



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

Port Lands OPM LPAT Appeals - Mediation Update - Request for Direction Report

Date: December 9, 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 first endorsed by City Council in December of 2017. Several appellants of the CWSP, including public agencies, existing industries, and private owners with development aspirations, have raised issues with the Port Lands OPM and a six-week Local Planning Appeal Tribunal (LPAT) hearing was scheduled begin on September 1, 2020 to deal with the land use and transportation issues (the Phase 1 Port Lands OPM Hearing). The hearing was adjourned to early 2021 to allow for Tribunal-assisted mediation, which took place over numerous days in October and November, 2020.

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 contained in Confidential Attachment 1 and all of Confidential Appendix A and Confidential Appendix C, once adopted by City Council.

3. City Council direct that the remainder of Confidential Attachment 1 and Confidential Appendix B are to remain confidential at the discretion of the City Solicitor, as they contain information that is subject to solicitor-client and settlement privilege.

4. City Council classify the Media City, Turning Basin and Hearn Districts as Class 4 areas under the Ministry of Environment (now Ministry of Environment, Conservation and Parks) Environmental Noise Guideline, Stationary and Transportation Sources – Approval and Planning, Publication NPC-300, August 2013, and request the Chief Planner and Executive Director, City Planning to include a non-statutory map (Public Attachment 1) in the Central Waterfront Secondary Plan showing areas classified as Class 4 areas in the Central Waterfront.

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 Item 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>

On June 29, 2020, City Council considered a report from the City Solicitor and endorsed a number of proposed policy modifications that would narrow or scope the issues for the Phase 1 Port Lands OPM hearing, and endorsed issue-specific settlements with some appellants.

For more information, including background on the Port Lands Planning Framework and OPM, and the Phase 1 Port Lands OPM hearing and issues, see the Council consideration and Report for Action with Confidential Attachment at the following links:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.CC22.9>
<https://www.toronto.ca/legdocs/mmis/2020/cc/bgrd/backgroundfile-148177.pdf>

COMMENTS

Background on LPAT Proceedings & Mediation

Over the course of 2019 and the first half of 2020, City staff engaged in informal without prejudice discussions with the appellants to try and resolve or narrow some of the issues in advance of the hearing. These discussions resulted in a number of policy modifications that were endorsed by Council in June, 2020.

Witness statements were exchanged on July 13, 2020. A total of 60 witness statements were filed in a variety of disciplines. 39 reply witness statements were exchanged on September 3, 2020. A number of experts meetings took place in August and September, 2020. Through these meetings, the experts worked together to prepare statements of agreed facts and further narrowed or resolved some of the issues for the hearing. It was through the experts meetings that the notion of exploring Tribunal-assisted mediation arose.

The idea of mediation was raised with the LPAT and it was confirmed that the hearing would not be proceeding in 2020 in order to allow for LPAT-assisted mediation. The hearing is presently scheduled to commence on January 18, 2021. Some of the final exchange dates for the Procedural Order still need to be established.

A number of days of mediation took place with a variety of parties in October and November, 2020. The focus of the mediation was on land use compatibility issues and on hydro infrastructure-related issues, as well as a number of other issues requested by various parties to be addressed in mediation. The purpose of this report is to provide an update on the mediation and to seek further instructions.

Land Use Compatibility

The land use compatibility policies in the Port Lands Official Plan Modification (OPM) consist of:

- District-specific policies (section 4.2) for the three planned mixed-use residential communities (Villiers Island, Polson Quay/South River and McCleary) that detail specific requirements for the consideration of residential and other sensitive uses in each District to account for adverse effects from port and industrial uses on each District; and
- A series of general land use compatibility policies (section 4.7) that have broader application in the Port Lands and to other non-residential sensitive uses contemplated in different Districts.

The policies reflect the 2016 Golder Noise and Air Quality Feasibility Study undertaken to support the Port Lands OPM.

Class 4 Designation for Media City, Turning Basin and Hearn Districts

In connection with the initial adoption by Council of the Port Lands Planning Framework and introduction of the Port Lands OPM in December of 2017, City Council classified Villiers Island, the McCleary District, Polson Quay and South River Districts as Class 4 areas under the Ministry of Environment and Climate Change's NPC-300 Publication. This was done because new sensitive use permissions, and specifically residential permissions, were being introduced in these areas, and in recognition that portions of the Port Lands will continue to have port and industrial uses. The Class 4 classification provides for higher noise limits, allows for source mitigation and assists in safeguarding industry.

Land owners and lease holders with interests in Media City, Turning Basin and the Hearn Districts have expressed an interest in having these areas also classified as Class 4. The land use permissions for these Districts do not contemplate residential uses, although some parties are seeking residential permissions in these areas through the LPAT appeal process.

The Port Lands OPM and Port Lands Planning Framework as adopted by City Council already contemplate other, non-residential noise sensitive uses in these Districts, such as child care centres to support certain employment areas and post-secondary institutions. In recognition of these sensitive use permissions and to protect existing port and industrial uses, the Class 4 classification is appropriate in these areas. The classification of these areas as Class 4 areas should not be seen as an endorsement of residential permissions for these areas, which are not supported by City staff.

Other Issues

Other matters that were discussed through mediation include but are not limited to:

- the priority retail streets and frontages policies and requirements for the consideration of large-scale retail uses in mixed use areas and at the Hearn;
- interim use permissions in Polson Quay;
- cultural-related and entertainment use permissions in the Media City;
- non-residential permissions at the Hearn; and
- the Parks and Open Spaces Areas designation north of the realigned Unwin Avenue.

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. Confidential 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

Public Attachment 1 - Map showing Class 4 Areas for inclusion in CWSP
Confidential Attachment 1 - Confidential Report from City Solicitor
Confidential Appendix A – Confidential Information
Confidential Appendix B – Confidential Information
Confidential Appendix C – Confidential Information