

VIA EMAIL: pwic@toronto.ca

File: 106259
May 13, 2015

Members of Public Works and Infrastructure Committee
Toronto City Hall
10th floor, West Tower, City Hall
100 Queen Street West
Toronto, ON M5H 2N2
c/o Dela Ting, Secretariat Contact

Dear Chair and Members of Committee:

**Gardiner Expressway and Lake Shore Boulevard East Reconfiguration
Environmental Assessment (EA) and Integrated Urban Design Study - Updated
Evaluation of Alternatives
Public Works and Infrastructure Committee Meeting – May 13, 2015
Item No. PW4.1**

This firm represents 3C Lakeshore Inc. ("3C") with respect to lands in the Keating Channel Precinct at the southeast quadrant of Lake Shore Boulevard and Cherry Street, municipally known as 429 Lake Shore Boulevard and 324 Cherry Street, City of Toronto.

We have reviewed the staff report from the Deputy City Manager together with background materials concerning the evaluation of alternatives for the Gardiner Expressway from Lower Jarvis Street to Logan Avenue (the "Gardiner East"). We understand that staff are seeking direction from City Council with respect to the preferred alternative for the Gardiner East and staff's position that given the state of disrepair of the Gardiner East, a decision on this matter is urgent.

We are writing to urge the members of Public Works and Infrastructure Committee to select or support a decision in the near future that approves the option which **removes the Gardiner East** and replaces this infrastructure with an at-grade eight-lane Lake Shore Boulevard as the preferred alternative. For the reasons that follow, there is no public benefit in any substantial delay of a decision on the future of the Gardiner East, nor is there sufficient public benefit in the hybrid alternative.

Implications of the Hybrid Option on 3C Lands

Our client's lands comprise approximately 14 acres within the Keating Channel Precinct Plan, bounded by Trinity Street to the west, Lake Shore Boulevard to the north, existing Cherry Street to the east and Lake Ontario to the south. The 3C site will support approximately 2.5 million square feet (232,257 square metres) which will generate active public spaces, new parkland, street-level animated commercial uses, employment, the provision of affordable rental housing and a vibrant waterfront community. 3C has assembled an international team of architects, designers and advisors with the goal of designing a development, which reflects the importance of the waterfront to this City.

As referenced in the staff report, the option to **remove** the Gardiner East in the context of the Keating Channel Precinct "would best accommodate existing plans for Keating district and create additional opportunities not currently provided in the Keating Precinct Plan". Removal of the Gardiner East also "offers the best opportunities to optimize block patterns, road alignments, parks and public spaces in North Keating". The removal option will "free lands adjacent to the channel to maximize its potential as the focus of public realm" and "would create 7.4 acres of additional redevelopment land in the Keating precinct", lands which would not be available if the hybrid option were selected.

Our client's team has been working for the past several years to refine the plans for development of its lands. This has included working with the City of Toronto and Waterfront Toronto in an Ontario Municipal Board-led mediation to resolve its appeals of the Central Waterfront Secondary Plan and the Keating Channel Precinct Zoning By-law. At this late date, our client is impacted by lack of consultation and seeming ignorance by those involved in the environmental assessment process of the lengthy planning discussions that have occurred. As acknowledged in the staff report, the hybrid option will directly and detrimentally impact the emerging settlement of our client's appeals and, we submit, threatens the success of the City's waterfront redevelopment within this precinct. More specifically, the new off-ramp for the Gardiner East, as required by the hybrid option, will result not only in the expropriation of a portion of the 3C lands but also the destruction of the planned Waterfront Promenade linking these lands to the remainder of the eastern waterfront, and loss of potential development of City-owned lands within the Keating Channel Precinct.

Notwithstanding that the City has been studying the hybrid alternative for over a year (since being given direction by Public Works and Infrastructure Committee on March 4, 2014), in our opinion, it has not thoroughly reviewed the implications of the hybrid option on private lands, including the potential for delays to the environmental assessment process as a result of staff's failure to consult with key stakeholders. It should also be noted that despite the significant impact of the hybrid option on the 3C lands, including the impediments for a settlement of our client's appeals to be realized, City staff failed to discuss the hybrid option with our client.

A decision with respect to the future of the Gardiner East also has implications that reach well beyond lands within the Keating Channel Precinct. It is our position that the City's review is flawed, has failed to give due consideration to the benefits and drawbacks associated with the hybrid alternative, and lacks a thorough assessment of the long-term impact of this option.

