

Calvin Lantz
Direct: 416.869.5669
clantz@stikeman.com

January 28, 2020
File No. 142452.1003

By E-mail
councilmeeting@toronto.ca

City Council
City Hall
100 Queen Street West
12th Floor, West Tower
Toronto, ON M5H 2N2

Attention: Ms. Marilyn Toft, Secretariat

Dear Sirs/Mesdames:

**Re: Item No. TE12.4 – King-Spadina Secondary Plan Update – Final Report
Letter of Concern
101 Spadina Avenue**

We are counsel to Devgreat Inc., the owner of the property municipally known in the City of Toronto as 101 Spadina Avenue (the "**Property**"), and located within the area of the proposed King-Spadina Secondary Plan (the "**Secondary Plan**").

By this letter, we request that City Council defer consideration of the Secondary Plan until staff have conducted meaningful consultation with affected landowners, including our client.

We have been engaged in the consultation process for the Secondary Plan and have expressed serious concerns to City staff by way of formal comments, submitted back in January 2019 (the "**Commenting Letter**"). A copy of the Commenting Letter is attached for your reference.

Staff have recently made substantive changes to the draft Secondary Plan, which became available to the public only in late December 2019. These recent changes have not been accompanied by further public and stakeholder consultation. Through the Commenting Letter, we requested a meeting with staff to discuss our client's concerns regarding the draft Secondary Plan, and to date, we have received no response from staff in respect of this matter.

Upon our preliminary review, the most recent draft of the Secondary Plan fails to address some of the serious concerns raised in the Commenting Letter and also raises additional concerns.

Some of these concerns include:

1. Policy 3.1.2, which requires that development provide the greater of the replacement of all existing non-residential gross floor area or a minimum of 25 percent of the total gross floor area as non-residential uses—without consideration of site location and context, the size and configuration of a site, or the built form implications of providing such a significant amount of non-residential space;

2. Policy 6.3, which requires setbacks of at least 3 metres above the height of a streetwall or base building, free and clear of projections—imposes an inflexible and prescriptive standard that fails to account for the unique attributes of the site and development scheme;
3. Policies 6.6, 6.15 – 6.17, and associated maps and policies, which impose height limits and other built form requirements—without regard for the emerging context and overarching direction for growth and development at transit-supportive densities;
4. Policies 4.3, 4.10 – 4.14, and associated maps and policies, which speak to the provision of public realm enhancements and mid-block connections on or around the Property; and
5. the lack of any policies addressing matters of exemption for particular sites.

Given that the revised draft Secondary Plan was made available to the public only in late December, it is essential that a deferral be granted in order to allow the public an opportunity to review and comment on this new document advanced by staff, and to provide staff the time needed to respond to the comments received.

In addition, as the appeals of the King-Spadina Heritage Conservation District Plan (the "**HCD Plan**") are still ongoing before the Local Planning Appeal Tribunal (Case No. MM170097), it is premature for the City to move forward with the Secondary Plan absent a determination on the appeals of the HCD Plan—particularly where the draft Secondary Plan references or incorporates elements of the HCD Plan still under appeal.

For these reasons, we strongly urge City Council to

1. Defer consideration of the Secondary Plan;
2. Direct City Planning staff to conduct further consultation as it relates to the draft Secondary Plan policies; and
3. Direct City Planning staff to report to Community Council with any further recommendations, such report to be made available to the public as required under the *Planning Act* and related regulations.

Please provide us with notice of all upcoming meetings of Council and Committees of Council at which the Secondary Plan will be considered, and we ask to be provided with notice of Council's decision with respect to this item.

Yours truly,



PA Calvin Lantz

CL/jsc
Enclosures
cc. Client

Calvin Lantz
Direct: 416 869 5669
clantz@stikeman.com

January 31, 2019
File No. 142452.1001

By E-mail

City Planning Division
Strategic Initiatives, Policy & Analysis
Metro Hall
55 John Street, 22nd Floor
Toronto, ON M5V 3C6

Attention: Ms. Sarah Phipps, Project Manager

Dear Ms. Phipps:

Re: Draft King-Spadina Secondary Plan Update - Comments

We are counsel to DevGreat Inc. (the "**client**"), owner of the property municipally known as 101 Spadina Avenue (the "**Property**"), and located within the area of the draft King-Spadina Secondary Plan Update (the "**Secondary Plan**"). Our client has reviewed the draft Secondary Plan and have a number of concerns and comments which have been provided below.

