MA-DS-1

TOWN OF CALEDON

TOWN HALL
6311 Old Church Road, Caledon, ON L7C 1J6
905.584.2272 | 1.888.CALEDON | FAX 905.584.4325 | www.caledon.ca

May 5, 2011

LEGISLATIVE SERVICES			
COPY TO:		FOR:	
Chair		Committee	
CAO			
Corporate Services		Council	✓
Public Works			
Employee and Business Services			
Health Services		File	
Human Services			
Peel Living			

Ms. Carol Reid
Regional Clerk
Region of Peel
10 Peel Centre Drive
Brampton, Ontario
L6T 4B9

Dear Ms. Reid:

RE: Caledon Official Plan Amendment Number 226 and Regional Official Plan Amendment Number 20, 22, and 24 – Ontario Municipal Board Hearing – External Legal Counsel

At the regular meeting of Council held on May 3, 2011, Council received a report regarding an Caledon Official Plan Amendment Number 226 and Regional Official Plan Amendment Number 20, 22, and 24 – Ontario Municipal Board Hearing – External Legal Counsel. The following was adopted:

That Report PD-2011-037 regarding Regional Official Plan Amendment Number 20, 22 and 24 and Caledon Official Plan Amendment Number 226 – Ontario Municipal Board Hearing – Retainer of Davis LLP, be received; and

That a contract for external Legal Counsel for Ontario Municipal Board (OMB) prehearing work related to appeals on Regional Official Plan Amendment Number (ROPA) 20, 22 and 24, in the amount of $113,971.20 inclusive of non-recoverable HST, be awarded to Davis LLP funded from Legal Services operating budget account, 150.65.674.001.2318 ($25,000) and a draw from the contingency reserve fund, account 003.03.003.001.5005 ($88,971.20) if required at the end of 2011; and

That the contract with Davis LLP include an option for external Legal Counsel OMB hearing work related to appeals on ROPA 20, 22 and 24, in the amount of $260,505.60 inclusive of non-recoverable HST, to be awarded in 2012; and

That a $260,505.60 one-time unavoidable operating budget increase be approved for the Legal Services 2012 operating budget, account 150.65.674.001.2318 for the ROPA 20, 22 and 24 OMB hearings; and

That should both the OMB pre-hearing and hearings proceed in 2011, staff also be authorized to award the OMB hearing work related to appeals on ROPA 20, 22 and 24 in 2011 in the amount of $260,505.60 inclusive of non-recoverable HST, funded from the contingency reserve fund (if required), account 003.03.003.001.5005 in lieu of an unavoidable increase to the 2012 operating budget; and

That the contract with Davis LLP also include an option to award Davis LLP the external Legal Counsel OMB hearing work related to appeals on Caledon Official Plan Amendment Number (OPA) 226; and

That staff report back to Council on the projected cost of the external Legal Counsel OMB hearing work related to appeals on OPA 226 upon conclusion of the ROPA 20, 22 and 24 OMB hearings or sooner, if possible; and

That Council enact a by-law authorizing the Mayor and Town Clerk to execute a contract to retain Davis LLP to provide external Legal Counsel to the Town of Caledon in respect of the appeals to the OMB of ROPA 20, 22 and 24, and OPA 226; and

RECEIVED
MAY 09 2011
REGION OF PEEL
CLERKS DEPT.

REFERRAL TO
RECOMMENDED
DIRECTION REQUIRED
RECEIPT RECOMMENDED ✓

MA-DS-2

That the Manager of Purchasing & Risk Management be authorized to prepare an agreement with Davis LLP to provide external Legal Counsel to the Town of Caledon in respect of the appeals to the OMB of ROPA 20, 22 and 24, and OPA 226; and

That a copy of Report PD-2011-037 be sent to the Region of Peel, City of Brampton, City of Mississauga, Ministry of Municipal Affairs and Housing and Solmar Development Corporation.

Please find attached a copy of Report PD-2011-037. If you have any questions regarding the report, please contact Tim Manley, Senior Policy Planner at tim.manley@caledon.ca or 905-584-2272 ext: 4285.

