending By-laws to reflect further additions to the Prevailing Lists, as further omissions are made known to City staff. It is anticipated, at this stage in the proceedings, that the number of further additions to the Prevailing Lists will be small.

Additions to the Prevailing Lists are site specific Zoning By-laws and minor variances that were either omitted from the Amending By-laws at the time of the enactment of the Amending By-laws, or have been enacted by the City, or authorized by the LPAT, since the Amending By-laws were enacted. They should be recognized in the instruments to ensure consistency between the instruments and the site and/or area specific by-laws and authorized minor variances, and to ensure that building permits can be issued for those City, OMB- or LPAT-approved developments.

Council's intent to avoid conflicting by-laws for developments that have been approved by Council or the LPAT will be furthered by providing standing authority to the City Solicitor, in consultation with the Chief Planner, to request that the LPAT make additions to the Prevailing Lists, as required. This standing authority will also result in more appellants either withdrawing their appeals of the Amending By-laws, or withdrawing as parties to the proceedings; or allowing the City Solicitor to request that those appeals be dismissed by the LPAT in accordance with the terms of adjournment previously endorsed by Council and approved by the LPAT.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

1. Confidential Attachment 1 - Confidential Recommendations and Confidential Information.
2. Confidential Attachment 2 - Confidential Information.