

May 30, 2017

Our File No.: 135257

BY EMAIL

Chairman and Members,  
Planning and Growth Management Committee,  
City of Toronto,  
City Hall, 100 Queen Street West  
10<sup>th</sup> Floor, West Tower,  
Toronto, Ontario, M5H 2N2

**Attention:** Nancy Martins, Secretariat, Planning and Growth Management Committee

Dear Chair and Members:

**Re:       Item: PG 21.4**  
**Port Lands Planning Initiatives – Interim Report**  
**Planning and Growth Management Committee Meeting – May 31, 2017**

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We act on behalf of 2034055 Ontario Ltd., the owner of the property municipally known as 309 Cherry Street (the "Site"). The Site is located at the intersection of Cherry and Villiers Streets in the Port Lands' Villiers Island Precinct.

We, along with our client, have had an opportunity to review the "*Port Lands Initiatives – Interim Report*" dated May 16, 2017 and are writing to express our client's concerns with the proposed official plan amendment in its current form, as well as with the proposed process of endorsing draft documents prior to resolving any outstanding matters with stakeholders and ultimately before they are brought forward to City Council in their final form.

### **Background**

It is our client's intention to develop the Site in phases and over the long-term. The Site is currently subject to two rezoning applications. A zoning by-law amendment application for the Phase 1 lands was submitted in March, 2012 and was appealed to the Ontario Municipal Board in October, 2014 as a result of Council's lack of decision on the application within the statutory timeframe.

A zoning by-law amendment application was filed with the City for the Phase 2 lands on December 30, 2016. While a Preliminary Staff Report dated March 17, 2017 was before the Toronto and East York Community Council ("TEYCC") on April 4, 2017 respecting the Phase 2 application, consideration of this matter was deferred *sine die*.

To our client's dismay, advancement of the Phase 1 appeal and consideration of the Phase 2 application is being stymied until other related Central Waterfront initiatives have been completed. Our client has consistently communicated its concerns with respect to

the various delays experienced in the City advancing the Port Lands Planning Initiates, in particular since, staff have taken the position that our client's applications/appeals are premature until the Port Lands Framework Plan and the Villiers Island Precinct Plan Process is complete. While our client takes the position that its applications/appeals ought not be considered in isolation from, and should not lag behind, the Port Lands Framework Plan Process, our client is pleased that substantial progress has been made respecting this initiative and is appreciative of their efforts to date.

Over the past several years, our client has continued to actively participate in the Port Lands Acceleration Initiative initiatives, including the Port Lands Framework Plan and the Villiers Island Precinct Plan exercises. Most recently, our client, together with its consultant team, reviewed the latest publically available materials concerning the Villiers Island Precinct Plan. Under separate cover dated April 12, 2017, our client provided comments to staff highlighting numerous concerns with the Villiers Island Precinct draft Official Plan Amendment, as circulated on March 29, 2017 (the "Draft OPA"). A copy of our client's correspondence is attached. We note that the Draft OPA attached to the May 16, 2017 Interim Report is largely consistent with the version distributed on March 29, 2017 and, in particular, our client's comments and concerns have not been addressed.

We understand that as part of this agenda item, it is staff's recommendation that City Council endorse in principle (*emphasis added*) the Draft OPA as a modification to the Central Waterfront Secondary Plan and to bring forward the final Draft OPA to the October 2017 Planning and Growth Management Committee meeting. As noted above, our client appreciates the City's prioritization of the Draft OPA. However, our client is not in support of City Council endorsing the Draft OPA in the form attached to the May 16, 2017 Interim Report.

First, the Draft OPA, in our respectful submission, constitutes a fundamentally flawed approach to land use planning and design for the Villiers Island Precinct. The Official Plan is a policy document and should not include matters which are better suited as zoning regulations and/or urban design guidelines. The Draft OPA policies appear to be drafted in a compulsory manner and if rigidly applied would result in excessively strict obligations which, in our client's view, will stifle and unnecessarily restrict development. As a general rule, official plan policies should be broad and purposive while still being capable of clear interpretation. The Draft OPA fails to achieve this balance and accordingly, the unduly restrictive nature of the Draft OPA policies will stagnant the ability to achieve good planning within this Precinct.

