

July 23, 2018

Ms. Meg Davis
Chief Development Officer
Waterfront Toronto
20 Bay Street, Suite 1310
Toronto, Ontario
M5J 2N8

Re: Draft Plan Development Agreement between the Toronto Waterfront Revitalization Corporation and Sidewalk Labs LLC

Dear Ms. Davis,

This letter contains City of Toronto staff comments on the draft Plan Development Agreement (PDA) between the Toronto Waterfront Revitalization Corporation (Waterfront Toronto) and Sidewalk Labs LLC. This response reflects the analysis of City of Toronto staff across multiple divisions, coordinated by the Waterfront Secretariat and City Legal. The City response is provided as advice to Waterfront Toronto for the purpose of more closely aligning the PDA process and deliverables with City policies and priorities.

Introduction – City's Role in Commenting

City staff have not been involved in any way in initiating the process which led to this agreement or negotiating its terms; however it appears to be in the interests of the City to provide some comments with respect to those matters of City interest which are affected by Waterfront Toronto's proposed arrangement with Sidewalk Labs.

The PDA will not be presented to Council for debate and approval, and City staff do not have the benefit of any direction by Council. Nothing in the PDA or in this letter should be construed as binding the City in any way or in any way changing the prevailing relationships between Waterfront Toronto and the City of Toronto, or conferring on Sidewalk Labs any authorities, roles and relationships accorded to Waterfront Toronto under the prevailing framework created by legislation, the MOU and various Council decisions.

City staff comments should therefore not be considered approval of, agreement with, or acquiescence to the arrangements Waterfront Toronto proposes to put in place with Sidewalk Labs.

Comments

1. January 2018 Staff Report

A report on the Sidewalk Toronto project was presented to and received by the City's Executive Committee on January 24, 2018. The report described the project and the approach that staff would take in participating in it at this time. The comments in this letter are consistent with the findings in the report. Executive Committee referred the report to the Director, Waterfront Secretariat with certain requests related to data matters and public consultation that Waterfront Toronto may find instructive.

2. City Approvals

City staff will be active in the development of the Sidewalk Toronto Master Innovation and Development Plan (MIDP). Implementation of the MIDP will require numerous approvals, given the City's role in policy-making as regulator, land owner, provider of municipal infrastructure, etc. The PDA should more explicitly and clearly describe these processes, for example, under Article III (Approvals).

City divisions and agencies, including CreateTO, will review proposals for the use of land owned by the City and its agencies, boards, commissions and corporate subsidiaries. Any recommended real estate transactions will be subject to City Council consideration and approval.

The PDA articulates certain goals, for example, in the "Plan Development Objectives" in Article 1 and "Pillar Working Group Goals and Subject Matter" in Schedule B. City comments on the MIDP and on any subsequent approval requests will be based on consistency with applicable regulations; provincial and municipal laws, by-laws, policies and guidelines, including, but not limited to:

- The Ontario Provincial Policy Statement and Growth Plan;
- City of Toronto Official Plan;
- Central Waterfront Secondary Plan;
- TOcore Downtown Plan (OPA 406) and accompanying infrastructure strategies;
- East Bayfront Precinct Plan and Keating Channel Precinct Plan;
- Zoning By-laws 1049-2006 and 1174-2010 and accompanying Section 37 agreements;
- Complete Streets Guidelines, City-wide Tall Building Design Guidelines, Toronto Green Standard, Open Data Master Plan, etc.

The PDA should specifically articulate the need for the MIDP to reflect and build upon the existing City policy framework. Through the MIDP development process, City staff can provide appropriate document lists and work with the parties and consultants to facilitate a plan that reflects this framework.

Schedule B notes the potential for innovations, which possibly include governance framework changes, in the delivery of traditional government services.

In Ontario, some municipal services are mandated by legislation to be provided by municipal government; other municipal services are delivered under locally adopted municipal service policies.

The MIDP should anticipate the continued government delivery of traditional and perhaps new government services, benefitted by the innovations developed under the MIDP, as well as governance frameworks compatible with that delivery. Nothing in the MIDP should anticipate derogating from, interfering with or limiting the exercise by the City of its authority or the fulfillment of its responsibilities as a municipality, or impose any obligation on the City, in its role as a municipality, without express agreement by City Council. The City's ability to operate, maintain and continue innovation with respect to the municipal service delivery models developed under the MIDP must be compatible with legislated and municipal policy requirements governing open municipal procurement.

The MIDP should also anticipate the requirement for extended testing and warranty periods and the potential for municipal revenue tools or revenue sharing arrangements to support the City's operation, maintenance, renewal and upgrades to municipal service delivery infrastructure.

3. Geographic Scope

It is the view of City staff that the focus of the project should be the 12 acre Quayside site. The PDA should be clear and explicit about the primacy of the Quayside site, and the need for a complete and comprehensive plan for this 12 acre district. The recitals on the first page of the PDA and definitions in Schedule A should define the Project as the Quayside site.

Staff acknowledge the potential value of exploring the benefits of implementing technologies, programs, approaches, financial structures and other aspects of the plan at scales larger than the Quayside site. For example, some initiatives may only be technologically feasible at a larger scale. Others may be technologically feasible, but not financially feasible. Certain options that may be judged as superior over 12 acres could be seen as less effective when evaluated across a larger implementation area. In some cases, understanding the implications of implementation at a larger scale will improve the ability to understand and evaluate Quayside-specific proposals.

