

<b>TO:</b>	<b>CHAIR AND MEMBERS PLANNING AND ENVIRONMENT COMMITTEE MEETING ON JULY 16, 2018</b>
	<b>GEOFFREY BELCH CORPORATION COUNSEL</b>
<b>SUBJECT:</b>	<b>DANFORTH (LONDON) LTD v. THE CORPORATION OF THE CITY OF LONDON - DECISION OF THE ONTARIO SUPERIOR COURT OF JUSTICE DATED JULY 5, 2018</b>

<b>RECOMMENDATION</b>
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That, on the recommendation of Corporation Counsel, this report **BE RECEIVED** for information.

<b>PREVIOUS REPORTS PERTINENT TO THIS MATTER</b>
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None.

<b>BACKGROUND</b>
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Danforth (London) Ltd, herein “Danforth” is the owner of 195 Dundas Street in the City of London, which sits on the southeast corner of King Street and Clarence Street. The plaintiff, through a related company, made an Application for a Zoning Bylaw Amendment to permit development on the property in the form of: a 35 storey, 316 unit apartment building; 132 storey, 286 unit apartment building; and 119 storey, 96 unit apartment building.

As part of the planning application process that followed in 2015, City staff sought road allowance dedications for a possible future rapid transit hub to accommodate the proposed rapid transit route along King Street that was under consideration at that time. As a result, Danforth did not proceed with its rezoning application and withdrew its application in October 2015 before the matter could be considered by Council.

On May 16, 2017, Council adopted the “couplet routing” through the downtown core for its bus rapid transit system. This moved the hub location to the east and away from the Danforth lands.

**The Legal Action by Danforth**

The Corporation of the City of London was served with a Statement of Claim on February 14, 2017 by the plaintiff, Danforth. The plaintiff later served an amended Statement of Claim.

Danforth alleged in its claim that had the City made its routing decision earlier, their development would have proceeded in 2015. As such, Danforth alleged that the City was negligent or, alternatively, failed to act fairly in the exercise of its discretionary authority relating to planning and transit. Danforth’s claim sought \$53 million in damages.

The City Solicitor’s Office received instructions from the City’s insurer to defend the action and to proceed with a motion for summary judgment. The crux of the City’s position was twofold. Firstly, the Applicant withdrew its application before a decision could be made by Council. As a result, the City did not exercise its core planning powers and could not be said to have acted negligently. Secondly, the City’s rapid transit initiative and the extensive decisions that such development entails involve the exercise of policy decision-making rather than operational decision-making. The *Municipal Act* provides that no action shall be brought against a municipality for the good faith exercise of such discretionary power.

The City’s motion for summary judgment was argued before the Honourable Justice Grace on April 9, 2018. On July 5, 2018, the Honourable Justice Grace granted summary judgment in favour of the City and dismissed the action in its entirety. A copy of the decision is attached to this report as Schedule “A”.

The City Solicitor's Office recognizes the substantial assistance from staff in the Planning and Engineering Departments, and in particular, Sonia Wise, Edward Soldo and John Fleming for their considerable contributions. The result of the motion has been communicated to the City's insurer.

<b>PREPARED BY:</b>	<b>PREPARED BY:</b>
<b>DANILO POPADIC SOLICITOR</b>	<b>GEOFFREY P. BELCH CORPORATION COUNSEL</b>

Attach. Schedule "A" - Decision

- c.c. Barry Card
- Martin Hayward
- John Fleming
- Kelly Scherr