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May 18, 2018

By E-mail
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City Council
City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Attention: Ms. Marilyn Toft, City Clerk Secretariat

Dear Members of City Council:

**Re: PG29.4 TOcore: Downtown Plan Official Plan Amendment
28 River Street**

We are counsel to 28 River Street Holdings Limited, owner of the property municipally known as 28 River Street (the "**Property**"), generally located at the northwest corner of the intersection of Queen Street East and River Street and located within the area of the proposed Downtown Plan Official Plan Amendment No. 406 (the "**TOcore OPA**") currently being considered by City Council.

An application for zoning by-law amendment for the Property was filed with the City on December 19, 2016 (File # 16 268409 STE 28 OZ). The proposed rezoning of the Property will facilitate the development of a 15 storey mixed use building with retail at grade and residential uses above. The application was appealed to the Local Planning Appeal Tribunal and awaits adjudication.

For the reasons set forth in this letter and the attached Planning Opinion letter, we strongly urge that:

- (i) **Council defer consideration of the TOcore OPA;**
- (ii) **Council direct City Planning staff to conduct further consultation as it relates to, among other things, the Policy Revisions and Map Revisions in Attachments 1 and 2 of the Supplementary Staff Report, exemption and transition issues and site specific issues; and**
- (iii) **That City Planning staff report directly to City Council with any further recommendations, such report to be made available to the public as required by Section 26 of the *Planning Act*.**

Policy Concerns with the TOcore OPA

Our client and our client's consulting planner reviewed the TOcore OPA as well as the Supplementary Staff Report, dated May 14, 2018. A number of concerns with the TOcore OPA have arisen based on this review, which are further documented in the attached Planning Opinion letter from Robert Glover,

Bousfields, dated May 17, 2018. In general, policies included in the TOcore OPA that are of concern to our client include:

- Introduction of new land use designations (Mixed Use Area 3) which enact use restrictions, built form standards and various other supplemental regulations; and
- Prescriptive performance and built form standards which include but are not limited to; mandatory residential unit mix, type, and size; and building heights and setbacks.

Such restrictions, performance and built form standards are excessively prescriptive and restrict intensification on the Property that is otherwise targeted for growth. The imposition of these standardized regulations also limits opportunities for contextually appropriate development variations, architectural creativity that may achieve the same objectives and provides no flexibility for irregular shaped lots (such as the Property) and a wide array of lot conditions.

For such reasons, the TOcore OPA is inconsistent with the Provincial Policy Statement, 2014 and fails to conform to the Growth Plan for the Greater Golden Horseshoe, 2017.

Procedural Concerns with the TOcore OPA

City staff advise that that the TOcore OPA policies will be used to evaluate current and future development applications in the TOcore OPA area. This statement is vague and creates significant uncertainty, particularly because the Property is the subject of an active development application that is before LPAT and changing the policy regime mid-process is unfair, unreasonable and would require our client to revise their application to demonstrate conformity which represents added expense, delay and the potential loss of development permissions.

We are concerned about the potential prejudices that may result by using the TOcore OPA to evaluate current and future development applications for the Property. The TOcore OPA also does not include any transition policies or protocols to recognize applications/redevelopment proposals that are in process or that should be exempted from the application of the TOcore OPA.

In the event that the Property is not specifically exempted from the TOcore OPA, transition provisions should be incorporated into the TOcore OPA so as to ensure that properties that are the subject of complete applications should be reviewed on the basis of the planning framework which was in force at the time they were filed, and that future applications for the Property, such as Site Plan Approval and minor variance, should be exempt from conformity with the TOcore OPA.

Statutory Notice Requirements Not Met

For an Official Plan Amendment under Section 26 of the *Planning Act*, information and material relevant to the amendment must be made publicly available at least 20 days before the Public Meeting. We note that the Supplementary Staff Report, dated May 14, 2018, which itemizes staff and PGMC's recommended amendments to the TOcore OPA, has not been the subject of a Public Meeting and has been released only seven days before the TOcore OPA is to proceed to Council for a decision, contrary to Section 26 of the *Planning Act*. Many of the proposed changes are substantive and our clients have not been given sufficient time to review and consider the impact of such changes.

