

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

**Date:** January 25, 2021

**To:** City

**From:** City Solicitor

**Wards:** 10, 11, 13, 14

### **REASON FOR CONFIDENTIAL INFORMATION**

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

### **SUMMARY**

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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 adopt OPA 352 and to enact 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.

Since 2016, the LPAT has conducted six Pre-Hearing/Case Management Conferences ("**CMC**") with respect to OPA 352 and the Amending By-laws. During these events, the LPAT identified and categorized appellants/parties, and issued procedural directions in order to ensure a cost-effective and efficient hearing. At the most recent CMC, the LPAT scheduled a two-week hearing scheduled to begin on March 15, 2021.

The LPAT identified a category of appellants and parties with carriage of appeals filed on behalf of universities, hospitals and a school board ("**Institutional Appellants**" and "**Institutional Appeals**"). The Institutional Appellants identified concerns that Official Plan Amendment 352 ("**OPA 352**") and Zoning By-laws 1106-2016 and 1107-2016 ("**Amending By-laws**"), as adopted by City Council, did not adequately address their unique programmatic requirements.

Further, the Institutional Appellants' issues were not resolved through the proposed modifications to OPA 352 ("**Modified OPA 352**") and the Amending By-laws that were adopted in principle by City Council at its meeting on November 25 and 26, 2020. When approved by the LPAT, the Modified OPA 352 would resolve all the general appeals of the instruments, in addition to many of the site-specific appeals.

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**

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The City Solicitor recommends that:

1. City Council adopt the recommendations contained in Confidential Attachment 1 to this report.
2. City Council authorize the public release of the confidential recommendations contained in Confidential Attachment 1 and Confidential Attachment 2, if adopted by City Council.
3. 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**

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

## **DECISION HISTORY**

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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>

Report for Action with Confidential Attachment - TOCore: Updating Tall Building Setbacks in the Downtown – City-Initiated Official Plan Amendment and Zoning By-law Amendments - Request for Directions for LPAT Hearing

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 and 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.

Toronto and East York Community Council commenced a statutory public meeting in relation to OPA 352 and the Amending By-laws 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 recommendations to, among others, request that the LPAT 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>

At its meeting of November 25 and 26, 2020, City Council adopted the City Solicitor's recommendations to, among others, request that the LPAT make modifications to the Council adopted OPA 352 and Amending By-laws. The Institutional Appellants wrote to Council on this item requesting LPAT mediation. 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=2020.CC26.5>

## COMMENTS

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The City Solicitor requires further instructions. This report is about litigation before the LPAT and contains advice or communications that are subject to solicitor-client privilege. Confidential Attachment 1 and Confidential Attachment 2 to this report contain confidential advice and should be considered by Council *in camera*.

## CONTACT

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## SIGNATURE

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Wendy Walberg  
City Solicitor

## ATTACHMENTS

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