Yours truly,

Barbara Karrandjas

Barbara Karrandjas
Legislative Administrator
e-mail: barbara.karrandjas@caledon.ca
Encl.

cc Tim Manley, Senior Policy Planner
City of Brampton
City of Mississauga
Ministry of Municipal Affairs and Housing
Solmar Development Corporation

MA-DS-3

TOWN OF CALEDON

PLANNING & DEVELOPMENT
Policy Section
Report PD-2011-037

To: Mayor and Members of Council

From: Mary Hall, Director of Planning & Development

Date: May 3, 2011

Subject: REGIONAL OFFICIAL PLAN AMENDMENT NUMBER 20, 22 AND 24 AND CALEDON OFFICIAL PLAN AMENDMENT NUMBER 226 – ONTARIO MUNICIPAL BOARD HEARING – RETAINER OF DAVIS LLP

RECOMMENDATION

That Report PD-2011-037 regarding Regional Official Plan Amendment Number 20, 22 and 24 and Caledon Official Plan Amendment Number 226 – Ontario Municipal Board Hearing – Retainer of Davis LLP, be received; and,

That a contract for external Legal Counsel for Ontario Municipal Board (OMB) prehearing work related to appeals on Regional Official Plan Amendment Number (ROPA) 20, 22 and 24, in the amount of $113,971.20 inclusive of non-recoverable HST, be awarded to Davis LLP funded from Legal Services operating budget account, 150.65.674.001.2318 ($25,000) and a draw from the contingency reserve fund, account 003.03.003.001.5005 ($88,971.20) if required at the end of 2011; and,

That the contract with Davis LLP include an option for external Legal Counsel OMB hearing work related to appeals on ROPA 20, 22 and 24, in the amount of $260,505.60 inclusive of non-recoverable HST, to be awarded in 2012; and,

That a $260,505.60 one-time unavoidable operating budget increase be approved for the Legal Services 2012 operating budget, account 150.65.674.001.2318 for the ROPA 20, 22 and 24 OMB hearings; and,

That should both the OMB pre-hearing and hearings proceed in 2011, staff also be authorized to award the OMB hearing work related to appeals on ROPA 20, 22 and 24 in 2011 in the amount of $260,505.60 inclusive of non-recoverable HST, funded from the contingency reserve fund (if required), account 003.03.003.001.5005 in lieu of an unavoidable increase to the 2012 operating budget; and,

That the contract with Davis LLP also include an option to award Davis LLP the external Legal Counsel OMB hearing work related to appeals on Caledon Official Plan Amendment Number (OPA) 226; and,

That staff report back to Council on the projected cost of the external Legal Counsel OMB hearing work related to appeals on OPA 226 upon conclusion of the ROPA 20, 22 and 24 OMB hearings or sooner, if possible; and,

That Council enact a by-law authorizing the Mayor and Town Clerk to execute a contract to retain Davis LLP to provide external Legal Counsel to the Town of Caledon in respect of the appeals to the OMB of ROPA 20, 22 and 24, and OPA 226; and,

That the Manager of Purchasing & Risk Management be authorized to prepare an agreement with Davis LLP to provide external Legal Counsel to the Town of Caledon in respect of the appeals to the OMB of ROPA 20, 22 and 24, and OPA 226; and,

That a copy of Report PD-2011-037 be sent to the Region of Peel, City of Brampton, City of Mississauga, Ministry of Municipal Affairs and Housing and Solmar Development Corporation.

BACKGROUND

The Region of Peel (the Region) and the area municipalities are required to bring their official plans into conformity with the provincial policy directions contained in the Provincial Policy Statement 2005, the *Places to Grow Act* and the Growth Plan for the Greater Golden Horseshoe, the *Greenbelt Act* and the Greenbelt Plan and *The Planning and Conservation Land Statute Law Amendment Act.*

Peel Region Official Plan Review (PROPR)

The Region initiated the PROPR process to bring its Official Plan in to conformity with the provincial legislation and policy outlined above. The PROPR process included studies to inform and support the development of seven (7) ROPAs .

1. ROPA 20 (sustainability and energy policies) was adopted by Regional Council on April 14, 2009 and approved with minor modifications by MMAH on November 26, 2009. MMAH's decision was appealed to the OMB by Solmar on December 15, 2009.

