

July 4, 2023

BY EMAIL TO: phc@toronto.ca

Planning and Housing Committee
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario
M5H 2N2

ATTENTION: Nancy Martins, Committee Administrator, Planning And Housing Committee

Dear Members of Planning and Housing Committee:

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")
39 Wynford Inc. ("Brookfield")
39 Wynford Drive, Toronto

(i) Introduction

Aird & Berlis LLP is counsel to 39 Wynford Inc. ("**Brookfield**"), the owner of 39 Wynford Drive 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 Planning and Housing Committee on July 5, 2023 as Item PH5.2.

(ii) Background

The Subject Site is a 1.62 hectare property located at the southeast corner of Wynford Drive and Gervais Drive, approximately 240 metres east of Don Mills Road.

The Subject Site currently contains a 5-storey office building with surface parking, and vehicular access from Wynford Drive. The existing floor space index ("**FSI**") of the Subject Site is 0.39 times the area of the lot, which represents a significant underutilization of a property of this size and in this location. The Subject Property represents an important opportunity for greater intensification in the form of mixed use development.

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

The Subject Site is located in close proximity to transit, being approximately 120 metres from the Aga Khan Park & Museum Station (at the Don Valley Parkway southbound exit ramp and Eglinton Avenue East) along the future Eglinton Crosstown Light Rail Transit line (the “Crosstown LRT”). In addition, the Subject Site is also approximately 320 metres from the Science Centre Station (at Don Mills Road and Eglinton Avenue East), which connects into both the Crosstown LRT as well as the under construction Ontario Line subway.

On July 21, 2021 Brookfield, through its planning consultants Bousfields Inc. (“Bousfields”), filed an employment areas conversion request for the Subject Site as part of the City’s current MCR process (the “Brookfield Conversion Request”). The Brookfield Conversion Request proposed the Subject Site be redesignated from the City’s in-force *Employment Areas* designation to *Mixed Use Areas* under the Toronto OP. The Brookfield Conversion Request is known municipally as Conversion Request No. 32. Throughout the MCR process, Brookfield and its consultants have engaged with City Planning staff in support of the Brookfield Conversion Request.

(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.

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

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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, Brookfield requests that Planning and Housing Committee 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, or Committee of Council, in connection with this matter.

Yours truly,

AIRD & BERLIS LLP



ALEXANDER J. SURIANO
AJS

Encls.

Cc: Client
Mike Dror, MCIP, RPP, Bousfields Inc.