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Our File No.: 193076

City of Toronto
Planning and Housing Committee
Toronto City Hall
100 Queen St. W.
Toronto, ON M5H 2N2

Attention: Nancy Martins

Dear Sirs/Mesdames:

**Re: Item PH6.3 - Our Plan Toronto: Recommendations on the East Harbour
Employment Area Conversion Request – Final Report**

We are counsel to EHL (21 Don Roadway) Holdings Inc., EHL (30 Booth Ave) Holdings Inc., EHL (385 Eastern Ave) Holdings Inc. and EHL (375 Eastern Ave) Holdings Inc. (collectively, “our client”) in respect of the East Harbour Lands, known municipally as 21 Don Valley Parkway, 30 Booth Avenue and 375 & 385 Eastern Avenue (the “**East Harbour Lands**” or the “**site**”). We write on behalf of our client to express concerns with the draft official plan amendment (the “**Draft OPA**”) staff are recommending for adoption. While our client supports staff’s recognition that the East Harbour Lands should be designated in a manner that permits a mix of uses, the Draft OPA suffers from significant flaws, including that (1) the lands proposed to be re-designated are inappropriately limited to specific pockets of the site in a manner that fails to capture the cohesive mixed-use vision that is necessary to support the planned transit hub, and (2) the proposed site and area specific policies inappropriately impose a minimum requirement for non-residential uses, inappropriately using a gross floor area figure that is intended as a maximum permission. At a minimum, the Draft OPA should be modified to address these issues before it is adopted.

Background

As you know, in April 2021, the Province announced a Transit Oriented Communities (“**TOC**”) partnership with our client for the East Harbour Lands. The fundamental premise of the TOC is that the development of a mixed-use community will optimize the planned transit hub located immediately north of the East Harbour Lands (the “**Transit Hub**”) – which is planned to accommodate Ontario Line, GO Transit and future TTC streetcar service – and create a complete, transit-supportive community with complementary office, residential, retail, open spaces and amenities.



On April 6, 2022, City Council approved terms for various agreements to implement the East Harbour TOC. On April 8, 2022, the Minister of Municipal Affairs and Housing made a minister's zoning order (the "MZO") for the East Harbour Lands, permitting up to 302,000 square metres of residential gross floor area, to supplement existing permissions for 926,000 square metres of non-residential uses and facilitate the envisioned mixed-use community. Since the issuance of the MZO, our client has been working collaboratively with the City and the Province to advance infrastructure planning, as well as subdivision and site plan approvals, to ensure development proceeds in manner that aligns with opening of the Transit Hub.

The conversion request submitted for the East Harbour Lands is intended to ensure that the official plan policies for the site align with the mixed-use vision reflected in the MZO. Existing official plan policies applicable to the East Harbour Lands were developed at a time when only non-residential uses were contemplated. With the TOC established and the MZO in place, the policy direction in the official plan must be updated to reflect the current permissions for the East Harbour Lands and help guide the implementation of those permissions in a manner that supports the vibrant mixed-use community that is intended.

The Draft OPA

Our client and its consultants have engaged extensively with City staff through the processing of the conversion request. Through that engagement process, our client has made clear that it has significant concerns with the Draft OPA in the form proposed. Among other things, the Draft OPA fails to reflect the development now permitted on the East Harbour Lands in a number of respects, and does not address a number of policies in the Unilever Precinct Secondary Plan (the "Secondary Plan") that are outdated now that residential uses are permitted on the site. However, our client's principal concerns relate to the scope of proposed *Mixed Use Areas* designation and a certain policy that inappropriately converts a maximum permission into a minimum requirement.

The Scope of the Mixed Use Areas Designation

The Draft OPA proposes to re-designate specific areas within the East Harbour Lands as *Mixed Use Areas*, while maintaining *General Employment* and *Core Employment* designations for the remainder. While we acknowledge that the MZO provides zoning permissions for residential uses only in specific areas, the narrow approach in the Draft OPA does not properly reflect the intent of the MZO or the role of the official plan in providing policy direction that accords with the mixed use community envisaged for the East Harbour TOC.