2. ROPA 21A (air quality and integrated waste management policies) was adopted by Regional Council on November 19, 2009 and approved with minor modifications by MMAH on May 25, 2010. ROPA 21A has not been appealed to the OMB and is in effect.

3. ROPA 21B (natural heritage and agriculture policies) was adopted by Regional Council on April 14, 2010. The Region has received draft modifications from MMAH on ROPA 21B and is currently working with area municipal and MMAH staff to reach agreement on the draft modifications. The prescribed time period of 180 days for MMAH to approve ROPA 21B has passed. At this time, ROPA 21B has not been appealed to the OMB.

4. ROPA 22 (transportation policies) was adopted by Regional Council on October 13, 2009 and was approved with minor modifications by MMAH on August 27, 2010. MMAH's decision was appealed to the OMB by Solmar on September 3, 2010.

5. ROPA 23 (housing policies) was adopted by Regional Council on October 27, 2009 and was approved with minor modifications by MMAH on June 22, 2010. MMAH's decision was appealed to the OMB by Solmar on July 5, 2010.

6. ROPA 24 (growth management, employment areas and Greenbelt Plan policies) was adopted by Regional Council on March 12, 2010. The Region has received from MMAH

draft modifications on ROPA 24 and is currently working with area municipal and MMAH staff to reach agreement on the draft modifications. MMAH's failure to issue a decision on ROPA 24 within the prescribed time period of 180 days was appealed to the OMB by Solmar on November 25, 2010.

7. ROPA 25 (performance measurement policies and *Planning Act* conformity) was adopted by Regional Council on January 14, 2010 and was approved with minor modifications by MMAH on August 10, 2010. MMAH's decision was appealed to the OMB by Solmar on August 20, 2010.

Caledon Official Plan Amendment Number 226

At its meeting on June 8, 2010, by Resolution 2010-371, Caledon Council endorsed OPA 226. OPA 226 is intended to bring Caledon's Official Plan in to conformity with provincial legislation and policy outlined above.

OPA 226 includes population, employment and housing forecasts to 2031 and policies related to growth management, sustainability, transportation, natural heritage system and affordable housing, among others.

OPA 226 was circulated to the Region on June 25, 2010 for approval. The 180-day review period has expired and the Region has not issued a decision due to the need to resolve outstanding issues on ROPA 24 with MMAH and the appeals on ROPAs 20, 22, 23, 24 and 25. These ROPAs affect OPA 226 due to the need for Caledon's Official Plan to conform to the Regional Official Plan.

The Region's failure to issue a decision on OPA 226 within the prescribed time period of 180 days was appealed to the OMB by Solmar on February 28, 2011.

City of Mississauga Official Plan Amendment Number 95 (OPA 95)

On June 10, 2009 City of Mississauga Council endorsed OPA 95. OPA 95 is intended to bring Mississauga's Official Plan in to conformity with provincial legislation and policy as outlined above. On December 10, 2009, the Region approved OPA 95 with the exception of Section 1.2, paragraph 1 which contains the population and employment forecasts. OPA 95 was appealed to the OMB by four appellants, including Solmar.

Appeals by Solmar Development Corporation

On April 11, 2011 Legal Counsel representing the Region, Caledon, City of Mississauga, City of Brampton, MMAH and Solmar, among others, met to discuss the appeals of ROPA 20, 22, 23, 24 and 25, OPA 226 and OPA 95.

On April 19, 2011 Legal Counsel for Solmar issued a letter to the OMB wherein Solmar scoped its appeals of ROPA 20, 22, 23, 24 and 25 as follows.

ROPA 20 – Solmar has limited its appeal to only policy 3.7.2.18 and has withdrawn its appeal to the balance of ROPA 20.

ROPA 22 – Solmar has limited its appeal to only policies 5.9.2.19, 5.9.3.2.2, 5.9.3.2.3, 5.9.3.2.4, 5.9.3.2.6, 5.9.7.2.4 f) and the definition of "planned transportation corridors" and has withdrawn its appeal to the balance of ROPA 22.

ROPA 23 and ROPA 25 – Solmar has withdrawn its appeal to ROPA 23 and ROPA 25.

ROPA 24 – Solmar has maintained its appeal to ROPA 24 in its entirety.

