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Our File No. 140934

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
Roverella Developments Ltd. – 250 Front Street East**

Please be advised that Aird & Berlis LLP acts on behalf Roverella Developments Ltd., the owner of property municipally known as 250-260 Front Street East.

Our client is proposing to redevelop its property with a 19-storey, 45,824 square metre mixed-use development containing residential and commercial uses. Our client submitted an application to rezone the property on November 30, 2017. After submission of further documentation, the City deemed the application complete on July 11, 2018. Our client made the decision to acquire the property and pursue its development application in reliance on the in-force official plan policies and secondary plan policies.

As a decision on our client's rezoning application is still pending, our client has concerns with the King Parliament Secondary Plan, as currently drafted. As such, we are writing on behalf of our client to convey its objections to the King Parliament Secondary Plan and the accompanying draft zoning by-law amendment, in their current forms. Given that the draft zoning by-law was only released last week, consideration of this instrument should be deferred to allow sufficient time for review and comment prior to a statutory public meeting.

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

- **Lack of Transition Provision:** the draft Secondary Plan does not contain any policy that provides for an adequate transition in the policy framework. This is in contrast to other recent secondary plans adopted by the City, such as the Downtown Plan and the Yonge Eglinton Secondary Plan. There are many sites within the King Parliament area, including our client's, that are either subject to past development approvals or have application where a final decision is outstanding. An intervening policy framework, such as the draft

Secondary Plan, would not have been accounted for in the formulation of those past approvals and applications, and would be unfair and contrary to the principles of good planning to impose the requirements of the draft Secondary Plan on the site. 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.

- **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. In addition, this policy essentially restates the role of zoning by-laws under the *Planning Act*, which is unnecessary and duplicative. We ask that section 1.5 be deleted.
- **Section 2 – Objectives:** the Secondary Plan imposes a mandatory obligation to provide non-residential 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 policy objective will impede the City and the development industry’s ability to provide non-residential uses as appropriate on a site specific basis within the King Parliament area taking into consideration factors such as feasibility and demand. A more flexible approach should be taken as not all sites are equally appropriate for accommodating non-residential uses comprising 25% of total floor area. 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. 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 more appropriate. With respect to 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.

- **Section 3.3 – Urban Structure:** this policy provides that a development site that is subject to two Policy Areas, the policies of the “more restrictive” Policy Area will apply to the entire development site. This policy is confusing, and the determination of which is the “more restrictive” policy is left to interpretation. It is unclear whether this policy only applies in respect of height, setbacks, or includes such other policies as uses or no-net-new-shadows test. This policy requires further clarification.
- **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 seeks to limit intensification to sites 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, which is contrary to good planning. 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. Further, this policy suggests that station locations are subject to change. However, the decision as to final locations of planned transition stations does not fall to the City, and should be recognized by greater clarity in this policy.

- **Section 4.1 – Heritage:** the first paragraph of section 4.1 is not an appropriate official plan policy. 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. In addition, the reference to "appropriate design responses" in policy 4.2 is overly broad and would create uncertainty in the application of the draft Secondary Plan, especially when the policy cross-references the accompanying zoning by-law amendment and urban design guidelines.
- **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 midblock connections. In our client's 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. In addition, our client questions the utility of the proposed midblock connection on its site, given the very close proximity to Berkeley Street, and especially considering the requirement of policy 5.9 which requires these connections to provide sky views and have a width of 4 metres. The Downtown Plan specifically recognizes that certain expansions to the public realm network appropriately qualify as community benefits. The draft Secondary Plan does not contain similar policy language, and should be revised to be consistent with the Downtown Plan.
- **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" setback 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. The use of the term "context-specific" in this and other policies is highlight problematic without a clarification of what that context is. The policy ignores the fact that the King Parliament are is planned for significant growth, including a new rapid transit line, and that development applications must be reviewing within this context. In addition, policy 8.5.1 provides that a greater setback may be required where "high" pedestrian volumes exist or are anticipated. More explicit language is needed to define what "high" means in the circumstances, and how this will be quantified. Policy 8.2.2. requires "noticeable and discernible built form transition" to adjacent Mixed Use Areas 3 and Mixed Use Areas 4. Instead, the Policy

should require appropriate transition to adjacent properties considering the particular context of a site and its surrounding area and that this transition can be accomplished in a variety of ways.

- **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. 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.
- **Draft Zoning By-Law Amendment:** based on our preliminary review of the draft zoning by-law, our client has significant concerns with respect to the proposed zoning standards concerning heights, streetwall heights, setback and stepbacks. It is our client's opinion that these zoning standards have been proposed without appropriate justification and therefore should be deleted, failing which, we request that a provision should be added to clarify, among other things, that the draft zoning by-law does not apply to properties which are the subject of development applications.

We reserve our right to raise other grounds of objection with respect to the substantive provisions and merits of the proposed instruments, in particular, once we have had an opportunity to review the draft zoning by-law amendment in greater detail.

Given the outstanding concerns, we request that the draft Secondary Plan and accompanying draft zoning by-law amendment be referred back to planning staff for further consultation with affected landowners and consideration of further revisions, in particular as it relates to transition provisions, prior to being considered by City Council for adoption. We reiterate that the draft zoning by-law amendment was just released resulting in an unfair opportunity to review the instrument in sufficient detail. We would welcome the opportunity to continue dialogue with the City with respect to these draft instruments 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.

Should you have any questions regarding this matter or require any further information, please do not hesitate to contact the undersigned.

Yours truly,

AIRD & BERLIS LLP

A handwritten signature in dark ink, appearing to read "S. Tomasella", followed by a period.

Sidonia J. Tomasella
SJT/JGP/cg

cc: client

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