

301-317 Queen Street East - LPAT Appeal - Request for Direction Report

Date: May 28, 2021

To: City Council

From: City Solicitor

Wards: Ward 13 - Toronto Centre

REASON FOR CONFIDENTIAL INFORMATION

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

SUMMARY

The purpose of this report is to seek further instruction from City Council with respect to the allocation of Section 37 benefits in the amount of \$1,050,000 that have been approved by the Local Planning Appeal Tribunal. This report has been prepared in consultation with City Planning.

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 recommendations contained in the Confidential Attachment 1, if adopted by City Council, but that the remainder of the Confidential Attachment 1 remain confidential at the discretion of the City Solicitor, as it contains advice which is subject to solicitor-client 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

On November 9, 2016, City Council refused an application for Official Plan and zoning by-law amendment, adopting the recommendations of a refusal report prepared by the Director, Community Planning, Toronto and East York District. The report stated the proposal was over-development, did not conform to the overall objectives of the Official Plan and the King-Parliament Secondary Plan, set a negative precedent and did not fit within the existing and planned context for the area. The report and decision document can be accessed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.TE19.7>

At its meeting of January 31, 2018 City Council considered a confidential report from the City Solicitor with respect to the ongoing LPAT appeal process, with Council directing the City Solicitor to continue discussions with the appellant on a revised proposal that addresses the issues that resulted in Council's November 9, 2016 decision. The decision of City Council can be found at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.CC36.7>

The LPAT issued a decision on July 13, 2018 that dismissed the owner's appeal of the refusal by the City. The owner subsequently requested a review of the Tribunal's decision, which was successful and the LPAT convened a rehearing of the matter in November, 2020. On February 5, 2021 the LPAT issued their decision in the rehearing, approving the appeal and the rezoning, subject to the satisfaction of several preconditions. The LPAT decision can be found at: <https://www.omb.gov.on.ca/e-decisions/pl161267-Feb-05-2021.pdf>

COMMENTS

The LPAT decision in this matter approved the requested rezoning to permit the construction of a 19-storey (65.0 metres including mechanical penthouse) mixed use building with an overall gross floor area of 12,032.6 square metres consisting of 144 residential dwelling units, 752.7 square metres of office space, and 229.0 square metres of retail space. The existing heritage designated Berkeley Church building, currently used as a private event space with a gross floor area of 772.0 square metres on the eastern portion of the site will be retained in-situ and will remain a separate building from the new building. A total of 42 vehicular parking spaces will be provided, to be within a 3-level underground garage with driveway access from a private lane off of Berkeley Street.

The Tribunal heard evidence from land use planners for the applicant and the City that the increase in height and density merited community benefits to be secured pursuant to Section 37 of the Planning Act. The planners agreed that the appropriate amount of those benefits was a \$1,050,000 contribution, but there was disagreement as to the allocation of those funds.

The owner's land use planner recommended the funds be allocated to the restoration and repair of the exterior façade of an on-site heritage resource, the Berkeley Church, which will continue to be owned and operated by the developer as a for-profit events space. There was also a suggestion that there would be improvements to the public realm surrounding the Berkeley Church building, which would encompass both the privately owned and publicly owned portions of the pedestrian sidewalks the building has frontage on. The City Planning witness opined that the public was better served by allocating the funds to either:

- a capital fund dedicated to providing new affordable housing units in the area; or
- improvements to local park amenities and community spaces, such as the community agency spaces at Moss Park.

The Tribunal made the following finding at paragraph 90 of its decision:

"After hearing the evidence, the Tribunal is satisfied that the Berkeley Church is a significant heritage building and that its conservation does serve the greater public realm. The Members presiding over this hearing would encourage the City to take into consideration the value to the public realm of the exterior restoration of the Berkeley Church, but the Tribunal will not determine the priorities of the City by directing allocation of the Section 37 contributions."

This report is to set out various options for allocation of these community benefit funds and provide a rationale on the capital facilities that will serve the area's residents, businesses, and community. Below are potential community benefits where Section 37 contributions may be allocated as articulated in Policy 5.1.1.6 of the Official Plan:

Local Streetscape Improvements

Streetscape improvements include sidewalk widenings, decorative paving, and street furniture within proximity of the development site, with directions typically articulated in a Secondary Plan, Community Improvement Plan, or through the Business Improvement Area's public realm plans. Streetscape improvements abutting the development site are considered as a standard condition of site plan approval and not considered as a form of community benefit for the increased density/height of a development.

Community Services and Facilities

Community services and facilities (CSF) include libraries, recreation facilities, community centres and public meeting spaces. Direction for potential section 37 funds

toward CSF has been more recently articulated through the Downtown Community Services and Facilities Strategy document as part of TOcore. One of the key strategic directions identified was the need for the replacement and expansion of the John Innes Centre located at Moss Park.

Affordable Housing

Section 37 contributions may fund the provision of affordable housing as a community benefit in building complete communities. The provision for affordable housing is preferred as an on-site contribution at the owner's discretion, but may alternately be provided off-site at another development, or as financial contribution toward the City's capital fund for affordable housing in the area. The capital fund may contribute towards the realization of affordable housing in meeting the targets of the Open Door Program, part of the HousingTO 2020-2030 Action Plan.

Heritage Conservation

In the past, Section 37 contributions have been used to fund Heritage Conservation District Studies as a community benefit, where such development is in close proximity to an area identified in the Official Plan as a Potential Heritage Conservation District. City Planning now has a dedicated budget for these projects Section 37 funds are no longer secured for HCD studies and plans.

Section 37 contributions have rarely been used to fund on-site heritage conservation as conservation of heritage resources is a requirement of various provincial and municipal documents. Heritage conservation is a standard condition of a rezoning and heritage alteration application.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

Confidential Attachment 1 - Confidential Report from City Solicitor

Report with Confidential Attachment - 301-317 Queen Street East - LPAT Appeal