Ontario Municipal Board Hearing

For case management purposes only, the appeals to ROPA 20, 22 and 24, OPA 226 and OPA 95 will be consolidated in to one hearing; the ROPAs will be heard first followed by OPA 226 and OPA 95.

It is anticipated that the OMB hearing related to the ROPAs will commence in 2012 and last about eight (8) weeks. Therefore, the appeal by Solmar of Caledon's OPA 226 will not commence until spring 2012 at the earliest.

A pre-hearing conference, related to all of the appeals, has been scheduled by the OMB for May 10, 2011, commencing 10:00 am at Court Room B7, 5 Ray Lawson Boulevard, Brampton. A series of pre-hearing conferences is anticipated in 2011 prior to commencement of the hearing.

The purpose of this report is to recommend that Caledon retain Mr. Chris Barnett from Davis LLP to provide Legal Counsel to Caledon in respect of the appeals to the OMB by Solmar of ROPA 20, 22 and 24, and OPA 226.

DISCUSSION

Caledon's purchasing by-law permits a non-competitive procurement process – e.g. negotiation with a single-source – in cases where Council has granted specific approval for the use of a non-competitive procurement process where, in Council's opinion, it would be advantageous to and in the best interest of Caledon.

While a lawyer with Davis LLP, Mr. Barnett has personally acted as Legal Counsel to Caledon on growth management matters since 2007 and assisted other lawyers at Davis LLP for well over a decade defending matters at the OMB on behalf of Caledon. During this time, Mr. Barnett has developed a good working relationship with Council and gained Council's respect on matters relating to growth management and environment and resource protection.

As Legal Counsel to Caledon, Mr. Barnett has successfully represented Caledon at the OMB in respect of Official Plan Amendment Number 114 (Caledon's tri-nodal growth management strategy), Official Plan Amendment Number 208 (Mayfield West Community Development Plan), and Rockfort Quarry. In doing so, Mr. Barnett has gained a comprehensive understanding of historical and current planning issues in Caledon and the Region. This is a very desirable attribute for Caledon in the upcoming OMB hearings.

FINANCIAL IMPLICATIONS

ROPA 20, 22 and 24

Davis LLP has provided an estimate of cost to provide Legal Counsel to Caledon in respect of the appeals to the OMB by Solmar of ROPA 20, 22 and 24 in the amount of $368,000, excluding non-recoverable HST (or $374,476.80 inclusive of non-recoverable HST).

Of the $368,000 pre-tax total cost, $112,000 is associated with the OMB pre-hearings and $256,000 is associated with the OMB hearing itself.

The cost associated with the OMB pre-hearings (i.e. $112,000) is further broken down as follows: $32,000 for attendance at pre-hearing conferences (assumes a maximum of 3 pre-hearings, without lengthy contested preliminary motions), and $80,000 for preparing and reviewing witness statements, and hearing preparation meetings with other counsel of like interest.

It is recommended that the external Legal Counsel OMB prehearing work related to the appeals of ROPA 20, 22 and 24 be awarded to Davis LLP, in the amount of $113,971.20 inclusive of non-recoverable HST, funded from the Legal Services account, 150.65.674.001.2318 – external legal services. In the 2011 budget, only $25,000 was budgeted in this account for external legal work related to OPA 226 and ROPA 24. The projected budget shortfall of $88,971.20 (= $113,971.20 - $25,000) may be offset by operating budget savings in other areas by the end of 2011. If required (e.g. if the Town's 2011 surplus in other areas is not sufficient to offset this over-expenditure), staff recommend that the 2011 operating budget shortfall of $88,971.20 be funded by a draw from the contingency reserve fund, account 003.03.003.001.5005.

It is further recommended that the contract for Davis LLP include an option for external Legal Counsel OMB hearing work related to appeals on ROPA 20, 22 and 24, in the amount of $260,505.60 inclusive of non-recoverable HST. It is anticipated that this work will be required in 2012, and accordingly will be included in the 2012 budget for Legal Services as a one-time unavoidable budget increase in the 2012 operating budget.

In the event that the OMB pre-hearings and hearings both occur in 2011, it is recommended that staff be authorized to proceed with the award of the OMB hearing work related to appeals on ROPA 20, 22 and 24 to Davis LLP in 2011, in the amount of $260,505.60, with funding (if required) from the Town's contingency reserve fund at the end of 2011.

