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Via Email: teycc@toronto.ca

Toronto and East York Community Council
City of Toronto
2nd Floor, West Tower, City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Attention: Ellen Devlin, Secretariat

Dear Sirs/Mesdames:

**Re: Item TE24.11 – King-Parliament Secondary Plan Review – Final Report
Secondary Plan and Zoning By-law Amendment**

We are solicitors for 1266845 Ontario Limited and 1429458 Ontario Limited, who are the owners of the properties known municipally in the City of Toronto as 187 King Street East and 65 George Street (the “**Properties**”). We are writing to provide our client’s preliminary concerns in respect of the draft Secondary Plan and the draft Zoning By-law Amendment (the “**Draft ZBA**”) pursuant to the requirements of the *Planning Act*.

At the outset, we would urge that Toronto and East York Community Council defer, at a minimum, consideration of the Draft ZBA. Our understanding is that the Draft ZBA was only released last week. This late release of the Draft ZBA makes it difficult to provide a full review and comment before the statutory public meeting.

We would also urge Toronto and East York Community Council to consider inclusion of a transition provision in the draft Secondary Plan as contained in the approved versions of the Downtown Plan and Midtown Plan. On April 21, 2017, our client submitted a complete rezoning application for the Properties, which is now the subject of an appeal to the Local Planning Appeal Tribunal. It would be contrary to established case law to evaluate this application pursuant to the draft Secondary plan. Instead, it is both fair and good planning to include such a transition provision to ensure that the legal basis for consideration of the rezoning application filed for the Properties follows the well-established principle that an application is entitled to be evaluated pursuant to the policies in force at the time of the application. Inclusion of a transition provision may even eliminate the need for an appeal.

Absent inclusion of a transition provision, our client has the following concerns:

Draft Secondary Plan

- Policy 1.5: This policy should be deleted. Not only is it unnecessary because it duplicates a requirement of the *Planning Act* but also it inappropriately refers to the Heritage Conservation District Plan. If this policy is to remain without revision, the Draft ZBA must be deferred until the Heritage Conservation District Plan is revised to comply with the directions in the Local Planning Appeal Tribunal decision.
- Policy 2.2: This policy is confusing and should be deleted or revised. Although it purports to preserve or expand non-residential gross floor area for cultural spaces, the operative policies would require a minimum of 25 per cent of the total proposed gross floor area in a redevelopment to be non-residential uses, regardless of whether or not such GFA is for cultural spaces. A similar policy was revised in the Downtown Plan to encourage the replacement of cultural spaces, but recognized this would be treated as a community benefit. Policy 2.2 should be deleted or at least similarly restricted to the replacement of existing gross floor area for cultural spaces.
- Policy 2.3: Although the non-residential replacement policies proposed in Official Plan Amendment No. 231 remain under appeal, this proposed policy would conflict with the direction in OPA 231, which allows for replacement within 500 metres of a rapid transit station or anywhere in the Downtown and Central Waterfront.
- Policy 3.5.1: The potential application of this policy is unclear. Various provisions of the *Planning Act*, including but not limited to Section 37 and Section 42, provide the mechanisms for the City to require an application to provide community service facilities and/or parkland. Further, the City has a responsibility for the provision of such matters through the *Planning Act*, the *City of Toronto Act, 2006*, and the *Development Charges Act*. This policy needs to be clarified to ensure it does not require private contributions beyond statutory obligations or otherwise limit appropriate optimization of land and infrastructure in the event that the City has not fulfilled its statutory obligations.
- Policy 3.5.3: This policy must be revised because it inappropriately elevates zoning by-laws to the status of policy. In addition, and as one example, Official Plan Amendment No. 352 provides policy guidance for reduction of tower setbacks meaning that it is possible to reduce certain performance standards in conformity with applicable official plan policies. This policy would inappropriately limit that approach and potentially require an official plan amendment.
- Policy 4.2: The vague nature of this policy should be reconsidered. Not only is the reference to “additional design responses” overly broad but also it would create uncertainty

in the application of the draft Secondary Plan, especially when the policy includes cross-references to the Draft ZBA and urban design guidelines.

- Policies 5.1-5.3 & 5.6: The Downtown Plan specifically recognizes that certain expansions to the public realm network appropriately qualify as community benefits. The draft Secondary Plan should be revised to be consistent with the Downtown Plan.
- Policy 5.9: The prescriptive requirements for new mid-block connections should be deleted or revised. It is not appropriate to require an official plan amendment if a new mid-block connection is not 4.0 metres or is partially covered. Such instances may be appropriate on a site-specific basis and should be implemented without a requirement for an official plan amendment.
- Policies 5.10 & 5.12: These policies are an inappropriate extension of the City's specific legal authority under the *Planning Act* and should be deleted or revised.
- Policy 8.1: The use of the "context-specific" in this policy and others is problematic without clarification of the context. The parent Official Plan provides guidance regarding the existing and planned context, but this policy (and others in the draft Secondary Plan) do not recognize that this area is planned for growth and that development applications must be reviewed within this context.
- Policy 8.3: This policy is unduly restrictive. A blanket prohibition on buildings cantilevering over setbacks at all, even above certain heights, is inappropriately rigid and ignores site-specific context or existing development patterns in certain areas. Further, the policy appears to exclude below-grade projections into a setback but such potential should be specifically included in the policy.
- Policy 8.6: This policy is vague and unclear and could be read as inappropriately elevating zoning permissions into Official Plan policies without recognizing that this area is planned for growth. This represents an inappropriate approach to the draft Secondary Plan, especially when Official Plan Amendment No. 352 has been revised through its appeal process to include a process for determining adequate tower separation in the Downtown.
- Policy 8.7.2: The intent to limit large areas of glass along King Street East is inappropriately restrictive when glass may be appropriate for certain aspects of a development where retail is proposed. If our understanding of the intent of this policy is incorrect, that the policy should be revised to improve its clarity in application.

Draft ZBA

As noted above, the late release of the Draft ZBA has precluded a fair opportunity for review and to provide comments to Toronto and East York Community Council. We would respectfully

request that this item be deferred for one cycle. (It would also enable staff to report back on why they are not recommending use of a transition provision in the draft Secondary Plan.)

Our preliminary review of the Draft ZBA suggests that the proposed overall height may recognize the growth potential of the Properties, but that other proposed standards would preclude the appropriate optimization of land within the King-Parliament area, including on the Properties. In particular, we are reviewing certain performance standards, such as streetwall heights, setbacks and stepbacks, with our client and its consultant team in light of the above-noted Local Planning Appeal Tribunal decision regarding the proposed heritage conservation district plan. This decision, which still needs to be implemented after some passage of time, removed certain matters from inclusion in the proposed plan, but it appears that the City is now proposing that these matters be included in the Draft ZBA without sufficient analysis.

We would also appreciate this letter being treated as our client's request for notice of any decision made in respect of both the draft Secondary Plan and draft Zoning By-law Amendments.

Yours truly,

Goodmans LLP



David Bronskill

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Cc: Client