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NY10.42.8

Via Email and Courier

Mayor and Members of Council
City of Toronto
100 Queen Street West
Toronto, ON M5H 2N2

Your Worship and Members of Council:

**Re: Dufferin Street Avenue Study - Draft Secondary Plan
Reference No. 15 130874 NPS 00 OZ
Proposed Official Plan Amendment No. 294 ("OPA 294")**

We are the solicitors for the Building Industry and Land Development Association ("BILD"). BILD has been deeply involved in all of the aspects of the Comprehensive Review of the City of Toronto Official Plan. As you may recall in this respect OPA 199 was settled. However, at this juncture BILD remains an appellant to the City's proposed Official Plan Amendment No. 231 ("OPA 231") respecting policies related to various employment uses and lands. It is BILD's involvement in OPA 231 which gives rise to BILD's concern with OPA 294.

Among other things, OPA 231 addresses, on a city-wide basis, policies to address the relationship between lands used for industrial purposes and lands used as proposed to be used for sensitive uses which are proximate thereto. Although BILD disagrees with those policies (please see attached the Issues List provided by BILD in the OPA 231 proceeding), it does concur with the approach taken by the City to consider this topic on a city-wide basis.

However, the approval of OPA 294 would, as currently recommended by North York Community Council, pre-empt the determination of this important topic on a city-wide basis. It contains language which parallels that of OPA 231, and the staff report effectively acknowledges such. BILD believes this is an inappropriate and unfair method of creating public policy.

Substantively, BILD's issues in OPA 294 are essentially the same as Issues 1, 2, 3 and the relevant parts of Issue 9, adjusted for the circumstances, as set out on the enclosed Issues List for OPA 231.

Accordingly, BILD requests that you defer approval of OPA 294 and send it back to staff with directions to meet with BILD representatives and report back with a revised draft OPA which responds to BILD's concerns. In this regard we submit that it would be appropriate to delete all reference to the relationship between sensitive land uses and Employment Areas in OPA 294,

as OPA 231 will ultimately provide for an appropriate city-wide policy framework. Should further area-specific policies be required they should be set in the context of OPA 231 as approved and thus considered at a future time.

Thank you for your attention in this matter. Should you have any questions or wish to discuss this matter please do not hesitate to contact us.

Yours truly,

McCarthy Tétrault LLP

Per:



John A.R. Dawson

JAD/kf

PL140860 (OPA 231) ISSUES LIST

BUILDING INDUSTRY LAND DEVELOPMENT ASSOCIATION

1. Should provisions of OPA 231 intended to preserve and/or enhance the ability of existing and new businesses to emit contaminants be constrained by amendments thereto to provide explicit policy wording that acknowledges:
 - (a) That the emission of contaminants may engender eco-system-wide effects (e.g. watershed, airshed) which are not desirable;
 - (b) That the ability of business to control their production (and thus emissions) processes should in some circumstances render them responsible for the emissions to be visited upon proximate existing or new sensitive uses;
 - (c) That private businesses should not become a de facto planning approval authority able to render otherwise meritorious development impractical or impossible?
2. Should OPA 231 be amended in respect of the type of new business that is to be provided for, and the location of such, to minimize future new restrictions on the location of sensitive uses on account of the new business?
3. Should OPA 231 be amended to permit Council, when appropriate, to allow the statutory regulatory processes directly related to the emission of contaminants to operate to provide for appropriate environmental conditions instead of automatically shifting the entire burden for such to a sensitive use which serves as the receptor of such contaminants?
4. Should OPA 231 be amended so that the considerations for future potential conversions reflect the matters raised in Issues 1, 2 and 3 above?
5. Should OPA 231 be amended to delete any requirement to increase office space within 500 metres of rapid transit stations, Downtown, Centres or the Central Waterfront and:
 - (a) Are such requirements illegal as an attempt to enable conditional zoning without meeting the statutory preconditions therefor?
 - (b) Is it desirable to proceed with the mandatory regulation represented by this requirement without any demonstration of the need therefor?
 - (c) What are the implications for redevelopment and on the market for office space that would be engendered by a requirement to increase office space within 500 metres of rapid transit stations and are the public policy implications thereof desirable?
 - (d) Does the mandatory regulation represented by this requirement facilitate and promote residential intensification, optimize the use of land and public investment in rapid transit infrastructure, and minimize the cost of housing?