Because of the excessively prescriptive performance and built form standards included in the TOcore OPA, the TOcore OPA is more regulatory than visionary and the TOcore OPA directly negates intensification in areas otherwise targeted for growth.

The City's powers to approve the TOcore OPA are powerful and extraordinary and the only safeguard against abuse of those powers is proper and meaningful consultation. Providing the public sufficient time

and notice to review and comment on the City's final proposed changes to the TOcore OPA, and for those comments to be considered by Council in their decision-making is a fundamental component of meaningful consultation —for which one week is simply inadequate.

Conclusion

For the reasons expressed in this letter as well as those included in the attached Planning Opinion letter, we ask that consideration of the TOcore OPA be deferred by Council to allow the public sufficient time to consider and respond to the supplemental staff recommendations, as well as for staff to address the concerns raised by our client, which engage matters of Provincial policy and procedural fairness.

Please provide us with notice of all upcoming meetings of Council and Committees of Council at which the TOcore OPA will be considered, and we ask to be provided with notice of Council's decision and the Ministry of Municipal Affairs' decision with respect to this item.

Yours truly,



Calvin Lantz
Partner

*Certified Specialist in Municipal Law
(Land Use Planning and Development)*

CL/nla

Attachment: Planning Opinion letter, prepared by Robert Glover, Bousfields, dated May 17, 2018

cc. Sherry Larjani, 28 River Street Holdings Limited
Lezlie Phillips, Queen River Limited Partnership



BOUSFIELDS INC.

May 17, 2018

Project No.:1885

Toronto City Council
Toronto City Hall
100 Queen Street West
Toronto, ON, M5H 2N2

Dear Mr. Mayor and Members of City Council,

**Re: *Proposed Official Plan Amendment No. 406 Draft Downtown Plan
28 River Street, Toronto, ON***

On behalf of our client, 28 River Street Holdings Limited, we reviewed the proposed draft Downtown Plan Official Plan Amendment No. 406 ("OPA 406") as it relates to the above-noted site (the "Subject Site"). We, along with our client, have a number of concerns with OPA 406, which are described below. More particularly, proposed OPA 406 is not consistent with the Provincial Policy Statement, 2014 ("PPS") and does not conform with the Growth Plan for the Greater Golden Horseshoe (the "Growth Plan") with respect to the proposed re-designation of the Subject Site, and does not optimize the use of land and infrastructure, particularly as it applies to the Subject Site.

Subject Site Application Details and Current Policy Permissions

Our client has an interest in the Subject Site, 28 River Street, which is located within the existing Downtown urban growth centre, in proximity to the northwest corner of the intersection of Queen Street East and River Street. We prepared the planning justification report in support of a Zoning By-law Amendment application for the Subject Site that was filed with the City on December 19, 2016 (File #: 16 268409 STE 28 OZ). The application would permit a 15-storey mid-rise building, fronting on River Street and stepping down to the west, containing 162 residential units and approximately 458 square metres of retail space on the ground floor.

From the transit perspective, the Subject Site is in close proximity to and served in the easterly and westerly directions by both the Queen and King streetcars. To the west, the existing street car lines access the TTC's Line 1 (Yonge) at the King subway station and the Queen subway station. In addition, the site of the planned Queen-Cherry station on the planned Downtown Relief Line (Map 41-4) is immediately southwest of the Subject Site. Additionally, the Downtown portion of King Street has recently been the subject of a transit enhancement pilot project by

the City which, by restricting car traffic, has improved its use and capacity for transit in the Downtown area.

In the current Official Plan, the Subject Site is designated as Mixed-Use Areas, which is the general growth designation of the Plan. The current Official Plan notes that, although “not all Mixed-Use Areas will experience the same scale or intensity of development”, the highest buildings and greatest intensity will typically occur in the Downtown and the Financial District in particular. The Subject Site is not located in the Financial District, but is located in the Downtown in an area close to other sites which contain a range of building heights and forms, including low-rise, mid-rise and approved tall mid-rise and tall building development. The closest tall mid-rise heights of 12 and 16-storeys are located to the immediate south of King Street East in the West Donlands area and taller building heights of 28 to 38-storeys are located at Shuter and River Streets, one block north and at the edge of Regent Park. The changes in height within the context of the Downtown historic and contemporary patterns are both appropriate and desirable.

