

**OPA 309 – 18 Champlain Boulevard – Tippet Road
Regeneration Area – Ontario Land Tribunal Hearing –
Request for Directions**

Date: September 26, 2023

To: City Council

From: City Solicitor

Wards: Ward 6 - York Centre

REASON FOR CONFIDENTIAL INFORMATION

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

SUMMARY

Further direction from City Council is required on Official Plan Amendment 309 (OPA 309), which was appealed to the Ontario Land Tribunal (OLT). OPA 309 is in force for all of the lands included in the OPA 309 study area except for 18 and 20 Champlain Boulevard. A 7-day hearing on this appeal of OPA 309 has been scheduled at the OLT commencing November 20, 2023.

On September 20, 2023, a with prejudice settlement offer, was submitted to the City by Fogler Rubinoff LLP, the solicitor on behalf of Champlain Torah Education Centre, the owner of 18 Champlain Boulevard (the "Subject Property"). The owner of 20 Champlain Boulevard has advised that they are no longer pursuing their appeal. The City will ask the owner to officially withdraw, failing which the City will seek a formal dismissal of that appeal from the OLT.

The City Solicitor previously sought direction from City Council on a without prejudice settlement offer at the July 28 and 29, 2020 meeting of Council through a Request for Direction Report (July 21, 2020) from the City Solicitor. City Council refused the settlement offer and directed staff to continue discussions with the remaining appellants.

The City Solicitor requires further direction from City Council in advance of the upcoming OLT hearing scheduled for 7 days commencing November 20, 2023. Given this timing, this item is urgent and cannot be deferred beyond the completion of the City Council meeting on October 11, 12, and 13, 2023.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the recommendations contained in Confidential Attachment 1 to this report from the City Solicitor.
2. City Council authorize the public release of the confidential recommendations contained in Confidential Attachment 1 to this report from the City Solicitor, if adopted by City Council.
3. City Council direct that all other information contained in Confidential Attachment 1 to this report from the City Solicitor is to remain confidential at the discretion of the City Solicitor, as it contains advice which is subject to solicitor-client privilege.

FINANCIAL IMPACT

There is no financial impact arising from the adoption of the Confidential Recommendations beyond what has already been approved in the current year's budget.

DECISION HISTORY

At its meeting December 16, 17 and 18, 2013, City Council adopted OPA 231, which included a Site and Area Specific Policy 387, applicable to the lands bounded by Wilson Heights Boulevard, Wilson Avenue, Champlain Boulevard, Highway 401, and William R. Allen Road. SASP 387 states that development will proceed in accordance with a framework to be established through a study of the area that addresses specific matters. The Tippet Road Area Regeneration Study is one of seven Regeneration Areas studies that resulted from City Council's adoption of OPA 231, at the conclusion of the City's Municipal Comprehensive Review of Employment Lands. The Study was initiated in 2013. At the City Council meeting on December 9 and 10, 2015, a Final Report on the results of the Tippet Road Area Regeneration Study (dated October 23, 2015) and Supplementary Report (dated December 7, 2015) from the Chief Planner and Executive Director, City Planning, were considered. City Council adopted Item PG8.6 with amendments, enacted By-law 1298-2015 adopting OPA 309. The Council decision and Final and Supplementary Reports from the Chief Planner and Executive Director, City Planning, can be found here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.PG8.6>

OPA 309 can be found here:

<https://www.toronto.ca/legdocs/bylaws/2015/law1298.pdf>

At its meeting on June 29 and 30, 2020, City Council referred Item CC22.13 to the City Solicitor and directed the City Solicitor, in consultation with the Chief Planner and Executive Director, City Planning, to continue discussions with the remaining appellants of OPA 309 in an attempt to reach a settlement and to report back on any settlement options directly to the July 28 and 29, 2020, meeting of City Council. The Council decision and Report from the City Solicitor can be found here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.CC22.13>

At the City Council meeting on July 28 and July 29, 2020, City Council refused a without prejudice settlement offer from Fogler Rubinoff LLP for OPA 309 for the lands at 18 and 20 Champlain Boulevard and directed City staff to continue discussions with the remaining appellants. City Council authorized the City Solicitor, in consultation with the Chief Planner and Executive Director, City Planning and the Ward Councillor, to accept further revisions to OPA 309 that are consistent with the City's goals and vision for the OPA 309 area as described in the Final Report dated October 23, 2015 and the Supplementary Report dated December 7, 2015, from the Chief Planner and Executive Director, City Planning. The Council decision and Report from the City Solicitor can be found here:

<https://secure.toronto.ca/council/agenda-item.do?item=2020.CC23.13>

COMMENTS

On September 20, 2023, the City received a with prejudice, not confidential, settlement offer from Fogler Rubinoff LLP, which is attached as Public Appendix "A" (the "Settlement Offer") for the Subject Property. The Settlement Offer contains revised/additional policies for OPA 309 and its Site and Specific Area Policy 387 (the "Revised Policies") specific to the Subject Property, in response to concerns raised by City staff. The Settlement Offer is open until the end of the City Council meeting commencing on October 11, 2023. Should City Council accept the Settlement Offer, the appellant intends to present the Revised Policies to the OLT for approval, otherwise, the offer will become null and void.

A comparison chart with the Revised Policies is found in Public Appendix "B".

The Revised Policies do the following:

- redesignates the western portion of the Subject Lands to Mixed Use Area "D" to permit the development of one tower element up to 17-storeys (56 metres);
- maintains the designation of the balance of the Subject Lands as Neighbourhoods "A". The intent of the Neighbourhood designation is to ensure that ground related development would be achieved along the Champlain frontage to provide for transition to the existing Neighbourhoods to the east;
- prescribes a maximum density of 5.2 FSI for the portion of the Subject Lands to be designated Mixed Use Area "D";

- prescribes built form policies such as tower floor plate, separation distances and setbacks;
- removes the requirement to replace non-residential uses on the Subject Lands; and
- provides policies to implement Mud Creek Pathway and a future east/west mid-block connection through the subject lands connecting Mud Creek Pathway to Champlain Boulevard in accordance with Map 3 Structure Plan.

The City Solicitor requires further instructions on this matter. This report is about ongoing litigation before the OLT and contains advice or communications that are subject to solicitor-client privilege.

CONTACT

Mark Crawford, Solicitor, Planning & Administrative Tribunal Law; Tel: (416) 392-8864;
Email: Mark.Crawford@toronto.ca

Yasmeen Peer, Solicitor, Planning & Administrative Tribunal Law; Tel: (416) 392-4264;
Email: Yasmeen.Peer@toronto.ca

SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

1. Public Appendix "A" - Letter from Fogler Rubinoff LLP, on behalf of Champlain Torah Education Centre, dated September 20, 2023, containing a With Prejudice Settlement Offer, with proposed modifications to OPA 309 for 18 Champlain Boulevard
2. Public Appendix "B" - Comparison chart with revised/additional policies for OPA 309
3. Confidential Attachment 1 - Confidential Report from the City Solicitor