With these factors in mind, should the MIDP explore options for implementation at scale elsewhere in the Designated Waterfront Area, the MIDP will need to address the additional City process and approvals that would be required to implement these options.

4. MOU and the Role of the Parties

Under Section 1.03, Role of the Parties, there are several concerns with the current wording:

- Section 1.03 (a) (i) should clarify that Waterfront Toronto's role as revitalization lead is triggered by City Council approval of Business and Implementation Plans for individual parcels, precincts or blocks. The same section should also clarify that Waterfront Toronto's revitalization role rests solely with Waterfront Toronto (its cooperation with Sidewalk Labs is unconnected to the MOU);
- Section 1.03 (a) (vii) should augment the language related to "stakeholders" and reference the City of Toronto's formal roles as regulator and land owner (in the case of City-owned land);
- Section 1.03 (a), overall, the description of the MOU should reference other relevant provisions, including Section 3.2 (Role of the City), Section 4.2 (Reinvestment of Revenues) and Section 12.4 (Proposal Calls).

5. Digital Matters

The PDA includes schedules relating to Intellectual Property (Schedule G), Freedom of Information and Confidentiality (Schedule H) and Digital Governance and Framework Principles (Schedule I). These matters are also dealt with in the body of the document.

The City understands that the scope, scale and implications of data collection and use that will be proposed for this project will be of great interest to the City and the public. The approaches outlined in these sections are considered to be "works in progress" requiring further discussion and analysis. Through the development of the MIDP, City staff will work in cooperation with other governments and outside experts in addition to Sidewalk Toronto to ensure emerging principles, policies and practices are in the public interest.

As with other matters, City staff will evaluate any proposals based on prevailing legislation (e.g. freedom of information and privacy protection legislation) and City policies. The PDA should explicitly state the requirement to comply with existing legislation.

It is also important for the PDA to note that these are rapidly evolving policy areas, and that the City and other orders of government are engaged in ongoing public consultation and policy development processes. Government policies and legislation may therefore change over the course of the project.

Specific comments on current sections of the PDA are noted below to inform future discussions:

- 1.02 (c) (iii): Privacy should be listed as its own principle, separate from open standards, and should be strengthened beyond "respect privacy" to "adhere, and where possible go beyond, Canadian privacy legislation";

- **Schedule G – Intellectual Property:** Further discussion and analysis is required regarding the ownership and commercialization of intellectual property, particularly IP developed with data collected from public lands and information sources;
- **Schedule H –** This section should include reference to FOI requests submitted to governments. Waterfront Toronto is not subject to MFIPPA Freedom of Information requests but if the City, Province or Federal governments receive FOI requests related to the project, they are required to release as much information to the public as possible without compromising third party information and confidentiality. The government that received the request will make the access decision;
- **Schedule I – Personal privacy:** Replace "Assurance that concerns that the Project could result in surveillance are meaningfully addressed" with "Assurance that any personal information collected during potential surveillance as part of the Project, will be done in accordance with local privacy legislation";

There are also number of items in this section whose definition is unclear and require further clarification and discussion. They include:

- "people first-approach";
- "responsible data use";
- "Canadian values";
- "minimization of collection, use retention and disclosure to what is necessary for the 'provision of the services and benefits individuals'";
- "Novel ownership structures for non-personal data."

Conclusion and Next Steps for City of Toronto

To conclude, next steps for the City of Toronto will be to:

- Monitor and participate in the development of the MIDP and other processes related to the Sidewalk Toronto project;
- Work cooperatively with Waterfront Toronto on the development of Business and Implementation Plans;
- Liaise with staff of provincial and federal governments through the Waterfront Revitalization Initiative Intergovernmental Steering Committee;
- Plan and deliver City-led public and stakeholder consultation meetings.

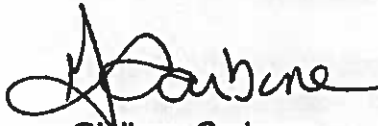
Staff will continue to coordinate across divisions, and with City Councillors and stakeholders, as the MIDP development process proceeds. At the conclusion of the MIDP process, staff will seek City Council direction relating to the contents of the MIDP.

In addition to participating in the Sidewalk Toronto engagement processes, the City will lead its own public and stakeholder consultation meetings. This will include meetings, local and city-wide, dealing with the broad scope of the project, as well as focused discussions on digital matters.

Please note that while Article XI of the PDA restricts Waterfront Toronto from pursuing certain proposals, the PDA does not, in any way, prevent the City of Toronto from taking actions anywhere, at any time, including through the PDA period.

Should you have any questions please contact Lou Di Gironimo, Interim Deputy City Manager, Cluster B, at 416-338-7200 or Lou.DiGironimo@toronto.ca, or David Stonehouse, Waterfront Secretariat, at 416-392-8113 or David.Stonehouse@toronto.ca.

Yours truly,



**Giuliana Carbone,
Interim City Manager
City of Toronto**

**cc: Kelly Gillis, Deputy Minister, Infrastructure Canada
Scott Thompson, Deputy Minister, Ontario Ministry of Infrastructure
Lou Di Gironimo, Interim Deputy City Manager, Cluster B**

