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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
City Initiated Official Plan Amendment No. 15 130874 NPS 00 OZ)
Proposed Official Plan Amendment No. 294 ("OPA 294")**

We are the solicitors for C.Y. Vehicle Enterprises Inc., the owner of lands known municipally as 3130 Dufferin Street located at the southwest corner of Dufferin Street and Apex Road. Our client participated extensively in the community consultation process described in the "Dufferin Street Secondary Plan City Initiated Official Plan Amendment – Final Report". However, OPA 294 does not reflect our client's submissions in that process and accordingly, it has significant concerns therewith.

These concerns are numerous, and are inter-connected as a result of the inter-connectedness of policies within OPA 294. In an attempt to avoid the length that would be entailed in articulating every issue, below we set out certain of the key principles underlying our client's objections by way of example only.

Density and Density Distribution

At the outset, the proposed density distribution seems unlikely to be realizable, includes an inherent element of self-contradiction, and does not appropriately acknowledge the implications of either the location or size of the site in question.

The density distribution is unrealizable as it generally provides for the highest densities on sites which cannot physically accommodate the assigned densities within a practical and economic built form due to the sites' configurations and locations. Specifically, OPA 294 proposes to attribute the plan's highest density, being an FSI of 3.5, to the lands on the east side of Dufferin, but not at the landmark entrances/nodes for the Secondary Plan Area. These sites are generally the narrowest and/or shallowest of the properties in the precinct which are contemplated for redevelopment in OPA 294. They are immediately adjacent to low density residential housing. They generally appear to be in multiple ownerships and therefore, generally need to be assembled to achieve sufficient site size/configuration to achieve, for

example, workable below grade parking necessary to the achievement of the proposed density. Further, but perhaps more importantly, would be the application of the City's angular plans in response to the low density residential lands to the east, which constrains the achievable built form.

In distinction, larger sites on the west side of Dufferin are to be limited to an FSI of 3 or 2.5 notwithstanding the ability of these larger lots to better internalize impacts and the fact that OPA 294 intends that these larger sites will provide for an enhanced public realm of streets and parks. Such lands are adjacent to an employment area to the west where impact concerns are of a different and lesser nature than those on residences. These lands are also separated from single family residences on the east side of Dufferin Street by both the full Dufferin Street right of way and by the planned redevelopment of properties fronting the east side of Dufferin Street.

Our client's lands form the northerly part of "Block 8" and are therefore part of a node adjacent to Lawrence Avenue West (with easy access to both Dufferin and Lawrence surface transit) The attribution of higher densities to properties with both greater impact on existing residential uses and with lesser access to transit is counter-productive when assessed against existing official plan policies in those respects.

The self-contradiction in the density policies stems from the fact that unlike more typical official policies, which set maximum permitted densities, in the case of OPA 294 the density of new development "will be consistent with the maximum gross densities shown in Map 36-11". Thus densities must be high enough to be "consistent" with the maximum gross densities but these maxima are unlikely to be achieved on the 3.5 FSI lands east of Dufferin.

Furthermore, again on the plain words of OPA 294, whereas the 3.5 FSI would appear to be a real gross density number, albeit practically unrealizable, the 3.0 and 2.5 FSI figures on the large lots west of Dufferin appear to be lower than they nominally suggest because policy 11.3 states that "Net FSI calculations will exclude new public streets, parkland, and existing local public streets." By excluding such lands from the calculations but capping the FSI at 3.0 or 2.5, the actual density will be significantly lower.

Finally, it appears that the cumulative density attributed to all sites is being treated as an overall area "cap", whereas our review of the background reports would suggest that an area-wide cap need not be so limited.

Height and Built Form

Related to the above, the directions related to, and the distribution of, height provided for in OPA 294 is also problematic for our client.

