

MEMORANDUM**CONFIDENTIAL LAWYER / CLIENT PRIVILEGE**

To Waterfront Toronto

From Dentons Canada LLP

Date July 24, 2018

Subject PDA Consistency with RFP - Geographic Scope
File No.: 567671-6

Waterfront Toronto is considering changes to the draft of the anticipated Plan Development Agreement (“PDA”) with Sidewalk Labs relating to references to the geographic context. In particular, the initial draft PDA contained a number of references to the “Eastern Waterfront”. It is proposed that these references be changed to “Designated Waterfront Area” as that term is defined in the *Toronto Waterfront Revitalization Corporation Act* (Ontario), which refers to all the territory within Waterfront Toronto stewardship.¹ You have asked whether implementing such a change to the draft PDA raises concerns in relation to the PDA’s consistency with the Quayside RFP (through which Sidewalk Labs was selected).

In our view, for the reasons explained below, the proposed changes to geographic reference are not inconsistent with the Quayside RFP. In other words, these changes do not push the draft PDA outside the scope of potential contracts that reasonably flow from the RFP.

RFP References to the Eastern Waterfront:

The March 2017 Quayside RFP and its addenda contain several references to the eastern waterfront (sometimes in capitalized form). These references are listed in the attached Appendix. These multiple references to the eastern waterfront are primarily contextual, in that they provide the proponents with an explanation of the geographic vicinity of the Quayside lands. References to the eastern waterfront, also explain the anticipated future revitalization and development of the eastern waterfront and the possibility that the solutions, approaches and innovations developed for Quayside may potentially be carried forward as and when the eastern waterfront is developed. For example, at page 6, section I, Overview of Opportunity, the RFP explains as follows:

Waterfront Toronto considers that by achieving key objectives for the Project it may be beneficial to advance the solutions, processes and partnerships proven successful through the Project to subsequent developments on the eastern waterfront, as those lands become available to Waterfront Toronto (as per the established protocols with the City of Toronto). As the directing agency of the waterfront lands, Waterfront Toronto, therefore, reserves the right to do so. The extent to and the manner in which such

¹ Pursuant to s. 1 of the Act, this area is specifically identified in the *Designated Waterfront Area Regulations* (O.Reg. 200/03).

successful solutions, processes and partnerships are carried forward into subsequent developments of the eastern waterfront could be affected by future applicable procurement policies and additional requirements of the City of Toronto or other funding authorities.

We note as well RFP Addendum 2, Question 13, which responds to the following proponent inquiry:

Will this smaller section of the waterfront be the start of the entire development and set the standards for the entire Master plan?

In response, Waterfront Toronto referred to the above passage from page 6 of the RFP and explained further as follows:

It should be noted that a planning framework and policy for the eastern waterfront is currently in progress. Further information is provided in the Data Room.

The RFP thus raises the possibility that solutions or innovations developed for Quayside may be part of the subsequent development of the eastern waterfront but equally clearly cautions that: a) there is expressly no commitment or obligation in this regard, b) to the extent it may occur, it remains subject to procurement policies and other requirements of Waterfront Toronto and its funding authorities, and c) the planning framework and policy for eastern waterfront is separately under development.

In short, references to the eastern waterfront provide contextual information to proponents, the RFP is clearly intended to result in a contract that will cover planning activities for the Quayside lands. These lands are situated within a broader geographic context in the RFP but there is expressly no commitment that the work product from that contract will be applied to subsequent developments (such as in the eastern waterfront), although that possibility remains open.

References to Designated Waterfront Area in the PDA

In addition to the definition in Schedule A (Definitions and Interpretation), section 1.01, the version of the draft PDA provided to us (dated July 24, 2018 in the header on the cover page) contains four mentions of term "Designated Waterfront Area". These four mentions are as follows:

- Section 1.03 sets the responsibilities and roles of Waterfront Toronto in connection with the creation of the Master Development and Innovation Plan ("MIDP") and provides at subsection (a)(vi) as follows:

Through the Project Management Committee, coordinating design of the built environment, including public realm, with the Waterfront Design Review Panel, which provides objective, professional advice about all facets of planning, design and development within the **Designated Waterfront Area**;

- Section 4.01 (Satisfaction of Initial Plan Milestones) confirms that parties' agreement that initial plan milestones (on which the Second Funding Commitment is contingent) have been satisfied and then expressly confirms as follows at subsection (a)(ii):

Waterfront Toronto Mandate. The Initial Plan Milestone relating to the reaffirmation of Waterfront Toronto's mandate to carry out the planning and implementation of development in relation to the Project is satisfied by various Council decisions and by City Staff Report (Ex30.9) dated January 16, 2018, which provides, among other things, that the "relationship between the City, Waterfront Toronto, and the Toronto Economic Development Corporation (TEDCO, now controlled by CreateTO) is defined in a three-party Memorandum of Understanding approved by Council in 2006, which MOU "identifies a lead implementation role for Waterfront Toronto in the 'Designated Waterfront Area' for precincts that have Council-approved Business and Implementation Plans" and that such "lead implementation role includes overall responsibility for revitalization matters including preparation of Business and Implementation Plans, site investigations, environmental remediation and risk management, site preparation work, hard services and other public realm improvements, and directing the transfer of development lands to third party purchasers or ground lease tenants."