Site-Specific Concerns and Comments

Land Use and Built Form

The Property, as shown in Map 16-2 of the draft Secondary Plan, falls within Mixed Use Areas 3. It is also located in the Spadina Precinct (Map 16-1) and Height Zone C (Map 16-5). The resulting height restriction does not make use of the land and infrastructure currently existing in a way that is efficient or effective. Further to the designation of the Property, a significant number of policies related to land use and built form proposed under the draft Secondary Plan have an impact on the future development of the Property.

Policy 5.1 requires that development in Mixed Use areas provide the **greater** of the replacement of all existing non-residential gross floor area or a minimum of 25 per cent of the **total** gross floor area as non-residential uses. This policy does not provide any consideration for site location and context, the size and configuration of a site or the built form implications of providing such a significant amount of non-residential space. For example, a significant amount of non-residential gross floor area in a building with residential above will require, at a minimum, two separate elevator cores, two independent loading areas and two lobbies. Only very large sites will be able to accommodate Mixed Use mid-rise or tall buildings given the required use and building program. The prescriptive nature of this one-size fits all policy is of concern as applies to the Property.

Policy 9.19 restricts the floorplate size to a maximum of 750 square metres for mixed-use and residential buildings, above the base building. A condition is provided in the policy which allows for the consideration of an increase, which requires demonstration "to the City's satisfaction" that shadow, wind, sky view and transition impacts can be mitigated. Currently, this maximum floorplate restriction is only imposed through design guidelines (and in the Downtown Plan which is not yet in force and effect) and therefore there is some flexibility associated with the restriction – it is an objective that development should strive to

meet. The imposition of the maximum 750 square metre floorplate size in the Secondary Plan is absolute and regulatory in nature. Such rigidity is not appropriate for policy and is of concern.

Many of the policies under the Secondary Plan, including but not limited to Policy 5.8, 9.16, and 9.19, can significantly restrict the development potential of properties in the King-Spadina Area. These regulations do not take into consideration the context of existing infrastructure in the area or provide the flexibility to address the opportunities for optimal use of land and infrastructure. The Provincial Policy Statement, 2014 (the "PPS") prioritizes the optimal use of land and infrastructure, particularly along transit and transportation corridors, and in particular within the Downtown Toronto urban growth centre, which includes the King-Spadina area. The location of transit and transportation corridors relative to certain properties does not appear to be considered in the Secondary Plan.

The PPS and the Growth Plan for the Greater Golden Horseshoe, 2017 view downtown Toronto as an area for intensification and growth. Under the Secondary Plan the redesignation of the Property results in an underutilization of the land, contrary to Provincial policy directions. The PPS contains a number of policies that promote intensification, redevelopment and compact built form, particularly in areas well served by public transit. Policy 1.1.3.2 of the PPS supports densities and a mix of land uses which efficiently use land, resources, infrastructure and public service facilities, and which are transit-supportive where transit is planned exists or may be developed. The draft Secondary Plan does not appear to take these PPS policies into consideration.

Infrastructure and Report Requirements

Further to the land use and built form regulations, certain policies in the draft Secondary Plan establish strenuous requirements for development applications that may not be contextually necessary or such requirements are beyond the control of developer and therefore introduces significant uncertainty into the development process.

Policy 4.2, 4.3 and 4.6 outline the requirement for a Complete Community Assessment which, if the results of such assessment show that the infrastructure is determined to be insufficient, could result in the City determining that a Site and Area Specific Policy or other study is necessary.

Policies 14.6, 14.7 and 14.8 provide the City the authority to place a holding provision on a property that has submitted a rezoning application if the existing infrastructure is determined to be insufficient. The concern related to Policies 4.2, 4.3, 4.6, 14.6, 14.7 and 14.8 arise based on the definition of 'Infrastructure' under the draft Secondary Plan which includes: community service facilities; parkland and open space; physical infrastructure; and green infrastructure.

Policies 4.2, 4.3, 4.6 and 14.6, when combined, could allow the City to halt development in King-Spadina. The availability of a significant portion of the services included under the definition of infrastructure are not within the control of a developer, specifically community service facilities (which includes schools) and parkland. The King-Spadina area has been rapidly developing and many of the "infrastructure" services required by the Secondary Plan are potentially at insufficient levels to support additional development. In other words, existing deficiencies in infrastructure could result in the placement of a holding provision on most lands in King-Spadina. This will lengthen development approvals processes, will increase costs, and will reduce certainty in the development process.