In the circumstances of my client's site, being proximate to employment uses, building height organized into tower form amenitizes the residential units and accommodates desirable built form in the context of an enhanced public realm, all with no material impact on any existing residential neighbourhood due to this site's relationship to the broader employment area to the west where matters such as privacy, overlook, shadow effects, etc. are less relevant. It thus assists in providing the critical mass necessary to support the commercial uses at grade which OPA 294 mandates or encourages, depending on location, to enliven the corridor. Further,

these positive attributes reinforce the existing and emerging structure of a node adjacent to Lawrence Avenue.

Thus our client objects to provisions of OPA 294 which would prevent the inclusion of a tower on our client's property, including explicit directions to limit tall buildings to lands further south, the creation of new roads which explicitly purport to provide a new boundary for tall buildings and providing directions both through OPA 294 and through the accompanying design guidelines (our client also objects to the elevation in status of this non-statutory instrument attempted by OPA 294) that new development should embody a built form transition to the employment lands to the west.

Pre-empting OPA 231: The Relationship of Mixed-Use to Employment Areas

With respect to these employment lands, our client also objects to the proposed new policies which purport to either implement, or set up a parallel regime, to the City's proposed Official Plan Amendment No. 231 ("OPA 231") to govern the relationship of sensitive uses to industrial uses. OPA 231 is under appeal, and the very provisions thereof which OPA 294 parallels are clearly in issue in that proceeding. We submit that it is fundamentally more appropriate that such policies be resolved, at least prima facie, on a city-wide basis. Having done so, site or area specific provisions may be unnecessary and, if not, any localized conditions which might merit a policy response could be assessed against a robust, in-force framework. That said, as written the provisions of OPA 294 are simplistic, arbitrary, and would appear to suffer from the same deficiencies as do the corresponding provisions in OPA 231, as are apparent from the issues list submitted by the Building Industry and Land Development Association in that proceeding as it relates to that topic, which our client adopts for the purposes of OPA 294 (copy enclosed). For example, physical separation distances are simply one means of achieving land use compatibility between employment and sensitive land uses, depending upon the nature and functioning of each use.

Land Use Designation

Furthermore, we submit that OPA 294 effectively is seeking to re-write the boundaries of the Employment Areas designation, moving it to immediately adjacent to our client's site. Given the burdens which OPA 294 seeks to visit upon lands adjacent to employment areas, this move inappropriately limits the opportunity to provide for intensification on my client's property in accordance with its Mixed Use Areas designation. It also creates the situation where if a public road is created towards the western portion of my client's lands it will serve as a public road for a residential development to the east but effectively as a rear laneway for employment uses to the west, diminishing the quality of the public realm and unnecessarily encouraging the mix of industrial and residential traffic.

Implementation

With respect to the proposed holding zone regime while it is not disputed that development requires adequate servicing, this regime does not provide for the fair and timely provision of services and allocation of costs thereof.

With respect to the proposed "block planning", putting aside the issues with the proposed new public roads and the distribution of height and density contemplated by the provisions for "Block

8", the potential delay of development while the "block planning" process proceeds (or does not proceed because of varying landowner interests) would be unnecessary if OPA 294 provided for a proper framework. An associated issue is the requirement for a plan of subdivision on enumerated "blocks", which is not necessary to the stated goal of creating new streets and blocks.

Conclusion

Our client's property is currently the subject of an application for rezoning and has been appealed to the Ontario Municipal Board. While it is our client's position that OPA 294 should not apply to that application at this juncture, and in consideration of our client's concern with the area planning context beyond its property, it has articulated the above preliminary concerns.

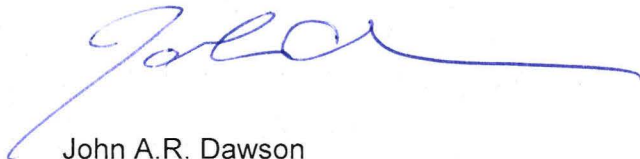
We submit that the examples above demonstrate fundamental problems with OPA 294. We respectfully request that it not be approved at this time, and instead that staff be directed to meet with us and report back to North York Community Council on the matters raised in this letter and on those discussions. Should OPA 294 be adopted in its current form our client would be compelled to object.

Thank you for your attention in this regard.

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