Second, as evidenced from our client's correspondence of April 12, 2017, there are a number of detailed concerns respecting the Draft OPA which remain outstanding. In our submission, it is premature for City Council to endorse a policy document which, in our submission, should be viewed as a working draft, subject to further amendments and refinements. An endorsement by City Council of the Draft OPA at this time and in its current form, in our respectful submission, renders the Draft OPA as approved (albeit in principle) thereby thwarting the public consultation process going forward. The *Planning Act* requires that City Council hold a public meeting prior to making a decision respecting the Draft OPA. That statutory public meeting is anticipated to occur in the Fall. The *Planning Act* does not contemplate a two-staged approval process as is being proposed in



is prejudicial to our client and circumvents the statutory public consultation and approval process enshrined in the *Planning Act*.

Based on the foregoing, we request that Planning and Growth Management Committee reject staff's recommendations and refer the Draft OPA back to staff in order that consultation with the public may be undertaken as part of a process which is not suggestive of City Council having predetermined the form of the Draft OPA prior to its final approval. In the interim, our client remains available to meet with staff to discuss its concerns respecting the Draft OPA in greater detail.

We formally request that the undersigned be provided with notice of any meetings of Council, Committees of Council, Community Council or Public/Community Consultation Meetings where reports related to the Draft OPA are to be considered. Finally, we request that the undersigned be notified of the any decision of Council, Committees of Council or Community Council respecting the Draft Plan.

Should you require any further information, please do not hesitate to contact the undersigned.

Yours truly,

**AIRD & BERLIS LLP**



Sidonia J. Loiacono  
SJL  
Encl.

Cc: Client

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April 12, 2017

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Dear Cassidy and Amanda,

***Re: Draft Official Plan Amendment respecting the Port Lands***

On behalf of 1337194 Ontario Inc. and 2034055 Ontario Ltd., the owners of 309 Cherry Street, City of Toronto, we are very supportive of the work completed to date to begin to 'unlock' the Port Lands and to realize the potential of this area. In particular, we believe that advancing Official Plan policies will assist in setting the larger development objectives for the Port Lands and in turn help facilitate investment and revitalization in the area.

As you are aware, for over five years we have been actively involved in the Port Land Acceleration Initiative process. Further, we have two rezoning applications for the 309 Cherry Street site. We filed a rezoning application for the northern portion of the site in March 2012 and appealed the application in October 2014 to the Ontario Municipal Board. Since the time of our rezoning application for the northern portion of the 309 Cherry Street site, we have filed a rezoning application for the southern portion in December 2016.

Based on our review of the Draft Official Plan Amendment respecting the Port Lands, we have a number of preliminary comments. As suggested, we have tried to group our response in the following three categories: 1. Policy areas that we are able to support, 2. Policy areas which are of the opinion should be strengthened and/or require further consideration and 3. Policy areas that we are of the opinion should be revised.

Please see our initial comments below.

**1. Policy areas that we are able to support**

Section 4- Land Use

- Section 4.1.1 a)- we are supportive of the mixed use residential land use designation for Villiers Island

Section 5- Parks and Open Spaces

- Section 5.10.2- we are supportive of the proposal that if cash-in-lieu of parkland is collected by the City, the monies will only be applied towards the acquisition, design and construction of parks within the Port Lands. Ensuring that any resources collected within the Port Lands gets allocated directly to the Port Lands and not elsewhere in the City is positive.

#### Section 10-Transportation

- We are supportive of the protection for higher order transit, including cycling, as well as inclusion of shared local streets.