Caledon Official Plan Amendment Number 226

It is difficult to estimate the cost to Caledon of defending OPA 226 at the OMB at this time, since the length of the hearing will be based largely on the outcome of the ROPA hearings; if the outcome of the ROPA hearings are acceptable to Caledon, the hearing in respect to OPA 226 may be shorter.

Accordingly, staff is recommending that the contract with Davis LLP also include an option to award Davis LLP the external Legal Counsel OMB hearing work related to appeals on OPA 226. Further, staff will report back to Council on the estimated costs and funding for the OPA 226 work at the conclusion of the ROPA hearings or when the costs can be reasonably estimated.

LEGAL IMPLICATIONS

By-law 2009-151 Purchasing Policy

Caledon By-law 2009-151 Purchasing Policy, in section 4.01, provides that Caledon obtain services and goods through a competitive procurement process such as a request for proposal. Under sections 3.04 and 4.02 (l) and (m), the by-law permits a

non-competitive procurement process – e.g. negotiation with a single-source – in cases where Council has granted specific approval for the use of a non-competitive procurement process where, in Council's opinion, it would be advantageous to and in the best interest of Caledon.

Furthermore, the purchasing by-law allows for non-competitive procurement with the following Exception 4.02, section c, "The confidential nature of the requirement is such that it would not be in the public interest to solicit competitive bids provided that the Town is in compliance with the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M56.

Agreement on Internal Trade

The Agreement on Internal Trade, which applies when a municipality is procuring services estimated at $100,000 or more, provides an exception for the need to arrange a competitive process for the retainer of outside Legal Counsel services.

Section 11 of Article 506 of the agreement provides that a competitive procurement process is not required in a situation "where goods or consulting services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through an open tendering process could reasonably be expected to compromise government confidentiality, cause economic disruption or otherwise be contrary to the public interest." The proposed retainer of Davis LLP falls under this exception.

NEXT STEPS

Execution of Contract with Davis LLP

By endorsing this report Council authorizes the enactment of a by-law authorizing the Mayor and Town Clerk to execute a contract to retain Davis LLP to provide external Legal Counsel to Caledon in respect of the appeals to the OMB of ROPA 20, 22 and 24, and OPA 226.

Furthermore, the Manager of Purchasing & Risk Management is authorized to prepare an agreement with Davis LLP to provide external Legal Counsel to Caledon in respect of the appeals to the OMB of ROPA 20, 22 and 24, and OPA 226.

COMMUNITY BASED STRATEGIC PLAN

Goal 2: Complete Our Community of Communities. Facilitate development of a safe, beautiful, connected and vibrant community of communities based on sound planning principles.

Strategic Objective 2D: Manage Growth and Use Land Wisely. Promote land use planning decisions that are rooted in innovative and sound planning principles and ensure: (1) Caledon's urban rural character is maintained; (2) Growth does not compromise the character and stability of existing residential neighbourhoods; (3) Growth is in keeping with Caledon's ability to provide and maintain appropriate infrastructure; (4) Growth contributes positively to Caledon's image and economic vigor; and, (5) Development of new communities in new ways.

MA-DS-9

TOWN OF CALEDON

POLICIES/LEGISLATION

Town of Caledon Purchasing By-law 2009-151.

CONSULTATIONS

Doug Barnes, C.A.O.
Nadia Koltun, Town Counsel/Director of Legal Services.
Fuwing Wong, Treasurer.
Amedeo Valentino, Manager of Purchasing & Risk Management

ATTACHMENTS

Not applicable.

CONCLUSION

Solmar Development Corporation has appealed ROPA 20, 22 and 24, and OPA 226 to the Ontario Municipal Board.

It is recommended that Mr. Chris Barnett from Davis LLP be retained by Caledon to provide external Legal Counsel to Caledon in respect of the appeals to the OMB by Solmar of ROPA 20, 22 and 24 and OPA 226.

Prepared and Recommended by:
Tim Manley
Acting Manager of Policy

Approved by:
Mary Hall
Director of Planning & Development

Approved by:
Douglas Barnes
Chief Administrative Officer