

MUNICIPAL, PLANNING & DEVELOPMENT LAW

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22 May 2018

Sent via E-mail ([clerk@toronto.ca](mailto:clerk@toronto.ca))

Mayor and Members of Council  
12th floor, West Tower, City Hall  
100 Queen Street West  
Toronto, ON M5H 2N2

Attention: Ms. Marilyn Toft

Dear Mayor and Members of Council:

**Re: TOcore: Downtown Plan Official Plan Amendment  
Council Meeting, 22 May 2018, Item PG29.4  
Submissions by CAPREIT Limited Partnership**

We are counsel to CAPREIT Limited Partnership (“CAPREIT”), which owns and/or operates a number of properties that are subject to the proposed TOcore: Downtown Official Plan Amendment (the “Draft Downtown Plan”). We understand that the Draft Downtown Plan will be considered by Council at its meeting on 22 May 2018.

Further to our letter of 1 May 2018, on behalf of CAPREIT, we attach a letter prepared by Bousfields dated 22 May 2018 outlining their planning concerns with the Draft Downtown Plan for Council’s consideration.

We also offer the following additional submissions for Council’s consideration:

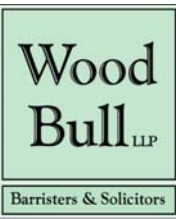
**Scope of the Downtown Secondary Plan is Overly Broad**

As noted in the Bousfields letter, the Draft Downtown Plan includes policies that direct growth to lands designated *Mixed Use Areas 1*, *Mixed Use Areas 2*, *Mixed Use Areas 3* (all of these designations appear to be modifications of the *Mixed Use Areas* designation in the Official Plan) as well as *Regeneration Areas* and *Institutional Areas*. However, the identification of strategic growth areas and associated development intensity is properly the subject of a municipal comprehensive review, which has not yet been undertaken.

Accordingly, we respectfully submit that the policies in the Draft Downtown Plan that direct growth to identified areas (Policy 4.2 and related policies in Section 6 and others) be excluded from this plan, and be the subject of a future municipal comprehensive review.

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22 May 2018

## **Section 26**

As set out in our 1 May 2018 letter, we have a serious concern with staff's position that the Draft Downtown Plan is a Section 26 amendment. It is clear from the public record that the Draft Downtown Plan was not presented as a Section 26 amendment (or as part of a five year review process) at the outset of the municipal approvals process in 2014. Although references to the plan possibly being a Section 26 amendment appeared in August 2017 (after Bill 139 was released), it was only in March 2018 that the plan was conclusively characterized as a Section 26 amendment. As you know, the implications of this re-characterization under the post Bill 139 *Planning Act* is very significant for landowners - appeal rights are restricted.

With respect, it is not appropriate for the City to change the nature of an amendment mid-way through a process, particularly where the change will be seriously prejudicial to stakeholders and landowners (restrict appeal rights). On behalf of CAPREIT, we again request that the City reconsider its position that the Downtown Plan is a Section 26 amendment.

## **More Consultation Required**

We urge City Council to defer its decision on the Draft Downtown Plan in order that the above and attached issues can be discussed and potentially resolved. It is imperative, particularly in the context of the post Bill 139 legislative scheme, that all members of the public are given a meaningful opportunity to consult and respond to a plan prior to City Council making a decision.

Yours very truly,

**Wood Bull LLP**

A handwritten signature in blue ink that reads "Jshapira".