- In Schedule A (Definitions and Interpretation), subsection 1.01(qq) defines MIDP Site as follows:

"MIDP Site" means the **Designated Waterfront Area**, as further described in Schedule E hereto.

- In Schedule E the parties provide for certain Intellectual Property Terms. Paragraph 8 in particular provides as follows:

8. Use of Site-Specific IP by Waterfront Toronto

If the PDA is terminated pursuant to Section 9.01 of the Plan Development Agreement, Waterfront Toronto will have an irrevocable, perpetual, royalty free, non-sub-licensable, non-exclusive license to use the Site-Specific IP in the **Designated Waterfront Area**

In such circumstances, Sidewalk Labs agrees to use commercially reasonable efforts to seek reliance letters, as required, from any relevant counterparties in order to entitle Waterfront Toronto to rely on such Site-Specific IP.

In our view, none of these references to the Designated Waterfront Area result in the PDA falling outside the scope of the RFP. The first mention simply reiterates Waterfront Toronto's role in coordinating design of the built environment within the Designated Waterfront Area. The second simply reiterates an extract from the Waterfront Toronto MOU approved by Council in 2006. The third provides that the MIDP Site means the Designated Waterfront Area as identified on a map reproduced in Schedule E. The fourth provides that if the PDA is terminated, Waterfront Toronto will have certain rights to use "Site-Specific" IP in the Designated Waterfront Area.

In our view, nothing about the above extracts changes the essential purpose of the PDA, which is to set the terms under which the MIDP will be developed for Quayside. References to the broader Designated

Waterfront Area provide appropriate geographic context, allow Sidewalk to factor this context into the MIDP where a larger geographic scale supports the plans (e.g., waste management or transportation) and grant Waterfront Toronto certain rights to subsequently use what is developed in developing the Quayside MIDP (such as IP) in the broader Designated Waterfront Area.

With respect to the scope of the PDA and the MIDP, we underscore section 1.03 of Schedule B, MIDP Scope, of the July 24 draft, which discusses the concept of “planning at scale” in some detail and reemphasises that any implementation of the MIDP will be subject to subsequent approvals and clearances, including from governments and landowners. In our view, the MIDP Scope set out in Schedule B remains consistent with the terms of the RFP.

We also underscore subsection 1.03(b) of the main body of the July 24 draft which expressly confirms that Sidewalk’s responsibilities in connection with the creation of the MIDP are to be “[c]onsistent with the RFP and RFP Submission Materials”. Likewise, subsection 1.05(a) states in part that the parties “...will seek to create the MIDP in a way that is in keeping with the spirit, vision and aspirations represented by the RFP and RFP Submission Materials.” These provisions confirm the parties’ intention to firmly root the PDA within the scope of the RFP.

To sum up, the fact that references to the Designated Waterfront Area were previously to the narrower Eastern Waterfront in earlier drafts of the PDA does not alter or broaden the essential purpose of the PDA, which remains (in accordance with the RFP) focused on the Quayside lands (albeit, for planning purposes, in their wider geographic context). In our opinion, the draft PDA thus remains within the scope of the contractual terms that could reasonably result from the RFP.

