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DELIVERED VIA EMAIL (councilmeeting@toronto.ca)

Marilyn Toft, Toronto City Council
12th Floor, West Tower, City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Attention: Marilyn Toft, Secretariat

Dear Mayor Tory and Members of Council:

RE: Agenda Item PH 31.1 – Development Proximity to Rail: Amendment to Official Plan – Final Report dated January 27, 2022

We are the solicitors for DK Victoria Park Inc. (“**DK**”), the owners of the lands known municipally as 411 Victoria Park Avenue, 2510 and 2530 Gerrard Street East in the City of Toronto (the “**Site**”). The Site, which includes blocks of land that will be conveyed to other parties including blocks that will be developed for affordable housing purposes, is adjacent to the Metrolinx Lakeshore East rail corridor.

The Site has been approved for development comprising five new development blocks on two new public streets accommodating four mid-rise apartment buildings ranging from 8 to 12 storeys and four blocks of stacked and back-to-back townhouses. A total of 1,052 dwelling units are being proposed, of which 120 would be affordable rental or ownership units. There is also approval for a potential school to be built adjacent to the rail corridor. OPA 551 and zoning by-law amendments (By-laws 959-2021 and 960-2021) for the proposed development were adopted by City Council at its meeting on November 9, 10 and 12, 2021 and are now in force and effect.

We have reviewed the Development in Proximity to Rail: Amendment to the Official Plan – Final Report, dated January 27, 2022 and the draft Official Plan Amendment 536 (the “**Draft OPA**”) attached to the Final Report.

Please accept this letter as DK’s written submission of its objections and concerns with the Draft OPA which seeks to amend the Official Plan to require, amongst other things, the submission of

a Rail Safety and Risk Mitigation Study as part of a complete application notwithstanding existing approvals for the Site.

Policy 1 of the Draft OPA requires the submission of a Rail Safety and Risk Mitigation Report as part of a “complete application to introduce, develop or intensify land uses within the area of influence of rail”, however, the proposed policy fails to define the term “area of influence of rail” and fails to distinguish between different types of land uses, including those that may be less or more vulnerable to the operations of a railway in close proximity.

Further, the draft OPA requires a Rail Safety and Risk Mitigation Report be prepared with each development approval, however, the proposed policy does not specify at which stage of the development approval process the Report is required. Therefore, the policy could be interpreted to require such a report at various stages of the development approval process, including applications for official plan amendment, zoning by-law amendment and/or site plan approval notwithstanding the fact that existing approvals for residential permissions are already in place. Consequently, the draft OPA is unclear and creates uncertainty throughout the approval process with the ability to impose repetitive obligations where it may not be needed or reasonable to do. It is also possible this new policy could be used to impose new obligations on approved developments which would be unreasonable and unfair.

Further, Clause (c) of Policy 2 of the Draft OPA requires landowners to enter into legal indemnification agreements with the City of Toronto (the “**City**”). The municipality has a statutory duty to review and approve land use planning applications and therefore, any associated responsibility should remain with the municipality. There are no legal or planning grounds to require landowners to enter into legal indemnification agreements and specifically, impose unlimited liability in this context on landowners as third parties. In our opinion, this proposed requirement is unprecedented, unreasonably onerous and should be removed from the draft OPA. Failure to do so, could create a significant barrier for redevelopment of lands in proximity to rail corridors and facilities for much need housing, including affordable housing, throughout the City.

Additionally, the OPA does not contain transition provisions, which are critical to prevent prejudice to landowners or developers with development projects and applications that are already approved or underway. Our client’s derailment work-to-date includes mitigation recommendations applicable to the conveyed lands that are to be developed by the other parties within our client’s draft plan of subdivision. The draft OPA should be revised to exempt approved developments and future applications that arise out of, or implement, such instruments.

Accordingly, our client objects to the draft OPA in its current form. Notwithstanding the submission of this letter, our client is nevertheless willing to work with the City to find an appropriate solution to these issues.

Lastly, please accept this letter as our request for notice of any further meetings or decisions of City Council regarding the Draft OPA.

If you have any questions regarding the above, please do not hesitate to contact me at 416-645-4572 or via email at jason.park@devinepark.com.

Yours very truly,
Devine Park LLP

A handwritten signature in blue ink, appearing to read 'J. Park', is positioned above the typed name.

Jason Park
JIP/OMR

cc: DK Victoria Park Inc.