#### **2. Policy areas which are of the opinion should be strengthened and/or require further consideration**

#### Proposed amendment to Policy P12

- Since Villiers Island is no longer referred to as Cousins Quay, the reference to 'Quays' may be confusing since there is formally only one 'Quay'- Polson Quay. You may want to clarify directly as part of the applicable proposed policy or include clarification notes was done elsewhere in OPA 257;

#### Section 3- Objectives

- Section 3.1- we suggest removal of 'beautifully designed buildings' since it does not read clearly with the rest of the sentence and instead add a new objective that speaks to the importance of incorporating high standards in building design, architecture and placemaking.
- Section 3.10- 'Ensure orderly development in lock-step with infrastructure improvements while advancing short-term actions for enhanced public spaces'- notwithstanding the minor typo ('is' instead of 'in'), this objective is unclear. Specifically, the reference to 'advancing short-term actions' is vague in the context of accelerating the creation of public spaces. Is this objective trying to note that notwithstanding the required infrastructure needed for development, emphasis should be placed on creating functional public spaces early in the process?
- Section 3.12- 'Strategically consolidate and relocate existing uses to create opportunity, improve public access and future proof portions of the Port Lands'- we recommend clarifying that it is existing industrial uses being referred to in this section and that opportunity is referring to future development opportunity and investment.

#### Section 4- Land Use

- Section 4.1.1 c)- why is only appropriate source mitigation 'determined through a detailed noise and air quality assessment and in agreement with the operators of the Cement Terminal on Polson Quay' when accessing sensitive land uses in Villiers Island? Why is receptor mitigation also not referenced?
- Section 4.5.1- although at-grade street-related retail and service uses may be achieved when the identified heritage structures are repurposed, clarification should be added that this may not be achieved for the identified heritage buildings.

#### Section 6- Cultural Heritage

- Section 6.2.3- we agree that the general conservation strategy of heritage buildings needs to go beyond solely retaining the front building facade. That said, the conservation approach should be determined on a site by site basis since each building has different heritage attributes. Creating a



'one size fits all' approach is not helpful in preserving and celebrating the heritage features in the Port Lands. We are of the opinion that the last sentence should be removed.

#### Section 7- Community Infrastructure

- Section 7.5.4 – although this section does not specifically reference where the 'twin pad arena or sports complex' will be located in the Port Lands, we strongly feel that it should not be located within the Villiers Island Precinct area.

#### Section 13- Biodiversity

- Section 13.2- it is unclear what a 'Naturalization Plan' is referring to. Should the reference be updated to Natural Heritage Impact Study, which has a defined scope within the City's Development Guide?

#### Section 15- Implementation

- Section 15.5.2 – It is unclear what the difference is between Heritage Evaluation Reports versus Heritage Impact Assessments. Please clarify.
- Section 15.10 –this section lists potential conditions that would be tied to the removal of the holding provision. It is unclear what 'special design features as required' is referring to. Please clarify or remove.

### **3. Policy areas that we are of the opinion should be revised**

#### Proposed amendment to Policy P42

- We are of the opinion that the current draft of the Port Lands Area Specific Policy included in Schedule C should be used to set the vision for the Port Lands and as such this reference should be removed until a number of matters are addressed.

#### Proposed amendments to Schedule A- Proposed Rights of Way (ROW) for Major Roads

- We do not believe that amendments to new proposed ROWs should be introduced until there has been more discussion on the proposed amendments of the ROWs themselves, including size and alignment. There has not been any further information regarding the Port Lands Municipal Class Transportation and Servicing EA shared with the public since November 2015 and it is currently unclear what, if any, of the proposed amendments will impact Villiers Island and 309 Cherry Street, in particular.