- (e) Is the mandatory regulation represented by this requirement necessary to ensure sufficient land is made available to accommodate office uses in the City of Toronto for a time horizon of up to 20 years?
 - (f) Is the mandatory regulation represented by this requirement necessary to ensure sufficient opportunities are provided for major office uses in Toronto's urban growth centres, major transit station areas and areas with existing frequent transit service or existing or planned higher order transit service?
6. Should OPA 231 be amended such that it acknowledges that retail uses which are not amenable to a fine grain of entrances may be a necessary part of a mix of land uses that:
- (a) Meets the long term needs of current and future residents;
 - (b) Minimizes the length and number of vehicle trips; and
 - (c) Supports current and future use of transit and active transportation?
7. Should OPA 231 be amended to remove policies intended to enable mandatory restrictions on commercial unit size; and
- (a) Are these policies necessary to ensure sufficient opportunities are provided for small business in Toronto?
 - (b) Will the mandatory restrictions promote small businesses (as intended) or will they promote businesses of all sizes that use small retail spaces?
 - (c) Is the objective of promoting small business appropriately balanced with the provincial planning policy objectives of providing a mix of uses that:
 - (i) Meets the long term needs of current and future residents;
 - (ii) Minimizes the length and number of vehicle trips; and
 - (iii) Supports current and future use of transit and active transportation.
8. Should OPA 231 be amended to revise policies applicable to "major retail" in General Employment Areas outside of the Downtown and Central Waterfront to apply to only large format retail, whether stand alone or agglomerated in to "power centre" format?
9. Should OPA 231 be amended generally as set out in the attached Appendix?
10. Are Policies 2.2.4.9 and 2.2.4.12 appropriate and are they consistent with the Provincial Policy Statement and do they conform with the Growth Plan? Do these policies unduly and inappropriately restrict the matters to be considered in assessing the desirability of a conversion?

APPENDIX

Section 2.2.4, third paragraph should be amended to read as follows:

Maintaining Employment Areas exclusively for business and economic activities provides a stable and productive operating environment for sustainable and environmentally responsible business, that also attracts new firms. New sensitive land uses within Employment Areas should only be permitted in accordance with the policies of this Plan. Where new sensitive land uses are located outside of, but in close proximity to, Employment Areas, adequate mitigation of the impacts from noise, traffic, odours or other contaminants from nearby industry should be provided for.

Policy 2.2.4.3 should be revised to read as follows:

3. A more intensive use of lands in Employment Areas for sustainable, environmentally responsible and contextually compatible business and economic activities will be encouraged to make better use of a limited supply of lands available for these activities.

Policy 2.2.4.4(a) should be revised to read as follows:

4. Employment Areas will be enhanced to ensure that they are attractive and function well, through actions such as
 - a) permitting a broad array of economic activities that encourage, where contextually compatible, existing businesses to expand or diversity into new areas of sustainable and environmentally responsible economic activity and facilitates firms with functional linkages to locate in close proximity to one another:

Policy 2.2.4.5 should be revised to read as follows:

5. New residential and other sensitive land uses outside of, but adjacent or near to, Employment Areas may require mitigation to appropriately address adverse effects from noise, vibration, traffic, odour and other contaminants upon the occupants of the new sensitive development. Where such is the case, in determining the scope of regulation to employ under the *Planning Act* Council may consider the implications of other statutory regulation of contaminants and the desirability of environmental sustainability.

Policies 2.2.4.12 (e), (h), (n), (o), (p) are revised to read as follows:

12. During Municipal Comprehensive Review, the City will assess requests to convert lands within Employment Areas, both cumulatively and individually, be considering matters such as whether:

(e) the conversion(s) will adversely affect the overall viability of the Employment Area, and maintenance of a stable operating platform for contextually compatible, environmentally responsible and sustainable business and economic activities with regard to the:

(h) potential adverse impacts on new sensitive uses may be mitigated by the offending business or economic activity, and the business implications of that mitigation:

(n) the conversion addresses Policy 2.2.4.5

(o) delete

(p) delete

Section 3.5.1, second paragraph should be revised to delete the balance of the paragraph after the words "within 500 metres of rapid transit stations."

Policy 3.5.1.6 should be revised to read as follows:

6. New office development will be promoted in Mixed Use Areas and Regeneration Areas in the Downtown and Central Waterfront and Centres, and all other Mixed use Areas, Regeneration Areas and Employment Areas within 500 metres of an existing or approved and funded subway, light rapid transit or GO station.

Policy 3.5.1.9 should be deleted.

Section 3.5.3.3 should be revised to read as follows:

3. Street related retail should generally be provided at the base of larger developments in Centres, Avenues, on streets adjacent to higher order transit, and important pedestrian streets to promote pedestrian use, where feasible and appropriate. A fine grain of entrances is generally encouraged, but it is recognized that some retailers which cannot operate with a "fine grain of entrances" due to format size or otherwise can provide an important service amenity and should be permitted.

Policy 3.5.3.5 should be amended to read:

5. In order to provide local opportunities for small businesses and maintain the safety, comfort and amenity of shopping areas, zoning regulations for ground floor commercial retail uses in new buildings in new neighbourhoods or in Mixed Use Areas along pedestrian shopping strips where most storefronts are located at the street line, may provide for the exemption from the otherwise permitted gross floor area provisions for

store or commercial units of a maximum size and minimum first-storey height as set out therein based on the following considerations:

Policy 4.6.4 should be revised to read as follows:

“Large-Scale Stand Alone Retail Stores and Power Centres may be considered in General Employment Areas outside of the Downtown Central Waterfront on lots that front onto and have access to major streets as shown on Map 3, through the enactment of a zoning by-law where the following matters are addressed to the City’s satisfaction:

The following definitions should be added as policies to Section 4.6 “Policies for All Employment Areas”:

xx Definitions:

Large-Scale Stand Alone Retail Store means a single retail unit that has a gross floor area of at least 6,000 squares metres and is the only retail unit on the lot

Power Centre means a single lot with more than one retail unit at least one of which has a gross floor area of 6,000 square metres or greater