Undisclosed Costs of the Hybrid Option – City-Wide

The staff report and associated background study describes the capital costs associated either alternative. Staff have concluded that the capital cost of implementing the hybrid option will cost the City \$107 million more than the option to remove the Gardiner East. The report however, is flawed as it does not assess the cost of the hybrid option net of:

- (a) the loss of development opportunity of City owned lands;
- (b) the loss in property taxes and other financial sources (development charges, fees

- etc.) that would have been generated by the City from development of privately owned lands;
- (c) the cost of expropriation and costs associated with injurious affection claims in connection with the City's taking of lands (such as our client's) to accommodate the hybrid option;
 - (d) the additional costs associated with the implementation of the hybrid option, money which could have been dedicated towards other competing City priorities (i.e.: funding towards the provision of transit such as SmartTrack and the Waterfront LRT, etc.);
 - (e) the City's resources (financial, time and otherwise) expended (potentially unnecessarily) towards resolving existing appeals (such as our client's Ontario Municipal Board appeals) and the potential cost of litigation arising from the unravelling of such settlements;
 - (f) the costs to the City as a result of delays in the City realizing its waterfront redevelopment vision until (and unless) any consequential litigation is resolved;
 - (g) future cost associated with maintaining an old, elevated expressway as compared to maintaining new infrastructure at grade; and
 - (h) loss of opportunity to revitalize the City's waterfront.

Hybrid Option Benefit Assessed On Only One Factor

For the reasons set out above, we do not believe that the hybrid option has been studied in sufficient detail to permit this Committee to fully understand implications (both short- and long- term) of a decision to proceed with the hybrid proposal. The hybrid option was motivated in response to one land developer's proposal and is being assessed mainly, if not exclusively, on the basis of mitigating congestion. Traffic congestion and vehicle travel times ought not to be the only, or major factor in determining the best alternative for the Gardiner East and the future of the City's waterfront.

The staff report is clear that the only perceived benefit of the hybrid option is shorter vehicle travel times and less traffic disruption during construction on which the hybrid option is estimated to result a more favourable result. In fact, the hybrid option only modestly improves travel time (i.e. a reduction in vehicle travel time of 3 minutes) when calculating the average commute to Union Station from the intersection of Victoria Park Road and Finch Avenue, for example, as compared to maintaining the Gardiner East in its current condition. It should also be noted that of all downtown commuter trips in the AM peak hour, considering all modes of travel, only 7 percent of the trips to the downtown core are served by the Gardiner Expressway between Bathurst Street and the DVP, and of that 7 percent, only 3 percent use the Gardiner East.

Benefits Forgone if Hybrid Option is Selected – City-Wide

The staff report recognizes that there is potential for significant long-term economic benefits in removing the Gardiner East. This surely was a reason why Council preferred

the remove option in 2014. In fact, aside from the projected modest benefit of the hybrid option related to traffic disruption during construction or the modest improved vehicle travel times, the option which removes the Gardiner East is unquestionably the better option. In our submission, the potential for significant economic and public benefits associated with the remove option far outweigh that of the hybrid option.

In our submission, the significant emphasis being placed on the advantage to vehicular traffic of the hybrid option (which are short-term and modest at best), have ignored the various important and substantial benefits which would be realized by the **remove** option by the City of Toronto, Waterfront Toronto, and the landowners in East Bayfront and Keating Channel alike. Improvements in urban design, the creation of new public spaces and an enhanced public realm, improved connectivity and overall infrastructure, in particular as it relates to transit, pedestrians and cyclists, and the potential for land value creation associated with the alternative to remove the Gardiner East should prevail over the modest and singular advantage of improved vehicular travel times offered by the hybrid option. Furthermore, what has been missed in staff's assessment is a thorough review of the benefits that could be realized if various transit projects were implemented following a decision to remove the Gardiner East. The Committee should not be rushed to decide immediately on the future of the Gardiner East and certainly not until all studies associated with the transit options and the proposals for expansion are available for consideration.

In summary, we recommend that the City seize the opportunities related to economic development, improved transportation and transit, and the beautification of the Toronto waterfront that will be generated by a decision to remove the Gardiner East. If Council is not prepared to approve removal at this time, we reiterate the flaws in both the process and conclusion of the analysis of the Hybrid Option and submit it should NOT be approved: before a decision can be made with respect to the hybrid alternative, further studies are required to test the assumptions and conclusions arrived at in the staff report and to ensure that this Committee fully understands the implications to the City of the hybrid alternative.

We will be in attendance at the Public Works and Infrastructure Committee meeting scheduled for May 13, 2015 and look forward to addressing the Committee on this matter.

Yours truly,

AIRD & BERLIS LLP



per. N. Jane Pepino, C.M., Q.C., LL.D.

NJP/SJL/sh

cc: Councillor Pam McConnell
John Livey
Client

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