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May 11, 2015

By E-Mail to scc@toronto.ca

Scarborough Community Council
Scarborough Civic Centre
3rd Floor, 150 Borough Drive
Toronto, Ontario
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Attention: Yvonne Davies, Committee Secretariat

Dear Ms. Davies:

**Re: Ellesmere Employment Study – Final Report
Agenda Item: SC6.14**

We are counsel to Principal 21 Inc., the owner of lands municipally known as 21 Principal Road in the City of Toronto, which is located within the area subject to the City-initiated Ellesmere Employment Study (the “Lands”).

We have had an opportunity to review the final report for the Ellesmere Employment Study prepared by the Acting Director, Community Planning, Scarborough District, dated April 24, 2015, which we understand will be considered by Scarborough Community Council at its meeting on May 12, 2015.

As set out below, we are writing to express our client’s objection to the draft zoning by-law amendment that is appended to the staff report.

By way of background, our client filed a Site Plan Application (Application File No. 13 113297 ESC 37 SA) with the City on January 29, 2013 to permit a recycling facility on the Lands. The City’s Planning Division subsequently confirmed that the application satisfied the City’s application submission requirements in a letter dated March 1, 2013.

During the processing of the site plan application, City Council enacted Interim Control By-law No. 1431-2013 (the “Interim Control By-law”) on November 14, 2013, which had the effect of prohibiting “Recycling”, as defined in the Scarborough Employment Districts Zoning By-law No. 24982, and “Recovery Facilities”, as defined in the new City’s Zoning By-law No. 569-2013, within the area of the “Ellesmere East Employment Node” for an initial period of one year.



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Principal 21 Inc. appealed the Interim Control By-law to the Ontario Municipal Board (the “OMB”) and also referred its site plan application to the OMB, both of which were scheduled for a hearing in September 2014. During the course of the OMB hearing, we resolved all outstanding issues with City staff. As a result, the OMB heard evidence from witnesses for both Principal 21 Inc. and the City in support of both an amendment to the Interim Control By-law that would exclude the Lands from the Interim Control By-law and the approval of the site plan application subject to a series of conditions.

In a Decision and Partial Order dated September 29, 2014, the OMB amended the Interim Control By-law to exclude the Lands, and thereby allow “Recycling” to continue as a permitted use on the Lands. At the same time, the OMB approved the site plan application to permit the proposed recycling facility, subject to a number of conditions, but withheld its final Order pending confirmation that certain pre-conditions had been satisfied.

Based on our understanding of the draft amendment to the Employment Districts Zoning By-law No. 24982, which is appended to the staff report as Attachment 1, it is proposed that the recycling of certain types of materials would be prohibited on the lands that are subject to the by-law, but that there would also be a further site-specific exception that would exempt from this prohibition “the erection or use of a building or structure for a construction and demolition waste material recycling facility” on the Lands, albeit limited to the facility proposed in the January 2013 site plan application.

Although we appreciate staff’s willingness to provide a site-specific exception for the Lands, it is our view that the exception, as currently proposed, is unnecessarily restrictive and fails to recognize that recycling is an appropriate use to continue to be permitted on the Lands in the zoning by-law, and that any compatibility concerns can be addressed through the site plan approval process, as reflected by the recent conditional approval by the OMB.

More specifically, our primary concerns with the proposed Exception No. 848 include the following:

1. By limiting the exception to the proposed facility that was the subject of the 2013 site plan application, it does not appear that the proposed exception would continue to apply if an amended site plan application were to be filed in the future;



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2. The proposed exception only speaks to the “erection or use of a building or structure”, whereas a recycling facility (including the proposed facility on the Lands) can also include activities that take place outside of a building or structure; and
3. By limiting the exception applicable to the Lands to a “construction and demolition waste material recycling facility” and, at the same time, by distinguishing between “building construction and demolition waste material” and other types of materials that may be recycled in proposed Exception No. 847, it might be interpreted that the type of materials that could be recycled on the Lands would be limited to a narrowly defined view of “construction and demolition waste material”. By contrast, according to the Ellesmere Employment Study Final Report, at pages 29-31, it is generally anticipated that building construction and demolition waste materials may include a wide range of materials including, among others, concrete, asphalt and asbestos, each of which is specifically identified as distinct from “building construction and demolition waste material” in Exception No. 847.

As a result, Principal 21 Inc. cannot support the draft zoning amendment in its current form. However, we would be prepared to work with City staff to determine whether the draft amendment could be revised in a manner that would satisfy our client’s concerns.

As is evident by the OMB hearing that was ultimately resolved, we are confident that by working cooperatively with City staff we will be able to find a solution that is both acceptable to our client and, at the same time, satisfies the City’s interests. Thus, we request that Scarborough Community Council direct staff to work with our client and its representatives in an effort to resolve its concerns prior to the draft zoning by-law amendment being forwarded to City Council for its consideration.

We trust that you will give due consideration to this submission.

Kindly ensure that we receive notice of any decision(s) by Community Council and/or City Council in respect of this matter.



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Yours truly,
DAVIES HOWE PARTNERS LLP

A handwritten signature in blue ink, appearing to read "Mark R. Flowers".

Mark R. Flowers
Professional Corporation

copy: Client
Billy Tung, KLM Planning Partners Inc.