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November 8, 2021

VIA EMAIL

Mayor John Tory and Members of Council
Toronto City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Attention: City Clerk

Your Worship and Members of City Council:

**RE: Proposed Official Plan Amendment
Updating the Definitions of Affordable Rental and Ownership Housing
Item PH 28.4**

We are the lawyers for the clients listed in Schedule "A" to this letter (collectively, "**our clients**"). We have reviewed the Report for Action prepared by the Chief Planner and Executive Director, City Planning Division and Executive Director, Housing Secretariat, to the Planning Housing Committee dated October 15, 2021, as well as the proposed City-initiated official plan amendment discussed therein (the "**Draft Official Plan Amendment**"), which are being considered by City Council at its meeting on November 9, 2021 as Item PH 28.4.

In general terms, the Draft Official Plan Amendment proposes to amend Section 3.2.1 of the Official Plan by introducing new definitions of "Affordable rental housing and affordable rents", "Affordable ownership housing" and "Mid-range rents," along with other related modifications to Section 3.2.1 that are proposed to implement these new definitions (collectively, the "**Proposed Modifications**").

Our clients acknowledge and support the important objective of protecting existing affordable housing, and to promote opportunities to create new affordable housing within the City. However, our clients have several concerns with the Proposed Modifications, including as it pertains to matters of implementation as generally described herein.

It would appear from the Staff Report that matters of implementation have yet to be developed. For example, the Staff Report notes that increased financial investments from all orders of government and adjustments to City policy and programs will be required to support implementation of the new definitions, as well as to offset any potential impacts to the delivery of new affordable housing. We submit that a clear understanding of the measures that will be required to implement the Proposed Modifications is essential to properly assess the potential impact that the Proposed Modifications will have on achieving the delivery of new affordable housing within the City.

In particular, we have concerns with the potential impact that the Proposed Modifications may have on existing development approvals and proposals, including those that include affordable housing in reliance on existing City policies and programs. As a general proposition, any proposed modifications to Section 3.2.1 should include a clear transitional provision for approved and pipeline projects. At a minimum, the transition provision should provide that the Proposed Modifications do not apply to planning and development applications filed prior to the adoption thereof, including any proposals providing affordable housing that have been approved in principle by either City Council or the Ontario Land Tribunal.


The Proposed Modifications introduce definitions that are consistent with the definitions proposed by City Staff in the draft inclusionary zoning instruments that are being considered by City Council on November 9, 2021 as Item PH28.1. As a general proposition, we agree that a consistent policy framework on the subject matters of PH28.1 and PH28.4 is appropriate. We have submitted separate correspondence outlining our concerns with the proposed inclusionary zoning instruments, a copy of which is enclosed herewith. Many of those concerns apply equally to the Proposed Modifications, particularly as it relates to matters of transition, and the lack of financial incentives that should otherwise be provided to developers of affordable housing, which may ultimately serve to increase the cost of housing.

As a related point, we submit that further consideration of the Draft Official Plan Amendment should occur once the inclusionary zoning instruments have been determined in their final form. It is noted that there are no private appeal rights in respect of the inclusionary zoning instruments. Rather, the proposed inclusionary zoning instruments may only be appealed by the Minister of Municipal Affairs and Housing. On the other hand, the Proposed Modifications are subject to private appeal rights, and therefore subject to changes in accordance with the provisions of the Planning Act.

For the reasons generally set out above, we are requesting that Item PH28.4 be referred to City Staff for further consultation with affected landowners and developers of affordable housing. At the outset, concerns over transition and the need for a transition provision in the Proposed Modifications should be developed with the development community, while other substantive concerns should be considered once the inclusionary zoning framework is in force.

Please accept this correspondence as our formal request to receive notice of any decision by City Council related to Item PH28.4, as well as notice of any future meetings and decisions of Council or Committees of Council in respect of Item PH28.4 and/or the Proposed Modifications.

Yours truly,
Overland LLP


Per: Daniel B. Arsenosi
Partner

Schedule "A" encl.