#### Section 4- Land Use

- Section 4.1.1 d)- We are supportive of setting a minimum of 20 percent of the total gross floor area of all uses within Villiers Island for non-residential uses; however, setting a maximum of 5 percent for retail and service uses within the non-residential total allocation is short sighted and arbitrary. Having a higher percentage may be required to respond to the needs of the emerging neighbourhood and to create a critical mass and destination for the area. Setting such prescriptive requirements will remove potential opportunities in the future. In addition, the sentence that reads

‘The precise location of non-residential uses will be determined when comprehensive zoning is advanced for the Island’ should be clarified or removed. Is it intended that one zoning bylaw be prepared for the Island or multiple zoning bylaws to reflect the various sites? If the intention is to proceed with site specific zoning bylaws, this reference needs to be revised to reflect same.

- Section 4.5.1- It is our opinion that in order for retail corridors to be successful they should be doubled loaded and found on both sides of the street. We are unclear why only one side of Villers Street is identified to support at-grade retail and service uses.

#### Section 6- Cultural Heritage

- Section 6.2.2 – We believe that heritage buildings need to be repurposed and appropriately integrated into a development project. As such, specific requirements for generous setbacks between tall buildings and heritage structures or ‘stepping down and tapering the heights of new buildings in order to protect and mitigate negative impacts’ may not be appropriate for the retention and repurposing of heritage buildings. There should not be a ‘one size fits all’ approach for preserving and retaining heritage buildings. These features should be celebrated and integrated into any future redevelopment and approach should be determined in the context of each heritage building/feature.
- Section 6.2.5- states that view studies will be completed during precinct planning and the development application review process. As such, it is unclear why Map 3F is included. Map 3F is too general and does not provide any context for what views should be considered (also missing is a detailed legend listing the views themselves).
- Section 6.2.6- ‘Giving silos, chimney stacks and other port/industrial artifacts address or frontage on/in major public open space and streets’ is unclear. Is this referring to protecting views to these features? Is this referring to City’s desire to integrate hydro towers into the revitalized streetscape?
- Section 6.2.7- as noted above, we believe that heritage buildings need to be repurposed and appropriately integrated into a development project. Specific development direction such as the requirement for ‘maintaining the low-rise character in any proposed development on the east side of existing Cherry Street’ is too specific for an Official Plan policy, especially since proposals for how to incorporate the heritage building has yet to be considered by the City.
- Section 6.3- Heritage Evaluation Reports are currently not defined in the Official Plan or the City of Toronto’s Development Guide. What is the difference between Heritage Evaluation Report and a Heritage Impact Assessment? If a Heritage Evaluation Report is intended to cover the same scope as a Heritage Impact Assessment, this section should be deleted since Section 6.4 speaks to the requirement of a Heritage Impact Assessment.

#### Section 8- Housing

- Section 8.3.1- We are supportive of the requirement that 10% of the total residential units should be three or more bedrooms. However, we are not supportive of setting a minimum size of 100 square metres and to require that half of all the 3 bedroom residential units be built with all bedrooms on an exterior wall with glazing in each bedroom to provide overlook of common public or private outdoor amenity areas. If the intent is to create larger units to support families, setting a minimum size may not assist since unit price is determined by its size and for many families’ large units are unaffordable. Today’s market has started to respond to creating livable and efficient three bedroom units. Further, although in most instances the three bedroom units would be located at the corners of the building, which would in turn allow for each bedroom to face the exterior wall,



setting a requirement in the Official Plan does not seem appropriate especially since there is no such requirement under the Ontario Building Code. In addition, mandating which views the units shall have i.e. ‘overlook of common public or private outdoor amenity areas’ seems overly prescriptive for an Official Plan policy.