Johanna R. Shapira

JRS

Encls.

c. Client

May 22, 2018

Toronto City Council  
Toronto City Hall  
100 Queen Street West  
Toronto, ON, M5H 2N2

Dear Mayor John Tory and Members of Council:

**Re: \$ *Proposed Official Plan Amendment – Downtown Plan  
CAPREIT***

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We are the planning consultants for Canadian Apartment Properties Real Estate Investment Trust (CAPREIT) in connection with the TOCore downtown initiative. On behalf of CAPREIT, we have reviewed the proposed Downtown Plan which was considered and modified by Planning and Growth Management Committee on May 1, 2018 and is scheduled to go before City Council on May 22-25, 2018 (“the Downtown Plan”). We have also reviewed the additional proposed modifications to the Downtown Plan as contained in the City’s Supplementary Report dated 14 May 2018 re TOCore: Downtown Plan Official Plan Amendment

### **Summary**

Based on our review of the Downtown Plan, we respectfully request that Council direct three modifications to the plan as follows:

1. ! Explicitly exempt the review of the active zoning by-law amendment application to permit infill development at 100 Wellesley Street East from the policies of the Downtown Plan;
2. ! Clarify that the Downtown Plan is intended to be consistent with the Official Plan and Official Plan Amendment No. 320, which explicitly acknowledges the potential for compatible infill development within *Apartment Neighbourhoods* designations; and
3. ! Add further clarification to Policy 11.1 (regarding housing mix) to confirm this policy does not apply to rental replacement units.

Our analysis in support of these requested modifications is provided below.

### ***The CAPREIT Properties***

CAPREIT presently owns and/or operates three properties within the Downtown Plan area.

100 Wellesley Street East is located on the northwest corner of Wellesley Street East and Jarvis Street. This site is designated as *Apartment Neighbourhoods* in the Official Plan and is currently occupied by a 28-storey rental residential building. Under the proposed Downtown Plan this site would continue to be designated as *Apartment Neighbourhoods*. 100 Wellesley Street East is the subject of an active zoning by-law amendment application to permit infill development on the site.

88 Isabella Street is located on the north side of Isabella Street, east of Church Street. Designated as *Apartment Neighbourhoods* in the Official Plan, this site contains a 14-storey rental residential building with a surface parking lot to the rear. This site is located within a 500m radius of the Yonge- Bloor Subway Station and accordingly would be considered to be located within a *major transit station area* as defined by the Growth Plan. Under the proposed Downtown Plan this site would continue to be designated as *Apartment Neighbourhoods*.

77 Huntley Street is located on the southeast corner of Bloor Street East and Huntley Street. This site is designated as *Mixed Use Areas* in the Official Plan and contains a 26-storey building. This site is located within a 180m radius of the Sherbourne Subway Station and accordingly, would be considered to be located within a *major transit station area* as defined by the Growth Plan. On Map 41-3 and 41-3-B, this site is designated at *Mixed Use Areas 2 – Intermediate*.

### ***Exempt 100 Wellesley Street East from the Downtown Plan***

Our client filed applications for a Zoning By-law Amendment and Rental Housing Demolition & Conversion on July 14, 2017 (File Nos. 17 198670 STE 27 and 17 198686 STE 27 RH) in order to construct a new 10-storey mid-rise infill rental apartment building along the Jarvis Street frontage and the easterly portions of Wellesley Street and Cawthra Square as well as a block of grade-related townhouse units on the westerly portion of Cawthra Square. The existing 28-storey apartment building on the property is proposed to be retained as part of the new development.

As stated in our Planning and Urban Design Rationale that was filed in support of this application, the proposal is consistent with the Provincial Policy Statement (“PPS”), conforms to the Growth Plan for the Greater Golden Horseshoe (“Growth Plan”) and conforms with the in-force City of Toronto Official Plan. The zoning by-

law application was appealed to the Ontario Municipal Board (now the Local Planning Appeal Tribunal) for City Council's failure to make a decision (PL180243), however our client is continuing to work with Planning Staff on the development proposal.

While, in our opinion, the proposed infill development meets the intent of the new policies, we are concerned that there may be insufficient clarity and flexibility within certain policies in the Downtown Plan to accommodate the proposed design. Specifically, the Downtown Plan contains a number of new policies relating to built form (e.g. Policies 9.8, 9.11, 9.24 and 9.2.6 public realm (Policy 7.3.2) amenity space design (Policy 9.34) and housing unit mix (Policy 11.1). It is also unclear what impact the policies related to community services and facilities (Chapter 10) and the Jarvis Street Cultural Corridor (Policy 12.8-12.9) would have on this active development proposal.