The Secondary Plan policy that ties the imposition of holding zone to the adequacy/provision of infrastructure and services is of concern to our client, due to: (i) existing infrastructure deficiencies; and (ii) that the provision of much of the infrastructure is beyond the control of the applicant/proponent. A "carrot" approach would be more appropriate to encourage the provision of infrastructure. The current Secondary Plan policy "stick" approach could bring development to a grinding halt in the Secondary Plan area.

General Concerns and Comments

Use of Term "Development"

In the Secondary Plan the term "development" is employed in several policies, yet the term is not defined in the Secondary Plan. The meaning of the term "development" comes from the definition of the same from the PPS, namely:

Development: means the creation of a new lot, a change in land use, or the construction of buildings and structures requiring approval under the *Planning Act*.....

According to the PPS every *Planning Act* application represents "development" and when the policies of the Secondary Plan that contain the term "development" are reviewed with this understanding, the very breadth of the term means that requirements that may be inappropriate or that may not be relevant to certain forms of "development" are never-the-less applicable.

For example, the term "development" is contained in many policies of the Secondary Plan that require reports to be submitted (Policies 4.3, 4.6, 14.1) and for the examination of sites under a certain evaluation framework (Policies 4.2, 5.8, 14.4, 14.5). Based on the PPS definition of 'development', these policies would require that a Community Impact Assessment:

- (i) be undertaken in support of an Official Plan Amendment application, a rezoning application, a Site Plan Approval application, a consent application, and a minor variance application;
- (ii) be undertaken no matter the magnitude of the change being sought by the development application; and
- (iii) be undertaken no matter the land use, residential or non-residential, permission being sought.

The requirement to prepare and file a Community Impact Assessment in support of an application should be reasonably related to the type of the development application, the magnitude of the change being sought and the proposed land use. The use of the term "development" in the Secondary Plan in this context is too broad, ambiguous and onerous.

Inclusion of Downtown Plan Policies

City staff have chosen to include certain policies from the Downtown Plan, which is currently before the Ministry of Municipal Affairs and Housing for Ministerial approval, in the Secondary Plan. Our client filed their concerns with the Downtown Plan policies with the City, through submissions to both the Planning and Growth Management Committee (now the Planning and Housing Committee) and City Council (attached). Council has already approved the Downtown Plan and all of such policies will apply to the Secondary Plan area when they come into force and effect.

In the attached letters, where the client raises concerns with the policies of the Downtown Plan such concerns are also raised with respect to the Secondary Plan, where the two instruments contain the same policies.

City staff have duplicated such Downtown Plan policies in the Secondary Plan, as a hedge against the Ministry's failure to approve the Downtown Plan. But, in gaming the system, the City's duplication of Downtown Plan policies in the Secondary Plan amounts to an abuse of process.

The public interest is reinforced by the current emphasis on efficiency and economy in the conduct of the public process. Since the underlying public interest is that there should be a finality to a development

application or approval process such that the same application should not be considered and/or litigated twice – the bureaucratic and administrative redundancy of duplicating the Downtown Plan policies in the Secondary Plan is similarly not in the public interest and is perceived as unfair.

The King-Spadina area is subject to numerous plans recently adopted by City Council, including the Downtown Plan the area is also subject to the King-Spadina Heritage Conservation District, which has been appealed to the Local Planning Appeal Tribunal. When the policies of the multiple plans applicable to the area, including those proposed in the draft Secondary Plan, are reviewed in combination they place a significant strain on future development in the area. It is common knowledge that the City of Toronto is currently facing issues with housing affordability and availability. The numerous restrictive and onerous policies proposed for the area could not only delay future development but also result in development that is not affordable. This will only magnify the current problems faced by the City of Toronto.

