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LAWYERS

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File #: 16215

November 27, 2017

By email exc@toronto.ca

His Worship Mayor John Tory and Members of the Executive Committee
10th floor, West Tower, City Hall
100 Queen St. West
Toronto, ON M5H 2N2

Attn: Ms. Josephine Archbold

Your Worship and Members of the Executive Committee of Toronto City Council

**Re: Toronto Executive Committee Meeting November 28, 2017
Agenda Item 29.2 (10:00 AM) Rail Deck Park - Results of Feasibility Analysis and
Next Steps for Implementation (Ward All)**

We are counsel to P.I.T.S. Developments Inc. (“PITS”) the purchaser of the air rights of the railway corridor between Blue Jays Way and Bathurst Street. On May 23, 2017, Mr. Ian Graham of R.E. Millward & Associates Inc. filed an Official Plan Amendment application with the City to permit the construction of a decking structure over top of the rail corridor together with a mixed-use development consisting of residential, retail, commercial, institutional and significant open space uses. That application (also known as the ORCA project) has been deemed complete by the City and, we expect, is undergoing review by City staff. As staff should confirm, that development application was signed by the registered owner of the air rights and consented to our client filing the application. There can be no doubt that both the registered owner of the air rights and the purchaser of the air rights are known to the City as are their intentions to develop them.

Our client, both in its own name and through its land use planning consultant (Mr. Ian Graham), has previously provided written comments on the City’s proposed Official Plan Amendment, which proposes to designate this privately-owned lands for public park use. That matter is clearly connected and related to the within reports which are before you today. Written comments have also been provided to the City by Toronto Terminal Railways and Canadian National Railway (the registered owner of the air rights). Those comments have been submitted to both the Toronto and East York Community Council and to the Executive Committee. We commend all of these communications to you which come from both the current registered owners and the purchasers under Agreement of Purchase and Sale.

The purpose of this letter, however, is to deal specifically with the material which is before you today and to raise serious concerns with it. We surmise that the purpose of the above-noted report and its attachments are to provide your committee, City Council and the residents of Toronto with, among other things, initial cost estimates for the Rail Deck Park. Knowing the full cost of this project is critical before decisions are made which commit the spending of significant public monies (such as the City's proposed OPA). It is no secret that large public infrastructure projects often (if not typically) run over budget, sometimes substantially. Very careful planning is required in order to minimize the chances of this.

Having reviewed the material provided in the above-noted report, it is our client's opinion that the cost estimates are wanting. For the purpose of this letter we will focus only on the air rights acquisition cost which has been omitted from the preliminary estimate of \$1.665 billion. That estimate, which translates to approximately \$83 million/acre, is just for the design and construction but does not include any air rights acquisition costs. This is clearly evident from Figure 8 (page 24 of the report, the extract of which is attached). The staff report fully acknowledges that the City does not own the vast majority of the air rights. The City will need to acquire those air rights through either purchase or expropriation yet no estimates whatsoever are provided for this essential task. I note further that on page 7 of the report under the heading "Financial Impact", staff says:

"Once the cost for securing the use and/or ownership of necessary properties is known, and the capital cost estimates have been refined, staff will report back on updated project details, including a recommended funding and financing strategy, for Council's consideration and the opportunity to confirm its commitment to proceed with the project."

Why would such a fundamental and essential decision be left for some later, unconfirmed date? How can City Council and the residents of Toronto have confidence in the ability of the City to deliver the Rail Deck Park with this key piece of information missing? The report does note that land in this area trades at approximately \$100 million/acre and that the proposed Rail Deck Park is estimated at 20 acres (most of which the City will need to acquire).

What is even more troubling is that the timeline on page 9 of the report (attached) omits any trigger date whatsoever for the City to acquire these air rights. It is not difficult to imagine how disturbing this is to the owners of land, especially those who have spent years and considerable time and resources filing a complete development application with the City in accordance with its own in-force Official Plan and its rules for complete applications.

While our client maintains that its proposed development is a far superior method of achieving public open space for the City, it requests that your committee and City Council carefully consider this letter in its deliberations.

Yours very truly,

A handwritten signature in cursive script that reads "Ira Kagan". The signature is written in dark ink and is positioned below the closing "Yours very truly,".

Ira T. Kagan

Enclos.

Copy: P.I.T.S. Developments Inc.
Mr. Ian Graham

5.3 Order of Magnitude Costs

Current project cost estimates are considered "order of magnitude" in nature, with project components yet to be fully designed or detailed. These estimates are at a 'Class 4' level and are based on completion of 1-5 per cent level of design. Cost estimates will be refined as further site design and site investigations are completed.