Accordingly, we request that, out of an abundance of caution, a site-specific exemption be granted for 100 Wellesley Street East from the Downtown Plan.

### ***Growth in Apartment Neighbourhoods***

In addition to 100 Wellesley Street East, CAPREIT's property at 88 Isabella Street is currently designated *Apartment Neighbourhoods*. The proposed Downtown Plan is not proposing to modify these designations. However, the proposed Downtown Plan does not include *Apartment Neighbourhoods* as lands to be targeted for growth (refer to Policy 4.2). While the current Official Plan includes language regarding the stability of *Apartment Neighbourhoods*, the policies do permit compatible infill development (and therefore growth), subject to certain conditions. This potential for more intensified growth within the *Apartment Neighbourhoods* designation is outlined in Official Plan Amendment No. 320 ("OPA 320"), which is currently under appeal at the Local Planning Appeal Tribunal (LPAT).

In contrast, there is no direction in the proposed policies of the Downtown Plan that speaks to the potential for infill development (whether residential or non-residential) within *Apartment Neighbourhoods*. Although Section 1.2 of the proposed Downtown Plan provides that the policies are to be read together with the Official Plan policies, in our opinion more clarity is required with respect to how the existing *Apartment Neighbourhoods* policies, including OPA 320, relate to those of the Downtown Plan. We also note that the Downtown Plan does not specify whether the Official Plan or the Downtown Plan would take precedence in the case of conflict.

In our opinion, not acknowledging potential for growth within *Apartment Neighbourhoods*, and in the case of 88 Isabella Street, growth within a major transit station area is not consistent with the PPS and does not conform to the Growth Plan. Both of these policy documents encourage intensification in appropriate locations, particularly on sites that are highly accessible by transit. Specifically, restricting growth in *Apartment Neighbourhoods* would not be consistent with Policy 1.1.3.2(a) and Policy 1.1.3.3 of the PPS, as included below, given that these policies promote intensification on sites that meet the PPS criteria:

- *1.1.3.2a: Land use patterns within settlement areas shall be based on densities and a mix of land uses which:*
  1. *efficiently use land and resources;*
  2. *are appropriate for, and efficiently use, the infrastructure and public service facilities which are planned or available, and avoid the need for their unjustified and/or uneconomical expansion;*
  3. *minimize negative impacts to air quality and climate change, and promote energy efficiency;*
  4. *support active transportation;*
  5. *transit-supportive, where transit is planned, exists or may be developed; and*
  6. *are freight-supportive.*
  
- *1.1.3.3: Planning authorities shall identify appropriate locations and promote opportunities for intensification and redevelopment where this can be accommodated taking into account existing building stock or areas, including brownfield sites, and the availability of suitable existing or planned infrastructure and public service facilities required to accommodate projected needs.*

In addition, restricting growth would not be consistent with Policies 1.1.1(a) and 1.1.1(b) of the PPS, which seek to sustain healthy, liveable and safe communities by promoting efficient development and land use patterns and accommodating an appropriate range and mix of residential uses, and 1.6.7.4 of the PPS, which promotes a land use pattern, density and mix of uses that minimize the length and number of vehicle trips and support current and future use of transit and active transportation. Both infill development and comprehensive redevelopment of *Apartment Neighbourhoods* sites can achieve this PPS policy direction.

It is also our opinion that this restriction would not be in conformity with the Growth Plan (2017). The Growth Plan (2017) policies have been strengthened as they apply to the integration of land use and infrastructure planning, and the importance of “optimizing” the use of the land supply and infrastructure. In this respect, the Growth Plan has been revised by adding more detail about the objectives of a

“complete community” and requiring minimum density targets for major transit station areas along priority transit corridors and existing subways.

