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Matter No. S855-04

January 27, 2020

DELIVERED BY EMAIL (clerk@toronto.ca)

Mayor and Members of Council
c/o City Clerk's Office
2nd Floor, City Hall
100 Queen Street West
Toronto ON M5H 2N2

Attention: Ms. Ulli S. Watkiss, City Clerk

Dear Mayor Tory and Members of City Council:

RE: City Council Meeting Item No. TE12.4
- King-Spadina Secondary Plan Update – Final Report
- Letter of Concern
- 90 and 100 Simcoe Street, 130 Pearl Street, and 203, 207 and 211 Adelaide Street West (the "Site")

We are the solicitors for Sun Life Assurance Company of Canada, the owner of the above-noted property (the "**Site**"). We are writing on behalf of our client to provide written submissions respecting the proposed King-Spadina Secondary Plan, which is being considered by Council at its meeting beginning January 29, 2020.

On January 8, 2020, Toronto and East York Community Council adopted the above-noted item, which recommends that City Council adopt the draft Official Plan Amendment, King-Spadina Secondary Plan (the "**Plan**"), included as Attachment 2 to the December 12, 2019 report from the Director, Community Planning, Toronto and East York District (the "**Staff Report**").

On behalf of our client, we wish to provide the following comments expressing our concerns. Our client's primary area of concern is the failure to provide transition for pre-existing development applications. Our client submitted a rezoning application for the Site in July, 2016 and extensive discussions have occurred with City staff since then.

However, the Staff Report before Council specifically recommends that “City Council direct staff to use the King-Spadina Secondary Plan in the evaluation of all current and new development proposals within its boundaries”. This is in direct conflict with a long-standing legal principle that an application should be assessed against the policies in place at the time the application is submitted. Failure to include transitional provisions in the plan or to exempt the Site from the application of the Plan could have a significant negative impact on our client’s application which has already undergone substantial review.

In addition to this significant procedural concern, there are a number of comments that we would like to make on behalf of our client.

1. Land Use Designation

We are pleased that the proposed Plan recognizes and reinforces the fact that the Site is located within “Mixed Use Area 1” in accordance with the Downtown Secondary Plan. As noted in the applicable policies, this is the major Growth designation and includes a diverse range of building typologies, including tall buildings, with height, scale and massing dependent on the site characteristics, especially those sites in proximity to major transit. In addition, it is an area that is generally encouraged to provide a significant proportion of non-residential uses within new-mixed use developments.

2. Policy Hierarchy – Conflict Provisions

Our client’s concerns relate to proposed Policy Nos. 1.2 and 1.3 which are the proposed “conflict provisions”. These provisions suggest that the policies contained in a Heritage Conservation District Plan prevail over land use policies. This issue of the relationship between policies contained in a Heritage Conservation District Plan adopted pursuant to the *Ontario Heritage Act* and policies in the Official Plans (including Secondary Plans and Site Area Specific policies) adopted under the *Planning Act*, is presently a matter of considerable uncertainty in the City.

Our client, along with many other land owners in the King-Spadina area, have filed appeals with respect to the King-Spadina Heritage Conservation District Plan. It is our understanding that the hearing of these appeals has been deferred until LPAT renders its decision on the St. Lawrence Neighbourhood Heritage Conservation District Plan. It is, therefore, premature to include these conflict provisions in the proposed Plan, until this legal issue has been determined.

3. Non-Statutory Public Realm Strategy and Design Guideline References

In proposed Policy 1.4 there is reference to a detailed "Public Realm Strategy" (to be adopted by City Council) and in proposed Policy 1.5, there is reference to "Urban Design Guidelines" (also proposed to be adopted by City Council). In both cases, the proposed Plan proposes to accord to these non-statutory documents (that is, ones that are not required to go through the detailed approval process required of an Official Plan, a Secondary Plan or a Site-Area Specific Policy) considerable weight. This is of concern to our client since both of these documents are not available for review. Moreover, once they are available, it is uncertain as to how the proposed Public Realm Strategy and the proposed Urban Design Guidelines will be applied to any specific site. Accordingly, our client believes it is both inappropriate and premature to adopt the updated Secondary Plan without the details of these proposed documents being made known.