Dentons Canada LLP

APPENDIX A

RFP EXCERPTS

DOCUMENT	PAGE / SECTION	EXCERPT
RFP	Page 6 - I. Overview of the Opportunity	Toronto’s eastern waterfront , with more than 300 hectares (750 acres) of land subject to future revitalization (see Figure 1), presents a unique opportunity for governments, private enterprise, technology providers, investors and academic institutions to collaborate on these critical challenges and create a new global benchmark for sustainable, inclusive and accessible urban development.
	Page 6 - I. Overview of the Opportunity	The opportunity in this Request for Proposal (“RFP”) is the Quayside Development (the Project), an approximate 4.9-hectare (12-acre) development site situated along Toronto’s eastern waterfront (see Figure 1) and within walking distance of the vibrant central business district.
	Page 6 - I. Overview of the Opportunity	Waterfront Toronto considers that by achieving key objectives for the Project it may be beneficial to advance the solutions, processes and partnerships proven successful through the Project to subsequent developments on the eastern waterfront , as those lands become available to Waterfront Toronto (as per the established protocols with the City of Toronto).
	Page 6 - I. Overview of the Opportunity	The extent to and the manner in which such successful solutions, processes and partnerships are carried forward into subsequent developments of the eastern waterfront could be affected by future applicable procurement policies and additional requirements of the City of Toronto or other funding authorities.
	Page 6 - I. Overview of the Opportunity	Please see Appendix A for additional background information on the flood protection work needed in order to unlock the development potential of the eastern waterfront and on the plans for other areas within the waterfront.
	Page 7 - I. Overview of the Opportunity	Figure 1. Quayside and the Eastern Waterfront
	Page 12 - VI. The Subject Lands and Their Context	The provision of light rail transit (“LRT”) in a dedicated right-of-way, as part of a revitalized Queens Quay, has been approved through a Class Environmental Assessment (available in the Electronic Data Room) and will ultimately connect the eastern waterfront to the downtown core.
	Page 14 - VII. Partner Scope & Deliverables (1)	The Project is intended to be a pilot environment for the broader eastern waterfront revitalization.

Page 15 - VII. Partner Scope & Deliverables (2)	In addition to the work already completed, specific efforts will be taken to identify the potential roadmap for these solutions to be included in future phases of eastern waterfront revitalization.
Page 15 - VII. Partner Scope & Deliverables (2)	Contribute appropriate financial resources and/or solution components to support building and district level solutions for the eastern waterfront including pilot projects that demonstrate innovative, emerging technologies.
Page 16 - VII. Partner Scope & Deliverables (3)(b)	Assist in developing a viable and implementable model for sustainable transit along the eastern waterfront into the Port Lands that can be supported by a combination of government and private sector funding.
Page 16 - VII. Partner Scope & Deliverables (3)(b)	Contribute appropriate financial resources and/or solution components to support transit solutions for the eastern waterfront including pilot projects that demonstrate innovative, emerging transit technologies.
Page 16 - VII. Partner Scope & Deliverables (4)	The Partner will work with Waterfront Toronto to achieve Waterfront Toronto's economic development objectives, including creating and attracting talent to knowledge-based jobs within the precinct to support the burgeoning innovation corridor in the eastern waterfront .
Page 18 - VIII. Potential Benefits to the Partner (a)	This Project provides the environment to prove new solutions that may potentially be integrated into broader eastern waterfront revitalization efforts.
Page 18 - VIII. Potential Benefits to the Partner (b)	The Quayside Development Opportunity and eastern waterfront revitalization efforts are projects of unprecedented scope nationally.
Page 20 - 1. Invitation & Submission Instructions (1.1)	Waterfront Toronto's aspiration is that the Partner will work with Waterfront Toronto as a co-master developer for the Project as a first step towards the longerterm vision for the broader eastern waterfront revitalization.
Page A3 - Appendix A (1.4)	In keeping with the East Bayfront Class Environmental Assessment Master Plan, which was approved in 2010, Waterfront Toronto has made significant infrastructure investments to support new development in the eastern waterfront , including upgrades in sanitary and storm sewer connections and facilities that service the East Bayfront and Keating Channel precincts.
Page A3 - Appendix A (1.7)	The provision of light rail transit ("LRT") in a dedicated right-of-way, as part of a revitalized Queens Quay, has been approved through a Class Environmental Assessment (available in the Electronic Data Room) for the East Bayfront and will ultimately connect the eastern waterfront to the downtown core.
Page C2 - Appendix C	Broader Eastern Waterfront Revitalization: Describe how

	(C)(1)(A1)(e)	your vision relates to the broader waterfront revitalization efforts.
	Page C3 - Appendix C (C)(1)(A3)(b)	Describe your approach to developing a viable and implementable delivery model for sustainable transit along the eastern waterfront , including financial resources and/or solution components.
Addendum 2	Page 5 - 5. Enquiries (13)	Waterfront Toronto considers that by achieving key objectives for the Project it may be beneficial to advance the solutions, processes and partnerships proven successful through the Project to subsequent developments on the eastern waterfront , as those lands become available to Waterfront Toronto (as per the established protocols with the City of Toronto).
	Page 5 - 5. Enquiries (13)	The extent to and the manner in which such successful solutions, processes and partnerships are carried forward into subsequent developments of the eastern waterfront could be affected by future applicable procurement policies and additional requirements of the City of Toronto or other funding authorities.”
	Page 5 - 5. Enquiries (13)	It should be noted that a planning framework and policy for the eastern waterfront is currently in progress.