Policy 2.2.1(2)(c) directs growth within Settlement Areas growth to “strategic growth areas”, which are defined as those areas “*within settlement areas, nodes, corridors and other areas that have been identified by municipalities or the Province to the focus for accommodating intensification and higher-density mixed uses in a more compact built form. Strategic growth areas include urban growth centres, major transit station areas, and other major opportunities that may include infill, redevelopment, brownfield sites, the expansion or conversion of existing buildings or greyfields. Lands along major roads, arterials, or other areas with existing or planned frequents transit service or higher order transit corridors may also be identified as strategic growth areas.*” Accordingly, within the Downtown (an urban growth centre), growth should be prioritized both through new development and infill development, particularly where transit infrastructure exists.

Policy 2.2.2(4) provides that municipalities are to develop a strategy to achieve the minimum intensification targets in the built-up areas, with *Urban Growth Centres* to achieve a minimum density target of 400 residents and jobs per hectare (as per 2.2.3(2)(a)). Downtown Toronto is considered an *Urban Growth Centre*, pursuant to the Official Plan. This density can be achieved with buildings of different scales and forms. Policy 5.2.5(1) provide that the specified density targets are minimum standards and municipalities are encouraged to go beyond these minimum targets, where appropriate. If the Downtown Plan significantly restricts growth opportunities within *Apartment Neighbourhoods* within an *Urban Growth Centre*, which is a strategic growth area, the Downtown Plan would not conform with the Growth Plan (2017).

Policy 2.2.1(4) of the Growth Plan (2017) seeks to support the achievement of complete communities, which can, for example come through the development of new purpose-built rental buildings. The redevelopment of *Apartment Neighbourhoods*, including the CAPREIT properties, would address this policy. The Downtown Plan should not restrict opportunities to add rental housing stock within the City.

We recommend that the Plan be modified to ensure that opportunities for appropriate infill development and redevelopment on lands designated *Apartment Neighbourhoods* are protected.



### **Strategic Growth Areas**

Policy 4.2 of the Downtown Plan “targets” growth to lands within certain land use designations. The policy prioritizes *Mixed Use Areas 1, 2 and 3* (newly amended land use designations) and *Regeneration Areas* and *Institutional Areas* for growth. In our opinion, it is premature to consider land use designations and areas where growth will be targeted without completing a municipal comprehensive review. The staff report accompanying the proposed Downtown Plan states that the proposed OPA is a conformity exercise to the Growth Plan (2017), and further states that additional work is necessary to achieve “full conformity”. It is our opinion that the City should undertake a municipal comprehensive review prior to identifying strategic growth areas (*Mixed Use Areas 1, 2 and 3* and *Regeneration Areas* and *Institutional Areas*).

### **Consideration for Housing Unit Mix Policies**

We appreciate that Policy 11.1 has been updated based on the Supplementary Report dated May 14, 2018 to clarify that the unit mix requirement only applies to a development that has 80 or more new residential units. We recommend that this policy be clarified further to confirm that this does not apply to rental replacement units, which are technically new units but which are also fixed in terms of unit size and type based on what exists on the property at the time a redevelopment application is made. Providing greater clarification will ensure that rental replacement units are properly protected for, and acknowledges the complexities of the implementation of this Official Plan requirement.

In so doing, an appropriate range and mix of housing types can be incorporated into new developments, which is consistent with Policies 1.1.1(b) and 1.4.1 of the PPS and conforms with Policies 2.2.6(2) and 2.2.6(3) of the Growth Plan (2017).

### **Conclusions**

We continue to review the available documentation, including the motions made at Planning and Growth Management Committee, and can provide supplementary correspondence as required. If you have any questions, please do not hesitate to ask the undersigned or Caitlin Allan of our office at (416) 947-9744. By way of this letter, we also formally request that we are provided with notice of any meetings where reports related to the City-initiated TO Core OPA are to be considered.



Yours truly,

**Bousfields Inc.**



Louis Tinker, MCIP, RPP

cc. ! *Johanna Shapira, Wood Bull LLP*  
*Dayna Gilbert, CAPREIT*