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VIA EMAIL

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

Attention: City Clerk

Attention: Administrator, Community Planning, Toronto and East York District

Your Worship and Members of Council:

**RE: City-Initiated Request to Amend the Official Plan and Zoning By-law
City Application No. 16 103066 SPA 00 OZ
Alterra Development Group
Request for Deferral and Preliminary Concerns**

We are the lawyers for Alterra Development Group (“Alterra”). Our client, and related entities, own several sites within the Downtown, including properties at 18-32 Eastern Avenue, 159 Wellesley Street East and 520 Richmond Street, which are each at different stages in the redevelopment process. In addition to these sites, Alterra has general development interests within the City of Toronto, including the Downtown.

On behalf of our client, we are writing to provide our concerns with the process employed by City Staff in advance of the statutory public meeting, as well as our preliminary concerns with the proposed Official Plan Amendment (the “**Proposed OPA**”) and Zoning By-law Amendments (the “**Proposed ZB Amendments**”).

Request for Deferral

The City has only very recently made available for public review a copy of the draft Proposed ZB Amendments, which is insufficient to provide the public with a meaningful opportunity to review this draft in advance of the statutory public meeting. In our view, late release of the Proposed ZB Amendments in these circumstances constitutes a serious departure from natural justice, given the significant impact that the proposed amendments will have on zoning permissions.

Importantly, the Proposed ZB Amendments in their current form are incomplete, with notations inserted for “Staff to list” site specific by-laws that permit towers, which will not be subject to the proposed zoning amendments. Accordingly, at this juncture it is not possible for property

owners to determine whether preexisting development approvals will be transitioned from the new proposed zoning framework. This is of particular concern for the property at 159 Wellesley Street East, which was the subject of a zoning by-law amendment (By-law No. 826-2013) to permit a 36-storey tower. To the extent that the proposed planning framework derogates from existing development permissions for any of our client's sites, our client objects thereto.

The failure to provide the public with a meaningful opportunity to review the Proposed ZB Amendments well in advance of the statutory public meeting further undermines an important City-building policy in the City of Toronto Official Plan, which directs that "the City and the private sector should work together as partners in creating a great city and achieving Toronto's architectural and urban design potential." In our respectful submission, the process leading up to the statutory public meeting fails to account for the important perspective and value that the private sector and the development community in particular brings in the iterative discussion that is required to develop and implement good planning policy.

To the extent that the Proposed ZB Amendments are intended to implement the Proposed OPA, we submit that the City should ensure that both instruments are available for consideration well before City Council's consideration thereof, so that the public is able to fully discern the policy intention and implications of the proposed framework.

We request that Community Council defer consideration of this item to enable a fulsome opportunity for the public to consider the proposed planning framework for tall buildings.

Preliminary Concerns

Based on our preliminary review of the Proposed OPA and ZB Amendments, the framework appears to contemplate a "one-size fits all" approach to the review and regulation of the development of tall buildings within the Downtown. In our view, this approach is fundamentally flawed. A more flexible framework is required to adequately respond to contexts within the Downtown that provide an appropriate opportunity for tall building typology even though they may not meet the base standard contemplated by the Proposed ZB Amendments. A more flexible approach is required as a matter of growth management in the City, in order to ensure the implementation of provincial policy that requires the optimization of land use and infrastructure.

The above concerns are particularly manifest with proposed Policy 517(B)(ii) of the Proposed OPA, which states that "Not every site in the Downtown can accommodate a tall building." The Proposed OPA in turns references certain criteria that are intended to inform the determination of whether a given site is appropriate for a tall building. The Proposed OPA further states that the implementing zoning by-law will contain "minimum numerical standards" for tall buildings in the Downtown. The general approach appears to be an attempt to enshrine as Official Plan policy what are currently "guidelines" to be considered in the review of a proposed tall building, which contemplates a more rigid application of zoning standards in the place of guidelines.

The Proposed OPA contains a standalone policy stating that "As building heights increase, greater lot line setbacks may be required from the tower to the lot line to achieve the intent of

Policy B(i).” According to the Staff Report, this policy is intended to apply to “super” tall buildings. However, there is no specific standard to implement this policy direction in the Proposed ZB Amendments. Rather, the Staff Report states that “Further study on “super” tall buildings is currently underway and additional information and policies are forthcoming.” City Staff are not able to provide specific direction on what the implications of the proposed policy will be. As a result, the public is not able to discern the implications of this proposed policy, and what future zoning amendments Staff may propose moving forward. We respectfully submit that this proposed policy direction is clearly premature.

The Staff Report further sets out an operating assumption that “it is expected that most tall building proposals will comply with the proposed Zoning By-law performance standard,” which appears to be based on Planning Staff’s experience over the past 10 years of development review. This position effectively constitutes a general predetermination of tower proposals without the benefit of a more contextual assessment of the various areas that make-up the Downtown, thereby eliminating the more contextual/sensitive approach that the City and development community have undertaken for a decade. Such a predetermination fails to acknowledge the evolving nature of development within the Downtown, including in areas that are currently underdeveloped and provide appropriate locations for the level of intensification contemplated by taller buildings despite not fitting a general fabric of land parcels and tower relationships that may exist in other areas of the City.

The proposed framework does not differentiate between land uses. Rather, the Staff Report states that tall buildings, regardless of the proposed use or the use of adjacent towers, will be required to meet the same development standards set out in the Proposed ZB Amendments. The failure to acknowledge the unique relationships that may exist between towers that contain non-residential uses, or between a residential tower and a non-residential tower, is a clear failure to recognize the different urban contexts that exist in various mixed-use settings. This failure also directly undermines a general Provincial and City policy objective of encouraging the development of office employment uses in the Downtown, which we submit requires a more flexible framework than that contemplated by the Proposed OPA and ZB Amendments.

The Proposed ZB Amendments fails to provide transitional provisions for existing “pipeline projects,” which raises concerns of fairness in the planning process given the potential for significant prejudice and uncertainty for projects moving forward. The Final Staff Report dated May 27, 2016 suggests that transition for projects currently in the development pipeline will be considered based on the planning framework that applied at the time of the application “and will be looked at on a case-by-case basis.” We respectfully submit that matters of transition should not be treated in a discretionary manner. To the extent that the City is justifying the Proposed ZB Amendments as an implementation of the Proposed OPA, the principles of “Clergy” apply and warrant objective transitional provisions to ensure that pipeline projects continue to be processed and reviewed on the basis of the in-force policy and zoning framework.

We hereby request notice of Community Council’s deliberations and decisions in this matter and of any resulting official plan amendment and/or zoning by-law amendment(s), as well as notice

of any deliberations and decisions in this matter by any other committee of Council and City Council.

Thank you for your consideration of this matter.

Yours truly,
Overland LLP

FOR 

Per: Daniel B. Artenosi
Partner
c. R. Cooper (Alterra)