

April 20, 2021

BY EMAIL

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

**Re: King Parliament Secondary Plan
Item TE24.11
Toronto and East York Community Council Meeting of April 21, 2021**

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 Parliament Secondary Plan. We are writing on behalf of those clients listed in **Appendix “A”** to this letter.

We have had an opportunity to review the draft King Parliament Secondary Plan (the “draft Secondary Plan”), the accompanying zoning by-law amendment, as well as the Staff Report Dated March 30, 2021. Our clients have a number of concerns with the policies proposed. In particular, we note our clients’ concerns with the following policies:

- **Section 1.5 – Interpretation:** the Secondary Plan provides that an implementing zoning by-law will reflect the built form directions of, among other things, the Heritage Conservation District Plan. As the City is aware, the Local Planning Appeal Tribunal (LPAT) in its decision concerning the St. Lawrence Neighbourhood Heritage Conservation District Plan (the “HCD Plan”), ordered the City to modify the HCD Plan to remove reference to built form policies. Accordingly, there will be no built form direction from the HCD Plan to be applied and, given the LPAT’s decision, reading in any built form requirements from the objective or policies of the HCD Plan would be inappropriate. We ask that section 1.5 be deleted.
- **Section 2 – Objectives:** the Secondary Plan imposes a mandatory obligation to provide employment uses on all sites designated Mixed Use Area 2 in the Downtown Plan. A site *must* provide the greater of:
 - i) the replacement of all existing non-residential gross floor area, or
 - ii) a minimum of 25 per cent of the total gross floor area as non-residential uses.

This obligations explicitly includes cultural spaces, as defined in the Downtown Plan.

This policy objective will impede the City and the development industry's ability to require employment uses as appropriate on a site specific basis within the King Parliament area. A more flexible approach should be taken as not all sites are equally appropriate for employment uses; section 2.2 assumes otherwise. It appears that City Staff are attempting to reintroduce the policies which had been contained in the Council adopted version of the OPA 406, the Downtown Plan, but which were significantly modified by the Minister when OPA 406, was modified and approved. These policies are unduly prescriptive and rigid and have recently been rejected by the Minister. In our submission, greater flexibility, including the incorporation of language to "encourage" the achievement of these objectives, is appropriate.

- **Section 3.3 – Urban Structure:** this policy provides that where a development site is subject to two Policy Areas, the policies of the more restrictive Policy Area will apply to the entire site. This will be a significant issue for large sites straddling two Policies Areas, particularly those large sites on the south side of Queen Street East. Further, this policy appears to apply irrespective of the percentage of a site that is within the more restrictive Policy Area. This policy should be revised to allow flexibility on the application of the appropriate Policy Area on a case by case basis.
- **Section 3.5 – Intensification:** this policy sets out the criteria that will be considered in determining the scale and intensity of development within the King Parliament area. Policy 3.5.3 purports to limit intensification to site with the appropriate characteristics as determined by the performance standards set out in the accompanying zoning by-law. This presumes tall buildings cannot be appropriately sited and adhere to good urban design principles without meeting the prescriptive standards as set out in the zoning by-law. Surely, this is not the case. In addition, policy 3.5.6 recognizes existing and planned rapid transit stations. However, this policy does not take into account the policy framework of the City's future Major Transit Station Areas ("MTSAs"). The *Growth Plan* directs intensification towards MTSAs and prescribes minimum density targets that the City must meet. This policy fails to appropriately recognize the policies of the *Growth Plan* and recognize the application of transit supportive densities generally.
- **Section 4.1 – Heritage:** the first paragraph of section 4.1 is not an appropriate official plan policy. Furthermore, in accordance with the LPAT's decision for the St. Lawrence Neighbourhood HCD Plan, policy 4.1 fails to recognize the contributions of recent periods of development within the area. For the reasons provided in the LPAT's decision respecting the St. Lawrence Neighbourhood HCD Plan, this section should be revised.
- **Sections 5.1, 5.9, 5.12 – Proposed Midblock Connections and Laneways:** these sections include policies dealing with laneways and midblock connections. The policies suggest that land would be taken through development review to create mid block connections. In our clients' view, this would represent a taking by the municipality in a manner which would otherwise not be permitted and is inappropriate and would serve no meaningful planning function. Greater flexibility including the use of policy language such as "where feasible and appropriate" should be incorporated.
- **Section 5.5 – No Net-New Shadows Test:** this policy incorporates a no net-new shadow test in respect of certain parks within the King Parliament area. Again, this no net-new shadow test was directly addressed in the Province's revisions to the Downtown Plan. It

is inappropriate for the City to attempt to impose this policy requirement once again despite the Province finding it inappropriate for this area.

