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Via Email – teycc@toronto.ca and Courier

City of Toronto
Mayor and Members of Council
Toronto City Hall,
10th Floor, West Tower
100 Queen Street West
Toronto, ON M5H 2N2

Attention: Toronto East York Community Council

Dear Sirs/Mesdames:

Re: Main Street Planning Study
Proposed Official Plan Amendment No. 478

We are the solicitors for 9 Dawes Development Inc. and 25 Dawes Inc. with respect to their application for rezoning of the 9 – 25 Dawes Road property, which is within the area which would be affected by the potential official plan amendment captioned above (the "Proposed OPA"). On behalf of our clients we would like to take this opportunity to identify, on a preliminary basis, their concerns with the Proposed OPA.

At the outset, we submit that it would improve the transparency of the policy to explicitly provide for a transitional provision to grandfather existing complete applications. This would serve to grandfather our clients' application as it was filed in July. That said, our clients appreciate and support an underlying principle of the Proposed OPA that land uses near the confluence of two separate higher order transit lines should be intensified. However, they submit that the implementation of that principle as contemplated by the Proposed OPA has a number of difficulties.

As noted above, our clients' lands are the subject of a zoning by-law amendment application which would permit the redevelopment of the lands with two residential towers atop a shared, 5-storey mixed-use podium building adjacent to Dawes Road.

A general concern is that the Proposed OPA does not adequately acknowledge the new regime for community benefits that is provided for in the latest set of amendments to the *Planning Act*. For example, on its plain words it attempts to make the provision of "POPS" (section 2.4.1) mid-block connections (section 2.2.3) and affordable housing (section 9.1) mandatory, for which there is no statutory framework in this new regime, even putting aside the issues from a planning policy perspective with such a "one size fits all" approach. This problem is exacerbated by section 6.1. The wording of section 6.1 is problematic in any event: there is no

land use planning concept of "greater residential and non-residential uses". No use is "greater" than another. It would seem likely that there was an intent to refer to the density of such uses but such was not done. It is also problematic to say that development may not be "considered" until works are provided or secured since there can be no agreement to secure, nor works provided, without Council authorization, which requires Council consideration. However, the intent of Section 6.1 raises the biggest concern. All the infrastructure required therein to be provided, except for some "sustainability measures", is in Council's control, especially under the Planning Act's new community benefit regime. Therefore, considered in its totality, section 6.1 would give Council unfettered discretion to determine whether any development proceeds without any recourse being available to an applicant (short of amending the official plan) which we submit is both contrary to law and bad planning.

Similarly, we note that the parkland provisions in Section 2.3 are inconsistent with the new *Planning Act* community benefits regime. Further, the wording of these policies suggests that the City can require off-site dedication, which we submit is contrary to law. The existing "parent" official plan already has the provisions which are necessary to permit off-site dedication where both the landowner and City consent.

Another difficulty with the proposed OPA is the scale of space for non-residential uses required. While our client can support appropriate provisions for active uses at grade, we submit that the direction that a Tall Building within the "Employment Priority Area" "must provide dedicated non-residential uses generally on the first, second and third floors" is inappropriate. We submit that such a provision will serve to discourage intensification given the lack of demand for such space.

With respect to our clients' proposal, we note that it would provide a higher percentage of employment space per residential unit than is contemplated city-wide in forecasts of both employment and population done for the City, and it does so without providing employment space on the second and third floors.

More generally, we note that the City has already met its 2041 Growth Plan employment forecasts and recently has publicly taken the position that employment as a component of "complete communities" should be assessed on a City-wide basis. Accordingly, we submit that there is no justification for the imposition of a requirement which discourages intensification.

A further concern arises in respect of provincial and City policy promoting intensification. When considering the specific lands subject to the Proposed OPA in this context, the imposition of an arbitrary "transition" from a "height peak" (Section 1.7. and 7.3.3) is counter-productive. It serves to limit densities unnecessarily. We submit in distinction that tall building proposals should be analysed in terms of their localized relationships to adjacent properties and the public realm.

We would also submit that in general the built-form policies in Section 7, and in particular those in Section 7.3 respecting Character Area C, are unnecessarily prescriptive and more suited to a guideline rather than official plan policy. Again, as per our comment above, we submit that a building by building analysis based on the specific local relationships is preferable to "one size fits all".

However, our client disagrees that "skyline view studies" should form part of any such assessment. We submit such is necessarily subjective and thus arbitrary: the nature of the "composition" afforded by the "skyline" as might be viewed from an arbitrarily picked vantage point should not determine either the adequacy of intensification or neighbourhood fit. One particular issue is created by section 7.3.7, where on the plain words of the Proposed OPA the mere filing of an application for a "proposed tower" on any abutting property can serve to veto a tall building. In this respect we would note that as a matter of law an applicant need not be the owner of such an abutting property.

Thank you for your attention in this regard. Please do not hesitate to contact us in respect of the foregoing and please provide us with notice of any further consideration of this matter by Community Council, Council or any Committee thereof.

Yours truly,

Cynthia A. MacDougall
Partner

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