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July 4, 2023

VIA EMAIL

Planning and Housing Committee
Toronto City Hall
10th Floor, West Tower
100 Queen Street West
Toronto, ON M5H 2N2

Attention: Nancy Martins, Administrator

Dear Members of the Planning and Housing Committee:

RE: Item PH5.2 – City-Initiated Official Plan Amendment No. 668 for Bill 97 Transition - Authorizing the Continuation of Institutional and Commercial Uses in Employment Areas

We are the lawyers for multiple clients who are the owners of various properties across the City of Toronto (the “**City**”). We have reviewed the draft Official Plan Amendment No. 668 which generally proposes to permit the continuation of institutional and commercial uses in the City’s *Employment Areas* despite their express exclusion from the definition of “area of employment” in the *Planning Act*, R.S.O. 1990, c. P. 13, as amended (“**Draft OPA 668**”).

On behalf of our clients listed on the enclosed Appendix “A”, we write to provide our preliminary concerns with Draft OPA 668.

Planning Act Amendments and the Proposed Provincial Planning Statement

The *Helping Homebuyers, Protecting Tenants Act* (“**Bill 97**”), which received Royal Assent on June 8, 2023, amends the definition of “area of employment” under Section 1(1) of the *Planning Act* to explicitly exclude institutional, commercial, retail and office uses where they are not associated or ancillary to manufacturing or warehousing uses. The province has simultaneously proposed a new Provincial Planning Statement (“**Draft PPS**”) which contains a similar definition, limiting the uses permitted within an area of employment to manufacturing, warehousing and certain associated or ancillary uses.

The amendments to the *Planning Act* under Bill 97 additionally contain two transition provisions under Subsections 1(1.1) and (1.2) that authorize municipalities to permit the continuation of institutional and commercial uses (including retail and office uses) within an area of employment

where the use was lawfully established prior to the day the *Planning Act* amendments come into force.

We note that the amendments to the *Planning Act* noted above are awaiting proclamation by the Lieutenant Governor and are not yet in force. Similarly, the Draft PPS has been posted for public comment on the Environmental Registry of Ontario until August 4, 2023, and accordingly, it is not yet in force.

Concerns with OPA 668

Draft OPA 668 proposes to authorize the continuation of all legally existing uses otherwise excluded from the amended definition of “areas of employment” under the *Planning Act* within the City’s identified *Core Employment Areas* and *General Employment Areas*. This blanket approach is contrary to the legislative intention of the *Planning Act* amendments approved through Bill 97 and the provincial direction to limit permitted uses within areas of employment to industrial, warehousing and certain associated or ancillary uses. To the extent that Section 1(1) of the *Planning Act* will authorize the City to permit the continuation of legally existing uses that are otherwise prohibited within an area of employment, we submit that implementation of such authorization requires a qualitative, site or area specific assessment to determine whether, in such circumstances, the permission is necessary to ensure the ongoing viability of an area that includes the uses intended by the province to constitute an area of employment.

As proposed, Draft OPA 668 would effectively negate the legislative intention of the recent amendments made to Section 1(1) of the *Planning Act* and will serve to restrict opportunities for the redevelopment of underutilized sites within the City. It would appear that this is the very intent of Draft OPA 668, by proposing to maintain the status quo despite the clear legislative intention of the Bill 97 *Planning Act* amendments to the contrary.

We further submit that the consideration and adoption of Draft OPA 668 is premature at this time. In particular, the Staff Report prepared by the Chief Planner and Executive Director, City Planning, dated June 19, 2023, states that further Official Plan Amendments will be brought forward in the Fall, which seek to review the permitted uses in areas of employment as a result of the *Planning Act* amendments introduced by Bill 97. Further consideration of Draft OPA 668 should await the consideration of any further policy modifications that may be proposed through the City’s ongoing review of the Official Plan employment policies, to ensure a comprehensive and coordinated approach to implementing the legislative amendments introduced by Bill 97 and the policy directions flowing from the Draft PPS, as may be modified and approved in its final form by the province.

We request that the undersigned and Justine Reyes (at jreyes@overlandllp.ca) be provided with notice of any further reports or decisions made in respect of this matter. Please contact the undersigned and Justine Reyes if you have any questions regarding this correspondence.

Yours truly,
Overland LLP

A handwritten signature in black ink, appearing to read "D. Artensosi", is written over a horizontal line.

Per: Daniel B. Artensosi
Partner

Encl.

APPENDIX "A"

LIST OF CLIENTS

- Easton's Group of Hotels Inc.
- West Four Hundred Inc.
- 2465855 Ontario Ltd.