



## REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

### Port Lands OPM OLT Appeals (Phase 2) - Supplementary Request for Direction Report

**Date:** January 31, 2022

**To:** City Council

**From:** City Solicitor

**Wards:** Ward 14

#### **REASON FOR CONFIDENTIAL INFORMATION**

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

#### **SUMMARY**

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The purpose of this report is to seek further instructions resulting from ongoing discussions that could narrow the scope of the issues for the Port Lands OPM (Phase 2) hearing, scheduled to commence on May 17, 2022. City Planning has been consulted in the preparation of this report. This report is supplementary to the Report for Direction, dated January 25, 2022, from the City Solicitor under Item CC39.5.

#### **RECOMMENDATIONS**

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The City Solicitor recommends that:

1. City Council delete the recommendations in the report (January 25, 2022) from the City Solicitor and adopt instead the following:

1. City Council adopt the confidential recommendations to staff in Confidential Attachment 1 to the Supplementary Report (January 31, 2022) from the City Solicitor.

2. City Council authorize the public release of:

- a. the confidential recommendations in Confidential Attachment 1 to the Supplementary Report (January 31, 2022) from the City Solicitor, if adopted by City Council; and
  - b. Confidential Appendix A to the Request for Direction Report (January 25, 2022) and Confidential Appendix A to the Supplementary Report (January 31, 2022) from the City Solicitor, if the confidential recommendations in Confidential Attachment 1 to the Supplementary Report (January 31, 2022) have been adopted by City Council.
3. City Council direct that the remainder of Confidential Attachment 1 to the Request for Direction Report (January 25, 2021) and the remainder of Confidential Attachment 1 to the Supplementary Report (January 31, 2021) remain confidential at the discretion of the City Solicitor, as they contain information that is subject to solicitor-client and settlement privilege.

## **FINANCIAL IMPACT**

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

## **DECISION HISTORY**

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### **309 Cherry Development Proposal Background**

At its meeting of September 21 and 22, 2011, City Council endorsed the protocol for the revitalization of the Port Lands, which initiated the Port Lands Acceleration Initiative (PLAI), a joint effort involving the City of Toronto, Waterfront Toronto, and Toronto and Region Conservation Authority (TRCA). The City Council decision and staff report are available here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.EX9.6>.

At its meeting of October 2-4, 2012, City Council adopted the staff report entitled "Port Lands Acceleration Initiative – Final Report", dated August 24, 2012. City Council endorsed the Summary of Findings of the initial phase of the PLAI process and adopted recommendations and directions to amend the Don Mouth and Lower Don Lands environmental assessments, based on a revised flood protection scheme. The Council decision also initiated the Port Lands Planning Framework and precinct planning for three areas within the Port Lands. The applicant of the current proposal deputed at Executive Committee and provided a written submission to City Council requesting that the 309 Cherry Street site be included within the boundaries of the Cousins Quay Precinct (today known as the Villiers Island Precinct). The City Council decision and staff report are available here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.EX22.1>.

The written submission from the applicant's deputation is available here:

<http://www.toronto.ca/legdocs/mmis/2012/cc/comm/communicationfile-32025.pdf>.

In March 2012, Aird & Berlis LLP submitted a rezoning application for the northern half (Phase 1) of the site known as 309 Cherry Street on behalf of the landowners (two Ontario numbered companies, 2034055 Ontario Limited and 1337194 Ontario Inc.). This application is considered Phase 1 of a proposed two-phase development on the subject site.

The Phase 1 application proposes to develop the northern half of the subject site with a mixed-use development comprising of an eight-storey office/retail base building, a 26-storey residential tower and two partially retained heritage buildings. The Phase 2 application proposes to develop the southern half of the subject site with an 11-storey building along Cherry Street and a 52-storey building atop a podium base ranging in height from 4 to 12-storeys along Commissioners Street and the proposed future Foundry Street.

At its meeting of July 8-11, 2014, City Council adopted the staff report entitled, Port Lands Acceleration Initiative Phase 2 – Progress Report, dated June 5, 2014. City Council directed the Deputy City Manager Cluster B and the Chief Planner and Executive Director, City Planning, with Waterfront Toronto, to complete the development of the Port Lands Planning Framework, Port Lands and South of Eastern Transportation and Servicing Class EA Master Plan, Film Studio District and Cousins Quay/Villiers Island precinct plans, based on the Land Use Direction in Appendix 3 to the report (June 5, 2014) from the Deputy City Manager, Cluster B including any amendments recommended for the Central Waterfront Secondary Plan.

The City Council decision and staff report are available here:  
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.PG34.11>.

On October 31, 2014, the applicant appealed their Phase 1 proposal to the Ontario Municipal Board (now known as the Ontario Land Tribunal "OLT" or "Tribunal") on the grounds that Council has failed to make a decision within the prescribed timelines in the Planning Act. A Request for Directions Report was adopted by City Council on March 31, 2015 pertaining to this application.

In December 2016, Castlepoint Numa submitted a rezoning application for the southern half of the site (Phase 2) on behalf of the landowners (the same two Ontario numbered companies noted above) of the site known as 309 Cherry Street. This application is considered Phase 2 of a proposed two-phase development on the subject site.

On June 1, 2017, the applicant appealed their Phase 2 proposal to the OLT on the grounds that Council failed to make a decision on the application within the prescribed timelines in the Planning Act.

At its meeting on July 4, 2017, City Council adopted the May 16, 2017 staff report from the Deputy City Manager, Cluster B, entitled "Port Lands Planning Initiatives – Interim Report". This report summarized the findings of the Port Lands Planning Framework and the Port Lands and South of Eastern Transportation and Servicing Master Plan (TSMP), and included a draft Port Lands Official Plan modification. The City Council decision and staff report are available here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.PG21.4>.

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On December 5, 2017, City Council adopted the September 27, 2017 staff report from the Deputy City Manager, Cluster B, entitled "Port Lands Planning Initiatives – Final Report". This report builds on the May 16, 2017 staff report and addressed the direction provided by City Council at that time. As part of its decision, City Council adopted the Port Lands Planning Framework, endorsed the Villiers Island Precinct Plan, and instructed the City Solicitor to request the Local Planning Appeal Tribunal to repeal Official Plan Amendment 388 and modify the former City of Toronto Official Plan and Central Waterfront Secondary Plan, substantially in accordance with the draft Port Lands Official Plan modification, among other matters. The City Council decision and staff report are available here:

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

The combined Phase 1 and Phase 2 rezoning proposals do not conform to the Council-adopted direction for the Port Lands and Villiers Island, as outlined through the Port Lands Planning Framework and the Villiers Island Precinct Plan, respectively.

Further information on these 309 Cherry Phase 1 and 2 rezoning OLT appeals can be found within the April 23, 2018 Request for Direction Report, which can be access at:

<https://www.toronto.ca/legdocs/mmis/2018/te/bgrd/backgroundfile-114697.pdf>

## COMMENTS

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The purpose of this report is to seek instructions arising from recent settlement discussions in advance of the scheduled OLT hearing, which is set to commence on May 17, 2022.

The City Solicitor requires instructions. This report is about litigation before the OLT 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**

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Wendy Walberg  
City Solicitor

## **ATTACHMENTS**

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1. Confidential Attachment 1 - Confidential Report from City Solicitor
2. Confidential Appendix A – Confidential Information