

July 6, 2018

Our File No.: 180860

**Via Email: [edc@toronto.ca](mailto:edc@toronto.ca)**

Economic Development Committee  
City Hall, West Tower, 10<sup>th</sup> Floor  
100 Queen Street West  
Toronto, ON M5H 2N2

**Attention: Nancy Martins, Committee Administrator**

Dear Committee Members:

**Re: Item ED31.7 – IMIT Property Tax Incentive Program Applications  
30 Bay Street and 60 Harbour Street (the “Subject Properties”)**

We are solicitors for 30 Bay ORC Holdings Inc. and CPPIB 30 Bay Inc., the registered owners of the Subject Properties and the applicants for development grants under the Imagination, Manufacturing, Innovation and Technology (“IMIT”) program, pursuant to an application submitted to the City of Toronto (the “City”) on January 11, 2018 (the “IMIT Application”). Our clients are proposing to redevelop the Subject Properties with a 60 storey multi-tenanted office building comprised of approximately 1.5 million square feet of gross floor area (“GFA”) pursuant to a zoning by-law amendment application that was deemed complete by the City on March 19, 2018.

We have reviewed the staff recommendation report dated July 4, 2018 (the “Staff Report”) along with the attached report from Hemson Consulting Ltd. dated June 29, 2018 (the “Hemson Report”). Despite confirming that the IMIT Application meets all of the applicable eligibility criteria, both the Staff Report and the Hemson Report recommend refusal of the IMIT Application for the Subject Properties on the basis that it does not satisfy a ‘but for’ test. There are no provisions in the applicable Community Improvement Plan By-law No. 1323-2012, as amended by By-law No. 466-2013 (collectively, the “CIP By-law”) which provide that the IMIT Application must satisfy such a test.

It is our view that the IMIT Application meets the current eligibility requirements as set out in the CIP By-law and should be approved by City Council, and the recommendations in the Staff Report and the Hemson Report represent an incorrect and inconsistent application of the existing CIP By-law. Furthermore, if the IMIT Application is not approved, then our clients’ project will be left at a competitive disadvantage when considered against other similarly qualified projects that have received development grants from the City.

**The Applicable CIP By-law**

As noted in the Staff Report, the IMIT Application for the Subject Properties must be processed under the applicable in-force CIP By-law as it read when the IMIT Application was submitted.

**Eligibility Criteria in the Applicable CIP By-law**

The underlying statutory authority for the financial assistance provided through the CIP By-law is subsection 28(7) of the *Planning Act*, and it expressly requires grants to be provided by the City in conformity with the provisions of the CIP. It is not appropriate or permissible for staff, or Council, to refuse an application based on secondary considerations not provided for in the CIP By-law.

The IMIT Application meets all of the eligibility criteria of the applicable CIP By-law. The Subject Properties are considered a ‘Site in Transit Corridor’ outside of the Financial District, and they are proposed to be developed as an ‘Office Building’ with a GFA that far exceeds the minimum GFA of 5,000 m<sup>2</sup> and the minimum threshold of 80% of the overall GFA being used for offices. Therefore, the proposed office development clearly qualifies as an eligible use under the CIP By-law.

The Hemson Report reaches the same conclusion on page 6 where it notes that “each of the applications meets the basic eligibility requirements as set out in the CIP by-law”. It also illustrates how the IMIT Application satisfies all of the other IMIT program objectives and how the proposed development will provide other important benefits to the City.

Despite reaching these conclusions, which should be determinative of whether or not the IMIT Application warrants approval by City Council, the Hemson Report and the Staff Report proceed to evaluate the IMIT Application by creating and applying a site-specific ‘but for’ test that does not exist within the CIP By-law.

There is no requirement to satisfy the ‘but for’ test on a site-specific basis unless the applicant is seeking approval for development grants as either a ‘Transformative Project’ or ‘Tourist Attraction’ (as defined in the existing CIP By-law). In both of those cases, the applicant is required to produce a business plan which demonstrates “its need for financial incentives in order for the development to be economically viable”. No such eligibility requirement is imposed on applicants seeking development grants for Office Buildings.

The City has never refused an application which meets all of the eligibility criteria under the applicable IMIT program by-law. Previous staff reports recommending approval of development grants under the CIP By-law underscore the fact that any ‘but for’ considerations are inherently satisfied by meeting the eligibility criteria in the existing CIP By-law.

While there are subjective aspects of the CIP By-law that apply to ‘Transformative Projects’ or ‘Tourism Attractions’, they do not apply to the IMIT Application. The IMIT Application clearly meets the applicable objective eligibility criteria, as noted in the Staff Report and Hemson Report.

Accordingly, there is no basis for the City to refuse the IMIT Application for the Subject Properties.



**Inconsistent Application and Competitive Disadvantage**

It would be unfair for the City to refuse the IMIT Application when every previous application that has met the eligibility criteria under the existing CIP By-law has been approved.

Investment decisions in respect of the Subject Properties have proceeded under the framework of the applicable CIP By-law. Our clients' primary competitors for office tenants are located in the immediate vicinity of the Subject Properties and those projects are being marketed with the advantage of development grants secured through the same CIP By-law. If the IMIT Application for the Subject Properties is refused, it will result in a competitive disadvantage for our clients.

Moreover, it would be inappropriate to deny development grants to the Subject Properties while approving development grants for other projects based on arbitrary and imprecise considerations. The Hemson Report recommends approval where such grants "may be a deciding factor" but recommends refusal where such grants are "not likely to be a deciding factor", yet these conclusions fail to exhibit any meaningful distinction between the relative merits of the applications. Given the magnitude of financial assistance at stake, the approval and refusal of grants must not be dependent upon vague principles for which no analytical guidance is provided in the CIP By-law.

The IMIT program is an authorized statutory exemption to the anti-bonusing rule which otherwise precludes the City from providing financial assistance to businesses pursuant to section 82 of the *City of Toronto Act, 2006*. As such, it must be applied fairly, consistently, transparently and without discrimination. The recommendations in the Staff Report and the Hemson Report are based on inapplicable considerations and would result in an unfair, inconsistent and discriminatory outcome.

**Conclusion**

For the reasons set out above, our clients are requesting that the Economic Development Committee recommend approval of the IMIT Application for the Subject Properties. Alternatively, we are requesting that the matter be sent back to staff with clear direction to evaluate the IMIT Application based on the appropriate eligibility criteria without applying tests or assumptions that are not contained within the existing CIP By-law.

We intend to appear at the meeting on July 9, 2018 to make an oral deputation on this matter.

Yours very truly,

**GOODMANS LLP**



Anne Benedetti

cc: Members of the Economic Development Committee  
Michael Williams and Rebecca Condon, Economic Development and Culture  
Mark Cote, Andrew O'Neil and Cory Estrela, Oxford Properties Group