As part of this submission, we request a meeting with City staff to discuss our client's concerns with the draft Secondary Plan. We appreciate your consideration of these comments prior to the finalization of the Secondary Plan.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Yours truly,

FOR  Calvin Lantz

CWL/jw
Enclosures

Attachments

cc:

Calvin Lantz
Direct: (416) 869-7085
clantz@stikeman.com

May 18, 2018
File No.: 142452.1003

By E-mail
clerk@toronto.ca

City Council
12th Floor, West Tower
City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Attention: Ms. Marilyn Toft, City Clerk Secretariat

Dear Members of City Council:

**Re: PG29.4 TOcore: Downtown Plan Official Plan Amendment
101 Spadina Avenue, Toronto**

We are counsel to DevGreat Inc., the owner of the property municipally known as 101 Spadina Avenue, generally located at the southeast corner of Spadina Avenue and Adelaide Street West (the "**Property**") within the area subject to the proposed Downtown Plan Official Plan Amendment No. 406 (the "**TOcore OPA**") currently being considered by City Council. Our client has reviewed the TOcore OPA and the Supplementary Staff Report, dated May 14, 2018 and has significant concerns as it would apply to the Property.

For the reasons set forth in this letter, we strongly urge that:

- (i) **Council defer consideration of the TOcore OPA;**
- (ii) **Council direct City Planning staff to conduct further consultation as it relates to, among other things, the Policy Revisions and Map Revisions in Attachments 1 and 2 of the Supplementary Staff Report, exemption and transition issues and site specific issues; and**
- (iii) **That City Planning staff report directly to City Council with any further recommendations, such report to be made available to the public as required by Section 26 of the *Planning Act*.**

We submit that the policies in the TOcore OPA are inconsistent with the Provincial Policy Statement, 2014 (the "**PPS**") and fail to conform to the Growth Plan for the Greater Golden Horseshoe, 2017 (the "**Growth Plan**"). Policies in the TOcore OPA restrict intensification on the Property, where the PPS and Growth Plan policies direct growth to occur.

Consistency and Conformity

Our client's property, as shown in Map 41-3 of the TOcore OPA, falls within Mixed Use Areas 3 – Main Streets, in particular the associated policies regarding height restriction, does not make use of the land and infrastructure in a way that is efficient or effective. The PPS and Growth Plan view downtown Toronto as an area for intensification and growth, under the TOcore OPA the redesignation of the property results in an underutilization of the land, contrary to Provincial policy directions.

The TOcore OPA does not take into account PPS directions to optimize the use of land and infrastructure, particularly along transit and transportation corridors, and in particular within the Downtown Toronto urban growth centre and in "major transit station areas". In this regard, "optimization" means making something "as fully perfect, functional, or effective as possible".

The PPS sets out the foundational planning framework to realize the vision for Ontario's "long-term prosperity" which includes the promotion of "efficient land use and development patterns" (Policy 1.0; Part V). To that end, the PPS contains a number of policies that promote intensification, redevelopment and compact built form, particularly in areas well served by public transit. Policy 1.1.3.2 of the PPS supports densities and a mix of land uses which efficiently use land, resources, infrastructure and public service facilities, and which are transit-supportive where transit is planned, exists or may be developed.

The vision cast by the Growth Plan is to effectively plan for growth and development which "supports economic prosperity, protects the environment, and helps communities achieve a high quality of life" (Policy 1.2). Downtown Toronto is considered an urban growth centre and the Growth Plan establishes minimum density targets to be achieved as it relates to residents and jobs per hectare (Policy 2.2.3 (a)). Lands that are adjacent to frequent transit service are encouraged to be developed with "transit-supportive and supportive of active transportation and a range and mix of uses and activities" (Policy 2.2.4 (10)). When examining policies related to our client's property the TOcore OPA is inconsistent with the PPS and fails to conform with the Growth Plan.

The policies within the TOcore OPA should ensure the efficient land use and development patterns promoted by the PPS are maintained and are reflective of the intensification opportunities within a designated growth area. The establishment of Mixed Use Area designations within the TOcore OPA, which restrict the redevelopment of sites that are strategically located in proximity to already established infrastructure and public service facilities, is inconsistent with the policy direction of the PPS.

In our opinion, the proposed redesignation of the Property to Mixed-Use Areas 3 – Main Street, and in particular the associated height restriction to generally not exceed the width of the adjacent street right-of-way, does not make use of land and infrastructure in a way that is efficient or as effective as possible. Under the TOcore OPA, the Property would be permitted less height/density resulting in an underutilization of land and infrastructure.