4. Replacement of Existing Non-Residential Gross Floor Area

Proposed policy 3.1.2 contains a provision requiring developments to provide the greater of the replacement of all existing non-residential gross floor area currently on the site or a minimum of 25 per cent of the total gross floor area as non-residential uses. In its current rezoning application, our client fully complies with the requirement to replace all non-residential gross floor area currently on site.

5. Heritage Policy References

As noted above, our client has a concern with the proposed application of policies in the King-Spadina Heritage Conservation District Plan (passed under the *Ontario Heritage Act*) to matters of land use planning considered under the *Planning Act*. Nonetheless, our client is cognizant of the need to give consideration to these policies and is actively working with City staff in this regard.

6. Public Realm Policy Reference

These are various proposed policies contained in the Section 4 entitled "Parks and Public Realm", in Map 16-3B (Midblock Connections), and Map 16.3C (Public Realm Structure Plan). Based upon previous versions of this proposed Plan and discussions with City staff, the location of a midblock connection was never shown on our client's Site, rather it was shown on the property to the west, namely 217 Adelaide Street West. Even in reviewing proposed Map 16-3B, the midblock connection still appears to be shown west of the Site. Therefore, this matter needs to be clarified in order to confirm our client's previous understanding that any midblock connection would be located on the property to the west, and not on its property.

7. Built Form – Shadow Policy References

Our client notes the provisions of proposed Policy 6.4 regarding not creating “no *net-new shadow* on the north side of the Queen Street West.” Our client’s project has been designed to comply with this standard.

8. Height Transition and Height Policy References

In proposed Policy 6.8.3 dealing with the heights in the “East Precinct”, it refers to:

“ensuring that building heights in East Precinct shall be subordinate to the building heights of the Financial District north of Front Street.”

Accordingly, our client agrees with this proposed policy since there are many tall buildings in the Financial District, some as high as 68 commercial storeys. However, the proposed Plan then creates uncertainty in the policies dealing with Height Transition Zones in the proposed Policy 6.6. Map 16-4 identifies the Site as being located in highest height zone, that is, Height Transition Zone A.

With respect to the relationship between Height Transition Zones A and B and B and C, the proposed policies in Sections 6.6.1 and 6.6.2 make reference to there being a “noticeable and discernable stepdown” in height. But there is no similar policy as it relates to the transition from the Financial District to Height Transition A. Therefore, while it is clear that the Site is located in the area where the greatest height should be located, there may be uncertainty as to how these policies are interpreted as it relates to any specific site.

Request

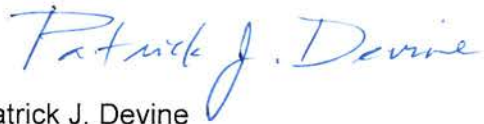
For all of these reasons, it is our client’s request that its Site (which includes 90 and 100 Simcoe Street, 130 Pearl Street, and 203, 207, and 211 Adelaide Street West) be exempted from all policies, texts and maps which form part of this proposed Official Plan Amendment. If Council does not accede to this request, our client will consider appealing this matter to LPAT.

Please accept this letter as our client’s written comments and concerns respecting the proposed King-Spadina Secondary Plan and implementing Official Plan Amendment. We respectfully request notification of any further actions or decisions made by Council or any City Committees with respect to this matter,

Should you have any questions respecting the forgoing, please don't hesitate to contact the writer.

Yours very truly,

Devine Park LLP

A handwritten signature in blue ink that reads "Patrick J. Devine". The signature is written in a cursive style with a large, looped initial "P".

Patrick J. Devine
PJD//sf

cc: Sun Life Assurance Company of Canada
c/o BentallGreenOak