- Section 8.3.2 – Again, we are supportive of the requirement for introducing larger units in any new development. Specifically, we are supportive of requiring 25% of the total residential units to be two or more bedrooms, inclusive of the 10% three-bedroom unit requirement. However, we are not supportive of setting a minimum size of 90 square metres. We do not think that is reflective of the market nor does it support the larger mandate of creating housing for a variety of different income brackets (unit prices are primarily determined by area).
- Sections 8.8 to 8.17- Based on the recent settlement of the appeals to the Central Waterfront Secondary Plan in the Keating Channel West Precinct Plan, those site specific Official Plan Amendments were not overly detailed in their respective Official Plan wording but rather outlined the affordable housing delivery methods, outlined the equivalency to the 20% affordable rental housing target based on delivery method and clearly noted that the implementation details of the affordable rental housing strategy would be detailed in the implementing zoning by-laws and secured in one or more agreements pursuant to Section 37 of the Planning Act. It is unclear why so much detail is provided in this draft Official Plan Amendment. Further, in light of the fact that detailed affordable rental housing requirements were agreed to by all parties in the context of the Keating Channel Precinct after over four years of negotiations and an OMB led mediation process, why the City would propose new affordable rental housing requirements in this draft Official Plan. This seems counterintuitive and not helpful in determining a realistic and implementable approach for delivering affordable rental housing.
- Section 8.9- Notwithstanding the fact that the section references do not correspond, the delivery of either affordable rental housing units or cash-in-lieu should not be at the discretion of the City, especially when there is a cap on the amount of cash-in-lieu that can be incorporated as part of the affordable rental housing delivery approach. Although we are of the opinion that a cap on the amount cash-in-lieu that could be used to satisfy the affordable rental housing requirement should not be applied to every site since it may be challenging to deliver units or land on smaller sites, setting a cap of 10% of the total affordable rental housing requirement across all sites is not helpful in supporting housing delivery, nor can it necessarily be realized for reasons stated above. This amount should increase to a minimum 25% of the total affordable rental housing requirement.
- Section 8.10- there are very specific details when considering affordable rental housing delivery methods. Such items as the term of affordability, the affordable rents to be used and inclusion of development charges, are as critical as the amount that would be delivered. By setting the percentage amount without considering the entire implementation details is problematic and inconsistent with other recent settlements made elsewhere on the Central Waterfront.
- Section 8.12- requiring land for 20% of the total residential gross floor area is challenging to implement, especially if the land dedicated to the City ‘will be delivered ready and available for development, including provisions for any needed soil remediation.’
- 8.18.2- ‘Living space adequate in size and appropriate in layout to facilitate contemporary living for all and for a range of different households’ as noted above, setting a standard of predominately large units will impact the affordability of such units and the ‘range of different households’ that will call the Port Lands home.



## Section 10- Built Form

- In light of the fact that the Villiers Island Precinct Plan has not yet been finalized and endorsed by City Council, we believe that including detailed built form requirements in Official Plan is premature and not appropriate at this stage, in particular since the City has determined that it will not bring forward a zoning by-law amendment for the Precinct concurrently with the Official Plan Amendment.
- Section 10.2- specific height regimes should not be set in this Area Specific Policy, especially in light of the fact that the density targets as outlined in the most recent draft Villiers Island Precinct Plan is still very low to support a critical mass and urban environment. The proposed FSI of 5.0 as outlined in the Villiers Island Precinct Plan presentation is misleading since the parkland, roads/woonerfs and promenade areas are deducted from the total area. The density proposed does not adequately support the infrastructure needed nor in creating a new urban community.
- Section 10.4 a) (ii) – We disagree that building heights along the east side of Old Cherry Street should be one or two storeys in order to complement the scale of the heritage resources. It is important that the heritage buildings be integrated into the new development in a sensitive manner but setting height requirements without considering a specific approach to the heritage features is problematic.
- Section 10.4 c)- Further to meeting the Toronto Green Standards, it is unclear why future development proposals would be required to ‘demonstrate how the building materiality supports longevity and sustainability objectives’ and more specifically how that requirement would be met. It may be more appropriate to include this or a similar provision as part of site specific zoning bylaw, which could provide further detail.
- Section 10.5 a) reads ‘Animating the public realm with retail and other active uses at grade with narrow frontages, a wealth of details and recessed entrances’ - it is unclear what a ‘wealth of details’ is intended to refer to?
- Section 10.5 b)- heritage buildings should be exempt from requirement of 70% transparency along ground level facades since it may be challenging to meet this target for existing buildings.
- Section 10.6.1- the majority of the Port Lands are currently vacant or underutilized, therefore setting requirements for new development to reinforce and showcase the Port Lands existing skyline (of mostly vacant lands) is counter to the efforts to support new development and investment
- Section 10.7.4- we are not supportive of setting a minimum tower separation distance of 40 metres, which is almost double the distance of the City Wide minimum requirement 25 metres between tall buildings. This distance seems arbitrary and inconsistent with the objective to create an urban environment.
- Section 10.7.5 – further to Section 10.7.4, we are not supportive of minimum separation distance of 40 metres between a tall building and the predominant face of heritage buildings/structures
- Section 10.7.6- we believe that minimum setbacks from base building should be evaluated with an actual massing proposal and should be referred to in a site-specific zoning bylaw and not within an Official Plan.
- Section 10.8.2- we disagree that the height along the east side of Old Cherry Street should not exceed 5 storeys. We believe that new mid-rise buildings can be integrated with the heritage buildings in this area in a sensitive manner.

