



Port Lands OPM OLT Appeals (Phase 2) - Request for Further Direction Report - TDSB/TLC Request

Date: May 2, 2022
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 Central Waterfront Secondary Plan ("OPA 257" or "CWSP"), including public agencies, existing industries, and private owners with development aspirations, raised issues with the Port Lands OPM. Given the large number of parties and issues, the hearing of the Port Lands issues was planned to be phased.

Land Use and Transportation issues were resolved through negotiation and settlement discussions in the first Phase of the proceedings, resulting in a Decision and Order of the Local Planning Appeal Tribunal in May of 2021. The bulk of the remaining issues were also resolved through negotiation and settlement discussions which resulted in policy modifications which will be presented to the Ontario Land Tribunal (OLT) at a settlement hearing scheduled for May 19, 2022.

The purpose of this report is to seek Council direction in respect of a further modification to the Port Lands Area Specific Policies to address a concern recently raised by the Toronto District School Board/Toronto Lands Corporation (TDSB/TLC). 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 Confidential Appendix A to Confidential Attachment 1, once adopted by City Council.
3. City Council direct that the remainder of Confidential Attachment 1 is to remain confidential at the discretion of the City Solicitor, as it contains information that is subject to solicitor-client and settlement privilege.

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, amongst other matters pertaining to the Port Lands Planning Initiatives, directed the City Solicitor to request the Ontario Municipal Board (now Ontario Land Tribunal, "OLT" or "Tribunal") 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 CWSP appeals proceedings before the OLT 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>

Throughout 2019, 2020 and 2021, the parties to the Port Lands OPM Hearing worked together to structure the Port Lands OPM hearing in phases, and to resolve the Phase 1 hearing issues. City Council considered a number of reports from the City Solicitor and endorsed a number of proposed policy modifications that resolved the Phase 1 issues and resulted in the issuance of a partial approval of the OPM, as set out in written Decisions and Orders of the Tribunal issued on March 8 and May 18, 2021 in Tribunal Case PL030514.

For background on the resolution of the Phase 1 Port Lands OPM hearing and issues, see the Council consideration and related reports 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>
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.CC27.5>
<https://www.toronto.ca/legdocs/mmis/2020/cc/bgrd/backgroundfile-159283.pdf>
<https://www.toronto.ca/legdocs/mmis/2020/cc/bgrd/backgroundfile-159471.pdf>
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.CC30.12>
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.CC31.14>

Subsequent to the Phase 1 Settlement hearing, the City continued to engage in without prejudice discussions to try and resolve the Phase 2 issues. City Council considered a number of reports from the City Solicitor and endorsed a number of proposed policy modifications that resolved the majority of the Phase 2 issues, and which will be considered at a settlement hearing at the OLT, scheduled for May 19, 2022.

For background on the resolution of the Phase 2 Port Lands OPM hearing and issues, see the Council consideration and related reports at the following links:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.CC38.13>
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.CC39.5>
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.CC41.8>

COMMENTS

TDSB/TLC Discussions

The Toronto and District School Board/Toronto Lands Corporation ("TDSB/TLC") had raised issues regarding the application or interpretation of specific Port Lands OPM community infrastructure policies that may have implications for school site identification, location, and delivery within Villiers Island, McCleary District, South River and Polson Quay. City staff worked with the TDSB/TLC to address these issues with a view to reaching a comprehensive settlement of their Phase 2 Port Lands OPM hearing issues. City Council endorsed modifications to address TDSB/TLC's concerns on December 15, 2021. Those modifications will be presented to the Ontario Land Tribunal for approval at the May 19, 2022 Settlement Hearing.

Recently TDSB/TLC reached out to City Planning staff to raise an additional concern regarding Policy 10.8.2.2, which pertains to built form and heritage adjacent to the Keating Channel. City staff and TDSB/TLC have worked collaboratively to address this outstanding concern and City staff now require instructions.

CONCLUSION

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

Sarah O'Connor, Solicitor, Tel. (416) 397-5378, E-mail: Sarah.OConnor@toronto.ca

Rob Robinson, Solicitor, Tel. (416)-392-8367, E-mail: Robert.Robinson@toronto.ca

Jessica Jakubowski, Solicitor, Tel. (416)-392-3331, E-mail: Jessica.Jakubowski@toronto.ca

SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

Confidential Attachment 1 - Confidential report from the City Solicitor

Confidential Appendix A - Confidential Information