The total preliminary cost estimate for the Rail Deck Park project (approximately 8 hectares; 20 acres) is \$1.665 billion (2017 dollars) or approximately \$83 million per acre (Figure 8). Cost estimates do not include escalation or financing costs as detailed cash flows are not yet known.

Figure 8 **Order of Magnitude (Class 4) Cost Estimates**

Elements	Cost Estimate (millions; 2017 \$s)
Deck Construction early works, hard costs, general requirements, management fees	\$844
Park Construction hard costs, general requirements, management fees	\$95
Design Fees	\$95
Contingencies design & pricing, construction and other contingencies	\$327
Allowances Potential work restrictions in the rail corridor	\$304
Total	\$1,665
(Priority Phase One Cost)	(\$872)
(Future Phases)	(\$793)

Hard construction costs are based on broad assumptions with respect to the materials, sizes and weights of structural members, depths and type of fill material, types of paving, and other considerations. These assumptions will be revisited as the design work proceeds and logistics are better understood.

Design and construction of the Rail Deck Park project will be subject to multiple approvals and requirements unique to building in the rail corridor. The project will need to be coordinated with other major capital works. Cooperation with Metrolinx on aligned capital projects is critical to determining the ultimate scope, timelines and cost of Rail Deck Park.

Therefore, the cost estimate includes significant contingencies and premiums reflecting the unique complexity and uncertainty of early-stage planning in the rail corridor.

- **Section 6** provides an update on funding and financing, including consideration of potential sources.
- **Section 7** describes proposed work to develop partnerships and support public and stakeholder engagement in the project.

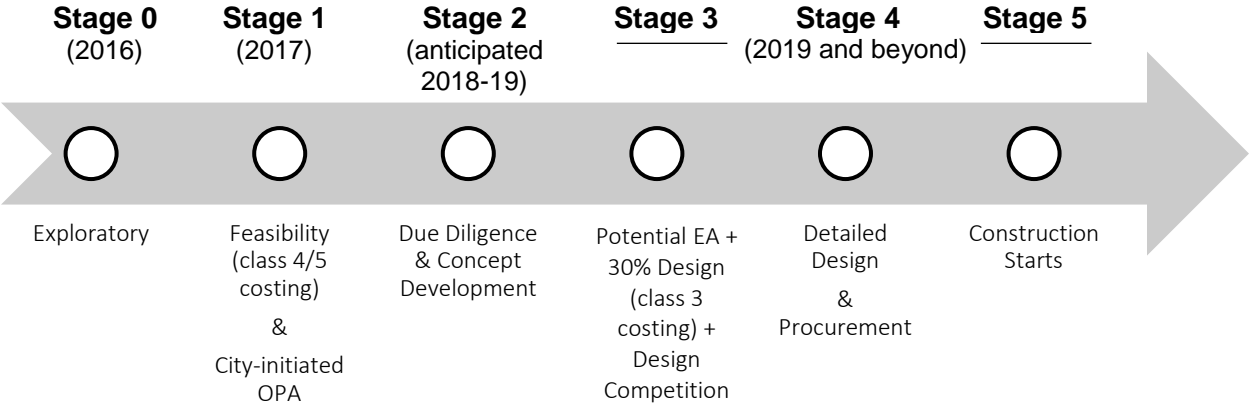
1.0 Project Summary & Work Plan

In October 2016, Council directed staff to develop an implementation strategy for a major park space above the rail corridor between Bathurst Street and Blue Jays Way ("Rail Deck Park").

The project could be advanced through a "stage gate" capital planning process, based on an approach established for other major capital projects undertaken in the city (e.g., transit enhancement).

This process involves a multi-year project plan, with project stages to be defined and advanced as scope, timelines, and cost estimates are clarified. Under this process, City Council would be provided with specific decision points related to project planning and commitments prior to proceeding with each project stage (Figure 1).

Figure 1 **Stages of the Rail Deck Park Implementation Strategy**



1.1 Stage One (2017)

The first stage of the implementation strategy involved analysis and studies to confirm the technical and financial feasibility of the project. This included a conceptual engineering and costing study, a framework for project, funding and a financing and legal review of real estate issues. To date, an interdivisional project team, with support from external partners have prepared the following:

- Preliminary design concepts for the decking structure, including analysis of existing site conditions; engineering system requirements; alignment with existing and