

309 Cherry Street – Ontario Land Tribunal Hearing – Request for Directions

Date: June 11, 2024

To: City Council

From: City Solicitor

Wards: Ward 14 - Toronto Danforth

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

On March 5, 2012 and December 30, 2016, the City received a Zoning By-law Amendment application for the north block and south block respectively of the lands known as 309 Cherry Street (the "Site"). The Site is centrally located within Villiers Island in the Port Lands. The applications proposed mixed use development, with a 26-storey residential tower atop an 8-storey podium and the partial retention of existing heritage buildings on the north block, and an 11-storey building and 52-storey building atop a 4-12 storey 'u-shaped' podium.

The applicant appealed City Council's neglect or failure to make a decision on its application for the Zoning By-law Amendment to the predecessor Ontario Land Tribunal (the "Tribunal") on October 31, 2014 for the north block and June 1, 2017 for the south block (the "Appeals"). In March 2023, the applicant submitted revised plans for the Site, proposing a tower on each of the north and south block with heights of 47 and 39 storeys respectively. On April 23, 2024, the applicant circulated further updated development plans to the Tribunal and other parties consisting of three residential towers of 27, 49 and 39 storeys, on podiums of various configurations ranging from 3 to 10 storeys. They also advised of their intention to provide 5 percent of the proposed residential units as affordable housing for a period of 25 years.

At a case management conference on June 4, 2024, a 15 day hearing was scheduled. The City Solicitor requires further directions for upcoming OLT hearings scheduled to commence July 7, 2025.

For reasons set out in Confidential Attachment 1, this item is urgent and cannot be deferred.

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, and Confidential Appendices "A" and "B", 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, 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

Site Specific Decision History

On March 5, 2012 and December 30, 2016, the City received a Zoning By-law Amendment application for the north block and south block respectively of the Site. The applications proposed mixed use development, with a 26-storey residential tower atop an 8-storey podium and the partial retention of existing heritage buildings on the north block, and an 11-storey building and 52-storey building atop a 4-12 storey 'u-shaped' podium.

The Preliminary Report for the application for the south block can be found [here](#).

On October 31, 2014 for the north block and June 1, 2017 for the south block, the applicant appealed City Council's neglect or failure to make a decision on the Zoning By-law Amendment to the Tribunal. The Appeals were consolidated by the Tribunal in June 2018. A Request for Direction Report on the applications was adopted by City Council on May 22, 2018 directing the City Solicitor and appropriate City staff to attend the Tribunal hearing to oppose the Zoning By-law Amendment applications. The Request for Direction Report can be found [here](#).

The applications and Appeals were held in abeyance at the OLT while the City and Waterfront Toronto proceeded to complete the Port Lands Planning Framework and Villiers Island Precinct Plan, as well as the resulting Port Lands Area Specific Policies ("Port Lands SASP") within the Central Waterfront Secondary Plan ("CWSP").

Since the resolution of Phases 1 and 2 of the Port Lands OPM, the Tribunal has held three case management conferences on the applications for this Site; the first in July 2022, second in October 2023 and third on June 4, 2024.

At its February 6, 2024 meeting, City Council stated its intention to designate the property under Part IV of the *Ontario Heritage Act*. Council's decision and staff's report can be found [here](#). The designation by-law was enacted and not appealed and is now in force.

At its March 20 and 21, 2024 meeting, City Council considered a Request for Directions Report from the City Solicitor in respect of the 309 Cherry applications and related appeals. Council's decision and staff's report can be found [here](#).

On June 5, 2024, the Toronto Preservation Board considered a Report for Action from the Acting Senior Manager, Heritage Planning, Urban Design, City Planning ([Item 2024.PB19.5](#)), recommending that City Council approve the alterations under Section 33 of the *Ontario Heritage Act* proposed for the heritage property at 309 Cherry Street. The Toronto Preservation Board's recommendation will be before City Council at the June City Council meeting, concurrent with this report. The staff report recommending approval of the heritage application can be found [here](#).

The Port Lands and Villiers Island Decision History

As noted above, the site specific appeals were held in abeyance at the OLT while the City and Waterfront Toronto proceeded with the comprehensive planning of the Port Lands through the Port Lands SASP and CWSP. The CWSP was already under appeal by a number of stakeholders in the Port Lands, so the Port Lands SASP was brought forward as the Port Lands Official Plan Modification ("Port Lands OPM"). Phase 1 and Phase 2 of the appeals were settled and the majority of the Port Lands SASP policies brought into force by the Tribunal in a series of decisions in 2021 and 2022.

The latest Request for Direction Report on Port Lands OPM Appeals - Phase 2 and the decision history regarding the Port Lands OPM Appeals can be found [here](#).

At its meeting on November 9, 2021, City Council directed the Director, Affordable Housing, the Chair of the Affordable Housing Committee and the local Councillor to participate in the preparation of the Business and Implementation Plan and investigate opportunities to achieve additional affordable housing in Villiers Island, over and above the minimum requirements in the Port Lands OPM. City Planning staff have since provided City Council with status updates on the work underway to achieve additional affordable housing in Villiers Island. In February 2023, Planning and Housing Committee directed the Chief Planner and Executive Director, City Planning and the Executive Director, Housing Secretariat to report back on a preferred approach for

increasing densities to support the maximum amount of housing and affordable housing on Villiers Island.

The Council direction and updates from City Planning staff can be found here:

<https://secure.toronto.ca/council/agenda-item.do?item=2021.EX27.6>

<https://secure.toronto.ca/council/agenda-item.do?item=2022.PH33.9>

<https://secure.toronto.ca/council/agenda-item.do?item=2022.PH34.7>

<https://secure.toronto.ca/council/agenda-item.do?item=2022.PH35.17>

<https://secure.toronto.ca/council/agenda-item.do?item=2023.PH2.9>

<https://secure.toronto.ca/council/agenda-item.do?item=2023.CC2.1>

<https://secure.toronto.ca/council/agenda-item.do?item=2023.PH2.9>

<https://secure.toronto.ca/council/agenda-item.do?item=2024.PH13.2>

COMMENTS

On April 23, 2024, the applicant circulated further updated development plans to the Tribunal and other parties consisting of three residential towers of 27, 49 and 39 storeys, on podiums of various configurations ranging from 3 to 10 storeys. Those plans are attached to this report as Public Attachment 1. They also advised of their intention to provide 5 percent of the proposed residential units as affordable housing for a period of 25 years. The affordable housing proposed on the record is not supported by City Planning as it is insufficient to meet the policy objectives for the area.

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

Sarah O'Connor, Solicitor, Planning & Administrative Tribunal Law; Tel: (416) 397-5378; Fax: (416) 397-5624; Email: sarah.oconnor@toronto.ca

Lauren Pinder, Solicitor, Planning & Administrative Tribunal Law; Tel: (416) 392-0797, Fax: (416) 397-5624; Email: lauren.pinder@toronto.ca

SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

1. Public Attachment 1 - April 2024 plans and email correspondence to the Ontario Land Tribunal
2. Confidential Attachment 1 - Confidential Information
3. Confidential Appendix "A" - Confidential Information
4. Confidential Appendix "B" - Confidential Information