Schedule “A”

- 128 Peter Street Limited Partnership
- 1386073 Ontario Inc.
- 1742875 Ontario Inc.
- 1720194 Ontario Inc.
- 2076203 Ontario Limited
- 2076204 Ontario Limited
- 2325968 Ontario Inc.
- 2672516 Ontario Limited
- 5047373 Ontario Inc.
- 6 Dawes Danforth Inc.
- Adsco Properties Inc.
- Bayview Village Developments Inc.
- Berkeley Carlyle (Junction) LP
- Cheong Family Holdings Ltd.
- Concert Properties Ltd.
- DN Trust
- Dormer Homes Inc.
- Double Z Investments Limited
- Freed Grand Park Development Inc.
- Freed Grand Park 3 Development Inc.
- Graywood 33 Limited Partnership
- Graywood CD Limited Partnership
- Graywood CM Limited Partnership
- Holmes Avenue Ltd.
- i2 Developments (Bronoco) Inc.
- Jencel 407 Yonge Street Inc.
- Jencel Properties Inc.
- Maplegrove York Apartments Ltd.
- Menkes Developments Ltd.
- NHD Developments Limited
- Novi Properties
- Ont GTA Properties Inc.
- Pem (Eglinton) LP
- Pier 27 Toronto (North) Inc.
- Pier 27 Toronto (Northeast) Inc.
- Policy Investment Ltd.

- St. Gaspar's Developments Corp.
- The Howard Property (386) Inc.
- The Howard Property Company Inc.
- The Independent Order of Foresters
- The Typhon Group Ltd.
- Tilzen Holding Limited
- Yonge & Scollard Developments Inc.

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100 Queen Street West
Toronto, ON M5H 2N2

Attention: City Clerk

Your Worship and Members of City Council:

RE: Inclusionary Zoning Official Plan Amendment, Zoning By-law Amendment and Draft Implementation Guidelines Item PH28.1

We are the lawyers for the clients listed in Schedule "A" to this letter. We are writing to express our concerns regarding the Inclusionary Zoning recommendations made at the October 28, 2021 meeting of the Planning and Housing Committee that we understand will be before City Council for consideration at its meeting that commences on November 9, 2021.

We have reviewed previous correspondence and submissions by and on behalf of BILD in this matter and we generally support the comments and position advanced by BILD with respect to Inclusionary Zoning. As well, we have reviewed the correspondence submitted by developer and other development industry representatives. While we acknowledge the important objective of providing affordable housing, we generally echo the underlying concerns raised about the particular Inclusionary Zoning regime that has been proposed.

While we support the recommendations in the Staff Report dated October 15, 2021 for transparent and predictable transition to an Inclusionary Zoning regime, we remain concerned about the possibility for premature imposition of Inclusionary Zoning and its impact on development projects that are in progress or in the pipeline. The rules regarding transition should be simple and straightforward and should not apply where *Planning Act* applications are underway or where development permissions have already been obtained for a property. For projects not yet underway, we generally agree with City Staff's approach that there should be a phase-in period. We note Staff are proposing September 18, 2022. We submit that the transition period should not be any date earlier than that.

The lack of financial incentives for developers of affordable housing is not consistent with Inclusionary Zoning regimes in other municipalities and jurisdictions. It is also contrary to the recommendations of the City's own consultant. Financial incentives must be considered as part of any Inclusionary Zoning regime in order to ensure that the cost of and responsibility for

providing affordable housing is not visited unilaterally or disproportionately on new development. This will only serve to increase the cost of housing.

The City's move to establish an Inclusionary Zoning regime prior to the formal identification of any Protected Major Transit Station Areas within the City of Toronto (the two that have been designated by the City so far remain before the Minister of Municipal Affairs for approval) is also problematic. Until appropriate minimum development permissions have been established in these important areas of the City, the impact of the proposed affordability requirements (which may yet go beyond those recommended in the City Staff report) are speculative.

We understand that the recommendations of the Planning and Housing Committee included a request to examine additional areas of the City to which the Inclusionary Zoning regime might be made to apply. Similar to the concerns about uncertainty expressed above, we are concerned with the lack of certainty with respect to the geographic extent and applicability of Inclusionary Zoning. Areas in which the regime will apply should be identified well in advance and not be subject to significant revisions just prior to the adoption of the City's instruments.

While the *Planning Act* provides no direct appeal mechanism for our clients in respect of the proposed Inclusionary Zoning regime, we are nevertheless **requesting written notice** of City Council's decision in this matter (along with any further reports and committee or Council meetings with respect to Inclusionary Zoning). In the event, the Minister of Municipal Affairs determines to appeal the City's Inclusionary Zoning instruments pursuant to Sections 17(36), 17(36.1.3), 34(19), and 34(19.4), some or all of our clients, including others not listed on Schedule "A", may seek party status to such an appeal. Our contact information for providing notice is set out herein.

Yours truly,
Overland LLP


Per: Daniel B. Artenosi
Partner

Schedule "A" encl.

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November 5, 2021

VIA EMAIL

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Overland LLP



Per: Christopher J. Tanzola
Partner

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