- Section 10.8.3- The references to maximum building heights along the key north-south and east-west streets within Villiers Island is extremely specific and not appropriate for an Official Plan. This level of detail should be included in a zoning bylaw.
- Section 10.8.4- In some instances exceeding a 1:1 ratio of building face to building face and the street width is appropriate and desired. This clause should be revisited.
- Section 10.8.6- the previous draft Villiers Island Precinct Plan contemplated all of the tall buildings along Commissioners and now the draft suggests that all of the tall buildings be staggered between Centre Street and Villiers Street. In light of the fact that the Villiers Island Precinct Plan is not yet endorsed by Council and the buildings themselves are not yet designed, it would be appropriate not to include specific locations of the proposed tall buildings in this current draft.
- Section 10.8.7- the proposed density within Villiers Island should be increased in order to create the critical mass needed to support infrastructure improvements, such as transit, as well as to support the DNA of an urban environment. The proposed height restriction of the towers as low to mid twenty storeys will not support the increase in population needed for the area.

## Section 11- Arts and Culture

- Sections 11.1 to 11.7 – it is unclear why there is such detail for Public Art Plan and Public Art Strategies when section 11.7 states that development on privately-owned sites are just encouraged to participate in the City's Percent for Public Art Program. Are other models for public art being considered than just the City's Percentage for Public Art Program and the proposed coordinated public program? As you may be aware, further alternative strategies were contemplated in the recent settlements in Keating Channel West Precinct.
- Section 11.7- is the intent to use a portion of the public art funds towards implementing the items listed in a, b, c, and d including high-profile events, new cultural facilities?

## Section 14- Municipal Servicing, Utilities and Green Infrastructure

- Section 14.5.3- states that development will be required to 'provide proper fit-outs to ensure connection to future low-carbon thermal energy network, such as deep lake water cooling....' Has the City confirmed the cost and timing implications of this requirement on future development?

## Section 15- Implementation

- Section 15.8- A Section 37 contribution is determined by the amount of density secured. The list of items anticipated to be funded solely by Section 37 contributions is unrealistic in particular given the current proposed density numbers envisioned in the Villiers Island Precinct.

## Maps

- Map 3E- there are two copies of Map 3E in the draft
- Map 3F- a detail legend should be included in order to clarify the proposed views i.e. what does 'B' refer to?
- Map 3F- what does 'protect view corridor through any redevelopment' as noted in the legend mean?





Although we would like to see Official Plan policies created for the Port Lands, we do not think that the draft should be advanced in its current form. We believe that further consultation and review is needed before the draft proceeds to the Planning and Growth Management Committee and City Council respectively.

We would be happy to discuss our preliminary comments above in further detail at your convenience.

Yours very truly,

**1337194 Ontario Inc. and 2034055 Ontario Ltd.**

A handwritten signature in black ink, appearing to read "E. Fancello".

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Elsa Fancello, MES, MCIP, RPP  
Development Manager, Castlepoint Numa