- **Section 6 – Adjacency to Rail Corridors:** section 6 proposes policies dealing with development adjacent to the Union Station Rail Corridor. As Council is aware, the City is currently undertaking a review of its guidelines for development in proximity to rail corridors. The purpose of that study is ultimately to recommend an official plan amendment and zoning by-law amendment to introduce a consistent, City-wide approach to dealing with development adjacent to rail corridors. As such, the rail corridor policies of the Secondary Plan should be removed in recognition of this forthcoming policy framework.
- **Section 8 – Old Town Policy Area:** the language of the built form policies of the Old Town Policy Area will result in difficulties in implementation. Policy 8.6.3 requires a “generous” stepback from the façade of base buildings. This term is subjective and lacks any practical, consistent meaning. Further, policy 8.3 appears to require a mandatory setback in every instance. This policy imposes an inflexible and prescriptive standard that fails to account for the unique attributes of the site or its site-specific context. Such built form considerations should be applied on a base by case basis.
- **Section 9 – Corktown Policy Area:** similar to the policies of the Old Town Policy area, the policies applicable to King Street East (Policies 9.3, 9.4, and 9.5) appear to require a mandatory setback in every instance, which imposes an inflexible and prescriptive standard that fails to account for the unique attributes of the site. Policy 9.6, which aims at compatibility of development with King Street’s historic main street character, purports to regulate construction materials used along King Street East. The regulation of materials used in construction is not the proper purpose of an official plan document. Lastly, Policy 9.8 appears to require development abutting overpassing in the Corktown Policy Area to provide a minimum continuous setback as providing in the accompanying zoning by-law. We believe this policy to be unnecessarily rigid. Appropriate mitigation measures other than this mandatory setback may be proposed through further evaluation and study, and in particular through those studies outlined in Policy 9.8.2 (i.e. air quality, noise, vibration studies). As such, Policy 9.8 should be revised to include such language as “...provide an appropriate building setback from the overpass structure.”
- **Sections 8.4, 8.5, 9.3 and 9.4 – Modifications to Performance Standards:** these policies appear to be an unnecessary carry-over from a version of the draft Secondary Plan that contemplated prescriptive built form standards. In the context of the current draft Secondary Plan, these policies constrain modifications to built form standards to few circumstances. Surely, the circumstances identified in these policies are not the only appropriate planning or urban design considerations when determining what an appropriate setback is, if at all required. Given that the current draft Secondary Plan removed all references to prescriptive performance standards — which our clients are supportive of — these policies are superfluous and should be deleted.
- **Section 10.19 – Holding Provision:** policy 10.19.3 requires that in the West Don Lands Policy Area, all zoning by-law amendments must include a holding provision “H” symbol pending measures to conserve built heritage resources on the site. This is an inappropriate use of this mechanism. The “H” symbol is intended to be applied where the requirements for lifting the holding provision are clear and precise, and capable of

resolution through feasible matters. Use of the “H” symbol is not appropriate however, where an appropriate solution has not been identified or the requirements for lifting are uncertain or vague. Unlike commonly accepted uses of the “H” symbol, “built heritage resources” can be “conserved” through a range of different solutions that may entail many different outcomes. In our clients’ view, use of an “H” symbol in this manner would circumvent the processes and timelines outlined in the *Ontario Heritage Act*.

- Our clients have also raised concerns with the lack of a transition policy in the Secondary Plan. In our view, a transition provision should be added to clarify that the Secondary Plan does not apply to development sites which are subject to previously approved zoning by-law amendments or minor variance applications, or to development applications submitted prior to the Secondary Plan coming into force.

As you can appreciate, our firm represents a number of land owners of both individual and multiple properties within the King Parliament area. Given the outstanding concerns, we request that the draft King Parliament Secondary Plan and accompanying zoning by-law amendment be referred back to planning staff for further consultation with affected landowners and consideration of further revisions, prior to being considered by City Council for adoption. We would welcome the opportunity to continue dialogue with the City with respect to this policy initiative to address the concerns we have outlined above.

Lastly, we request that the undersigned be provided with notice of any future meetings related to this matter and for notice of any decision of City Council, including its Committees of Council, concerning the proposed Secondary Plan.

Thank you for your consideration of this request.

Yours truly,

AIRD & BERLIS LLP



Eileen P. K. Costello

EPKC/JGP/SJT/lm

c: Clients

APPENDIX “A”

1. Allied Properties REIT
2. Lamb Development Corp.
3. KingSett Capital
4. Hullmark Developments

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