The Subject Site and OPA 406

In general terms, the existing development context in the area of the Subject Site already successfully combines existing mostly historic, lower scale house form development with existing mid-rise and contemporary taller forms of development in a compatible fashion. In its Downtown context, the Subject Site would also be an appropriate and desirable location for mixed-use intensification at a taller height and greater density than building scale contained in OPA 406 for the Subject Site. However the planning policies of the proposed Mixed-Use Areas 3 designation of the Subject Site in OPA 406 limits the opportunity for intensification and the optimization of density on the Subject Site in an area of the City that is well served by higher order public transit and municipal infrastructure; and also limits potential redevelopment opportunities by restricting new buildings to a low and mid-rise scale that is generally equivalent to the height of the right-of-way width (20 metres). Additionally, the proposed boundaries of the Mixed-Use Areas designations in OPA 406 are overly detailed and prescriptive for policy and effectively operate in a similar manner to a zoning by-law by restricting the potential height and density through a strict approach to built form criteria.

Consistency and Conformity

Policy 2.2.4(2) of the Growth Plan requires that the City of Toronto delineate the boundaries of major transit station areas on priority transit corridors or subway lines “in a transit supportive manner that maximizes the size of the area and the number of potential transit users that are within walking distance of the station”. The initial Staff Report accompanying proposed OPA 406 acknowledges that a major transit

station area assessment may be undertaken as part of a future municipal comprehensive review for development around subway stations. However, the overly prescriptive nature of the proposed Mixed-Use Areas 3 policies in OPA 406, together with detailed and distinct designation boundaries is premature in advance of a major transit station area assessment.

OPA 406 does not take into account PPS directions to optimize the use of land and infrastructure, particularly along transit and transportation corridors, and in particular within the Downtown Toronto urban growth centre and in "major transit station areas". In this regard, "optimization" means making something "as fully perfect, functional, or effective as possible".

In our opinion, the proposed redesignation of the Subject Site to *Mixed-Use Areas 3*, and in particular the associated height restriction to generally not exceed the width of the adjacent street right-of-way, does not make use of land and infrastructure in a way that is efficient or as effective as possible. Specifically, the proposed 15-storey building is taller than the adjacent right-of-way. Under OPA 406, the Subject Site would be permitted less height/density resulting in an underutilization of land and infrastructure.

Finally, it is my opinion that this approach to the "planned context" for the Subject Site does not conform with the Growth Plan, specifically Policy 2.2.4(9) which prohibits land uses and built form that would adversely affect the achievement of transit supportive densities within a major transit station area. Based on the foregoing, the proposed policies of OPA 406 and boundary delineation of the Mixed-Use Areas 3 designation are inappropriate and do not constitute good planning. Proposed OPA 406 is not consistent with the PPS and does not conform with the Growth Plan.

Request for Transition

It is noted that, OPA 406 does not currently include any transition policies or protocols to recognize applications/redevelopment proposals that are in process, and/or were the subject of applications filed prior to the adoption of OPA 406. In this regard, the above-noted rezoning application for the Subject Site was submitted well in advance of the release of the initial draft of OPA 406 in August 2017 and as such, the Subject Site should be exempted from the application of OPA 406.

In the event that the Subject Site is not specifically exempted from OPA 406, it is our opinion that transition provisions should be incorporated into OPA 406 so as to ensure that properties that are the subject of complete applications should be reviewed on the basis of the planning framework which was in force at the time they were filed. OPA 406 should not negate a process which was well underway prior to its release.

Should you have any questions or comments on the foregoing, please do not hesitate to contact the undersigned.

Yours truly,

Bousfields Inc.



Robert G. Glover MCIP, RPP, FRAIC, Architect (retired)

RGG/klh:jobs