Statutory Notice Requirements Not Met

For an Official Plan Amendment under Section 26 of the *Planning Act*, information and material relevant to the amendment must be made publicly available at least 20 days before the Public Meeting. We note that the Supplementary Staff Report, dated May 14, 2018, which itemizes staff and PGMC's recommended amendments to the TOcore OPA, has not been the subject of a Public Meeting and has been released only seven days before the TOcore OPA is to proceed to Council for a decision, contrary to Section 26 of the *Planning Act*. Many of the proposed changes are substantive and our clients have not been given sufficient time to review and consider the impact of such changes.

Because of the excessively prescriptive performance and built form standards included in the TOcore OPA, the TOcore OPA is more regulatory than visionary and the TOcore OPA directly negates intensification in areas otherwise targeted for growth.

The City's powers to approve the TOcore OPA are powerful and extraordinary and the only safeguard against abuse of those powers is proper and meaningful consultation. Providing the public sufficient time and notice to review and comment on the City's final proposed changes to the TOcore OPA, and for those comments to be considered by Council in their decision-making is a fundamental component of meaningful consultation —for which one week is simply inadequate.

Conclusion

For the reasons expressed in this letter as well as those included in the letter dated April 30, 2018, and submitted to the Planning and Growth Management Committee, we ask that consideration of the TOcore OPA be deferred by Council to allow the public sufficient time to consider and respond to the supplemental staff recommendations, as well as for staff to address the concerns raised by our client, which engage matters of Provincial policy and procedural fairness.

Please provide us with notice of all upcoming meetings of Council and Committees of Council at which the TOcore OPA will be considered, and we ask to be provided with notice of Council's decision and the Ministry of Municipal Affairs' decision with respect to this item.

Yours truly,


Calvin Lantz

*Certified Specialist in Municipal Law
(Land Use Planning and Development)*

CL/jw
cc. DevGreat Inc.

Calvin Lantz
Direct: (416) 869-5669
clantz@stikeman.com

April 30, 2018
File No.: 130514.1008

By E-mail

Planning and Growth Management Committee
City Hall, West Tower, 10th Floor
100 Queen Street West
Toronto, ON M5H 2N2

Attention: Ms. Nancy Martins, Administrator

Dear Sirs/Mesdames:

Re: PG29.4 - TOcore: Downtown Plan Official Plan Amendment

We are counsel to RioCan (Festival Hall) Trust, the owner of the properties municipally known in the City of Toronto as 259-267 Richmond Street West, 126-142 John Street, and 41-59 Widmer Street, commercially known as RioCan Hall, and generally located south of Richmond Street West, bounded by Widmer Street and John Street, within the affected area of the proposed Downtown Plan Official Plan Amendment (the "**Proposed OPA**"). RioCan is also the owner of various other properties and broad land interests in the City of Toronto and acquires additional interests in lands in the City from time to time.

For the reasons set out below, **we urge the Committee to defer consideration of the Proposed OPA** in order to allow time for members of the public to review and provide meaningful input on the Proposed OPA.

Our client has serious concerns regarding the Proposed OPA, especially given that the key materials needed to review and comment on the Proposed OPA—including the staff report, the actual text of the Proposed OPA and the Downtown Plan, the accompanying schedules, etc.—were posted on the City's website on April 24, 2018, merely one week before this matter is scheduled to be considered by the Planning and Growth Management Committee.

Our client and other members of the public have not been given sufficient time to review the Proposed OPA—a voluminous planning document that proposes to introduce significant changes to the downtown area policies, substantially affecting the rights of landowners and stakeholders in the City's downtown.

It is imperative that the City undertake proper and meaningful consultation with the public when introducing amendments to established Official Plan policies. A fundamental aspect of meaningful consultation is providing the public sufficient time and notice to review and comment on the City's final proposed changes—for which one week is simply inadequate.

For these reasons, we urge the Committee to defer consideration of the Proposed OPA, in order to allow time for members of the public to review and provide meaningful input on the Proposed OPA.

We will continue to follow this matter closely. Please provide us with notice of all upcoming meetings of Council and Committees of Council at which the Proposed OPA and the Downtown Plan will be considered, and we ask to be provided with notice of Council's decision with respect to this item.

Yours truly,

A handwritten signature in black ink, appearing to be 'Calvin Lantz', written over a horizontal line.

Calvin Lantz

CL/jsc

cc. Melissa Bruzzese & Matthew Ortved, *RioCan (Festival Hall) Trust*