

## AIRD BERLIS

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BY EMAIL

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Dear Chair and Members of Toronto and East York Community Council:

**Re: King Spadina Secondary Plan Update  
Item TE12.4  
Toronto and East York Community Council Meeting of January 8, 2019**

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Please be advised that Aird & Berlis LLP acts on behalf of a number of property owners within the area that is the subject of the King Spadina Secondary Plan. Our clients include, but are not limited to, Allied Properties REIT, Capitol Buildings, Hullmark Developments Ltd., First Capital Realty Inc., Riveroaks Investments Inc., Trinity Development Group Inc., Timbercreek 4Q Urban Developments LP (Toronto), Georg Cinq Trading Co. Limited, RTCB Holdings as well as 457 Richmond Street West Limited and 450 Richmond Street West Limited.

We have had an opportunity to review the draft King Spadina Secondary Plan as well as the Staff Report dated December 12, 2019 which accompanied the draft Secondary Plan. Our clients have a number of concerns with respect to the prescriptive and rigid nature of the policy framework which is being proposed as it would require Official Plan amendments in many instances in order to bring forward development which is site and context specific. In particular, we note our clients' concerns with respect to the following policies:

- Section 1 Interpretation – references two non-statutory documents, a Public Realm Strategy and Urban Design Guidelines and, in so doing, purports, we believe, to incorporate these non-statutory documents into the draft Secondary Plan. This is inappropriate as these non-statutory documents cannot be appealed. Moreover, the first of these documents, the Public Realm Strategy, has yet to come forward for adoption, and we understand from the Staff Report that the Urban Design Guidelines may be reviewed and updated. If indeed it is the intent of Staff to use these documents to implement the Secondary Plan, then it would be appropriate to bring them forward in their final version now so that the cumulative effect of the Secondary Plan and these documents can be better understood.
- Section 3 Objectives – our clients have concerns with policies 3.1.2.1 and 3.1.2.2 which are mandatory and will require the replacement of all existing non-residential gross floor area or a minimum of 25% of the total gross floor area to be non-residential uses, whichever is greater. In our view, requiring this in every development without the opportunity for any flexibility is inappropriately rigid at an Official Plan level and does not

recognize that employment space need not be provided and indeed may not be appropriate on every single development site in order for King Spadina to remain a vibrant Mixed Use Area.

- There are numerous policies with respect to laneways and mid-block connections contained in Section 4, Parks and Public Realm. It appears that through these policies the City is attempting to effectively turn private land into portions of the public realm (see, for example, policy 4.12). It is unclear if, by virtue of these policies, all of the public realm requirements would apply to what is otherwise private land. In our clients' view, this is a taking by the municipality in a manner which would otherwise not be permitted and is inappropriate. It is also unclear whether new mid-block connections which "will be secured through the review of development applications" is intended to apply on a site-by-site basis. We believe greater flexibility including the incorporation of language such as "where feasible and appropriate" would improve these policies.
- Section 6 Built Form Policies – our clients object to the inclusion of specific minimums related to base buildings and setbacks, as the application of these policies would be area-wide and without reference to the site or subarea context. For example, in Section 6.3.1 there is a minimum requirement of 3 metres and then in Section 6.3.3 there is a suggestion that greater setbacks may be required in certain circumstances. The policy is silent on the fact that a lesser setback may also be appropriate in other circumstances. Our clients similarly object to a setback of 5.5 metres from all property lines not adjacent to a public street or a public lane together with the requirement of a setback of 5.5 metres from the centre of a lane.
- Policy 6.5 incorporates a *no net-new shadow* test in respect of certain parks within the Secondary Plan area. This was directly addressed in the Province's modifications to the Downtown Plan and our clients believe it is inappropriate for the City to seek to impose this stringent test when the Province has clearly found it to be inappropriate for this area.
- With respect to the policies related to the scale of development, our clients object to the imposition of a 50 metre (including mechanical penthouse and all projections) height cap in the *Mixed-Use Areas 2*. Contrary to the statements contained in the Staff Report, there are a number of developments within the West Precinct which have exceeded 50 metres in height. This suggestion that 50 metres is some sort of consistent height datum in the West Precinct has been refuted on a number of occasions in recent LPAT decisions. Moreover, the mandatory nature of the height cap fails to account for site specific proposals where additional height may be necessary and warranted, for example where the proposal is for non-residential development.
- Similarly, while we recognize the Downtown Plan speaks to the Spadina Precinct as being appropriate for development, we do not believe it is appropriate to then transpose Spadina Avenue's right of way width into a height cap of 40 metres. Moreover, policy 6.17 seems to link height to the provision of appropriate setbacks "on all elevations of the building" regardless of whether that is necessary for particular development.
- The inclusion of a minimum setback of 10 metres above the streetwall or base building for all elevations fronting Wellington Street (policy 7.8.3) and Duncan Street (policy 7.13) appears to implement policies from the draft Heritage Conservation District Plan which is under appeal. Additionally, these mandatory setbacks provide no flexibility for site

development within these areas, notwithstanding that there have been recent approvals which do not provide such significant stepbacks.

- Section 8 Monitoring Implementation and Development Approvals – introduces a mandatory requirement of a Heritage Impact Assessment for all development proposals in King Spadina. This requirement is being implemented regardless of whether there are any actual heritage resources on or adjacent to a development site. This is an onerous and costly requirement which is being imposed across a large area that is designated for growth. In our clients' view, this is an inappropriate use of a Heritage Impact Assessment and is unnecessary given existing Official Plan requirements.

As you can appreciate, our firm represents a number of land owners of both individual and multiple properties within the King Spadina area. We would welcome the opportunity to continue dialogue with the City with respect to this important policy initiative and to address our concerns as outlined above. In addition, we may provide additional commentary on behalf of other clients and in respect of other aspects of the draft Secondary Plan prior to the adoption of any Bills by Council.

Finally, we respectfully request that Community Council recommend that the matter be referred back to staff so that the concerns outlined herein can be addressed in a revised version of the Secondary Plan. We ask to be provided with notice of any future meetings related to this matter and for notice of adoption of any Official Plan Amendment resulting therefrom.

Thank you for your consideration of this request.

Yours truly,

AIRD & BERLIS LLP



Eileen P. K. Costello

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cc. Clients