

Julius,

Thank you for your call yesterday. We understand that Waterfront Toronto plans to complete its flood protection work in the Polson area and is currently assessing whether interim Official Plan policies are needed if Waterfront Toronto will complete all necessary flood protection work before development is pursued on the lands. You have asked for our advice on whether Waterfront Toronto can complete the flood protection work and apply for an official plan amendment to re-designate the lands to mixed use, without the need for interim Official Plan policies.

Subject to the assumptions and considerations below, we are of the view that Waterfront Toronto can proceed in the manner described above. In fact, once an OPA is undertaken, particularly if it is sought contemporaneously with the construction of the flood protection works, that OPA may provide a convenient home for any interim policies that the City wishes to have addressed, such as the requirement that the flood protection works be completed to certain standards, or prior to any development on the lands.

The foregoing relies on the following assumptions:

1. The existing Official Plan designation and zoning for the lands permit the construction of the flood protection works (which is a condition of receiving any municipal permits in connection with the work) or that no permits are needed to complete the flood protection works; and
2. The existing Official Plan designation and zoning for the lands permits the removal and relocation of the historic properties that Waterfront Toronto intends to relocate.

We have not researched the foregoing assumptions; however, we note that it is possible that a municipal building permit will be required for the construction of retaining walls at the lands. The City requires a building permit for retaining walls measuring over one metre in height in certain circumstances. If you would like more information on this, please let us know. A prerequisite to the issuance of municipal building permits is compliance with applicable laws. Zoning is an “applicable law”. Accordingly, it would be prudent to undertake a zoning review to ensure compliance with zoning before construction begins (so as not to delay the procurement of any required permits).

We note that it is possible that, regardless of the permissions granted by the current OP designation/zoning, the City may request interim policies because of experiences that the City has had with other critical infrastructure/flood protection projects, where such policies may have been required. There may be such policies in existence in respect of the Lower Don Lands through prior Official Plan amendments. If the City is of the view that interim policies are needed, it may not be necessary to pursue those policies separately from the official plan amendment to recognize the proposed uses. The official plan amendment for the proposed uses, could contemplate the floodplain works in its language, by recognizing that certain work will take place to permit the mixed-use development permitted by the designation. If the OPA language is well crafted, it could contemplate the flood protection works in a way that would make in a separate set of interim policies redundant.

The assumptions above would need to be “tested” with the benefit of input from City staff as would their position on the interim flood protection works. We would be pleased to assist further as you may require.

Sarah

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