

July 19, 2023

**BY EMAIL TO:** [councilmeeting@toronto.ca](mailto:councilmeeting@toronto.ca)

City Council  
City of Toronto  
Toronto City Hall  
100 Queen Street West  
Toronto, Ontario  
M5H 2N2

**ATTENTION:** Sylwia Przewdziecki, Manager, Council Secretariat Support

Dear Mayor Chow and Members of City Council:

**Re: Item PH5.2 – Official Plan Amendment for Bill 97 Transition - Authorizing the Continuation of Institutional and Commercial Uses in Employment Areas - Final Report**  
**Toronto Official Plan Amendment No. 668 ("OPA 668")**  
**Nits Investments ("Dolphin Gaming")**  
**765 Warden Avenue, Toronto**

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### (i) Introduction

Aird & Berlis LLP is counsel to Nits Investments ("**Dolphin Gaming**"), who have an interest in the lands municipally known as 756 Warden Avenue in the City of Toronto (the "**Subject Site**").

We are writing to provide comments on the City Planning Staff Report entitled "Official Plan Amendment for Bill 97 Transition Authorizing the Continuation of Institutional and Commercial Uses in Employment Areas – Final Report," dated June 19 2023 (the "**Final Report**"). In the Final Report, Planning staff have recommended the approval of the City-initiated Official Plan Amendment ("**OPA**") 668, which proposes to address changes to the definition of "Areas of Employment" in the *Planning Act* made by Bill 97, the *Helping Homebuyers, Protecting Tenants Act* ("**Bill 97**"). The Final Report and the proposed OPA 668 is intended to be considered by City Council on July 19-21, 2023 as Item PH5.2.

### (ii) Background

The Subject Site is a corner location, generally bound by Comstock Road to the north, Warden Avenue to the east, Hymus Road to the south, and the property municipally known as 69 Comstock Road to the west. The property has an approximate site area of 24,260 square metres. The property has approximate frontages of 210 metres along Warden Avenue, 110 metres along Hymus Road, and 115 metres along Comstock Road.

The Subject Site is currently vacant. It is in close proximity to the public transit. It is within approximately 1000 metres north from the Warden Subway Station at the intersection of Warden Avenue and St. Clair Avenue East, and which is located on Toronto Transit Commission ("**TTC**")

Line 2 (Bloor-Danforth). It is also approximately 800 metres south from the future Golden Mile Light Rail Transit (“LRT”) Station at the intersection of Warden Avenue and Eglinton Avenue East, and which is located on the Metrolinx Eglinton Crosstown line. Finally, the Subject Site is located directly adjacent to two TTC Bus Stops at Warden Avenue and Hymus Road and at Warden Avenue and Comstock Road, both of which form part of route 68 running north and south along Warden Avenue.

The Subject Site is identified as *Employment Areas* in Map 2 (Urban Structure) and is designated as *General Employment Areas* on Map 20 (Land Use Plan) of the Toronto Official Plan (the “OP”). Importantly, the Subject Site is not located within a Provincially Significant Employment Zone (“PSEZ”).

Dolphin Gaming is the operator of a charity bingo hall and electronic gaming facility, which is currently located near by to the Subject Site at 1921 Eglinton Avenue East. As a result of a future development proposal for the existing location, Dolphin Gaming has been required to find a new site for its business, and has acquired an interest in the Subject Property.

### **(iii) Concerns regarding Proposed OPA 668**

Firstly, consideration of OPA 668 at this time is premature as the relevant sections of the *Planning Act* amended by Bill 97, in particular subsection 1(1) adding the new definition of “Area of Employment” and subsections 1(1.1) and (1.2) setting out the proposed transition provisions, are not yet proclaimed. Furthermore, the related definition and policies applying to “Employment Areas” in the proposed new Provincial Planning Statement (the “**New PPS**”) are still open for public consultation and consideration by the Minister of Municipal Affairs and Housing (the “**Minister**”). As a result, any consideration of OPA 668 by City Council should not occur until the Bill 97 amendments to the *Planning Act* and the related policies of the New PPS are fully approved and in force.

Secondly, the proposed OPA 668 as recommended by City Planning staff is not sufficient to implement the clear intention of the new *Planning Act* definition of “Areas of Employment”, which now expressly provides that institutional and commercial uses, including office uses such as those found on the Subject Site, are not intended to be subject to restrictive *General Employment Areas* and *Core Employment Areas* designations. Rather, City Planning staff should undertake a more detailed and site-specific assessment of the appropriateness of the *General Employment Areas* and *Core Employment Areas* designations on lands which are currently planned and have existing permissions for a wide range of non-residential uses, including institutional, commercial, and office uses, and determine whether those sites should appropriately be redesignated given the new statutory definition of “Areas of Employment” and the policy framework proposed in the New PPS. In addition, City Planning staff should also evaluate the appropriateness of including certain recreational uses such as bingo halls on *Employment Lands*.

Finally, the proposed OPA 668 does not provide sufficient clarity regarding the appropriate interpretation of “lawfully established” uses. Rather, the policies of the proposed OPA 668 should clearly define the intended meaning of that term in the context of Official Plan policy and designations, since the Official Plan should appropriately provide clear guidance to landowners and the public on the appropriate use of lands within the City. Furthermore, by importing the concept of “lawfully established” uses into Official Plan policy, OPA 668 places an undue burden

on landowners to demonstrate “lawfully established” compliance and/or legal non-conforming status.

**(iv) Conclusion**

In its current form, the proposed OPA 668 is premature and does not represent good planning.

For the reasons set out above, Dolphin Gaming requests that City Council refer this matter back to staff with direction to address the matters set out herein.

We ask to be notified of any decisions made by City Council in connection with this matter.

Yours truly,

AIRD & BERLIS LLP

A handwritten signature in black ink, appearing to read "Alexander J. Suriano". The signature is fluid and cursive, with a large initial "A" and "S".

ALEXANDER J. SURIANO  
AJS

Encls.

Cc: Client