As outlined above, the vision for the East Harbour TOC is for a vibrant, mixed-use community that functions as a dynamic and lively node, centred on transit and fully embracing the site's role as a major gateway to both Downtown Toronto to the west and the Port Lands to the south. The office, retail and residential uses are intended to complement and support one another, not operate in isolation. There will not be separate employment and residential communities, but rather one cohesive, complete community with residential and non-residential uses sharing services and



amenities and comingling to support a vibrant public realm. In other words, East Harbour as a whole is intended to become a complete community, not just the specific areas on which residential uses are permitted. Consistent with this vision, the MZO, and the mapping referenced in it, identifies all of the East Harbour Lands (excluding a flood protection landform on the western portion of the lands) as the “East Harbour Mixed Use Area”, not just the specific parcels on which residential uses are permitted. A copy of the mapping attached to the MZO is enclosed for reference.

By designating only the specific areas where the MZO permits residential uses as *Mixed Use Areas*, the Draft OPA fails to provide policy direction that supports a truly mixed-use community. The policy approach that would appropriately implement the planning direction for the site would be to designate all of the East Harbour Lands as *Mixed Use Areas*, and include policies in the Draft OPA that exclusively permit non-residential uses on portions of the site where no residential uses are permitted under the MZO. This, combined with corresponding policies in the Secondary Plan, would establish the overall mixed-use vision for the East Harbour Lands, while ensuring that residential uses are only permitted where indicated in the MZO.

The Minimum Employment GFA Policy

The Draft OPA proposes to replace Site and Area Specific Policy No. 426 (“**SASP 426**”) with a new set of area-specific policies for the East Harbour Lands. Policy (c) provides as follows:

- (c) A minimum employment gross floor area of 926,000 square metres will be developed on the lands.

This policy is highly problematic for many reasons.

Both the City-enacted zoning by-law for the East Harbour Lands and the MZO permit a maximum of 926,000 square metres of non-residential gross floor area. However, policy (c) refers to the 926,000 square metre figure as a minimum. This distortion of the development permissions for the East Harbour Lands into a purported minimum requirement is illogical, inappropriate, and has no planning basis in the Secondary Plan or elsewhere. Further, the policy cannot be practically implemented. If the maximum employment permission is also a minimum official plan requirement, the policy direction could seemingly only be achieved if the total non-residential floor area equals precisely 926,000 square metres. Theoretically, our client could deliver ten office buildings totalling 900,000 square metres of gross floor area, in compliance with the permissions in the City-enacted zoning by-law and the MZO, and still fail to meet the policy. Such incongruity cannot represent good planning.

The mandatory nature of the “will be developed” language is also inappropriate – and likely to be counterproductive in achieving the intention of facilitating non-residential development. Development is dependent on myriad factors, including market ones. Official plans cannot compel development to proceed. Yet the policy seemingly attempts to do just that. In doing so, the policy



could be applied in a manner that could hinder appropriate employment growth. For example, office proposals that deliver substantial gross floor area, but less than the minimum 926,000 square metres prescribed, could be interpreted as not conforming with the policy direction in the official plan.

In addition, while City staff have stressed that policy (c) would not in any way limit the amount of residential gross floor area that could be constructed ahead of non-residential uses, our client is concerned that the policy could be inappropriately interpreted in such a manner in future. Any such “linkage” between the sequence of residential or non-residential development is directly at odds with the MZO and other arrangements relating to the East Harbour TOC.

We acknowledge that the City has adopted SASPs in connection with other conversions that include a policy imposing a minimum amount of non-residential gross floor area, where that amount is a true minimum (often based on the amount of existing non-residential gross floor area on the lands) that can be exceeded. City staff appear to have formulaically imported the same approach here, without recognizing the critical distinction between maximum permissions and minimum requirements, or the specific context of the East Harbour Lands given the presence of the MZO. In particular, the minimum non-residential gross floor area identified in policy (c) could not be exceeded on the East Harbour Lands, as doing so would not comply with the zoning permissions. Put differently, the 926,000 square metres of non-residential gross floor identified in policy (c) is not a minimum and should not be characterized as such.

For the reasons outlined above, Policy (c) in SASP 426 as proposed must be modified. In particular, it should be modified to read as follows:

(c) 926,000 square metres of employment gross floor area is permitted on the lands.

This simple modification would address the issues outlined above and align the policy direction with the permissions approved for the East Harbour Lands in 2018 when the City enacted by-laws 1281-2018 and 1280-2018.

Conclusion

For the reasons outlined above, the Draft OPA requires modifications. Our client would be pleased to work with staff on refining the Draft OPA prior to Council adoption.

Goodmans^{LLP}

Yours truly,

Goodmans LLP

A handwritten signature in blue ink, appearing to read "Max Laskin".

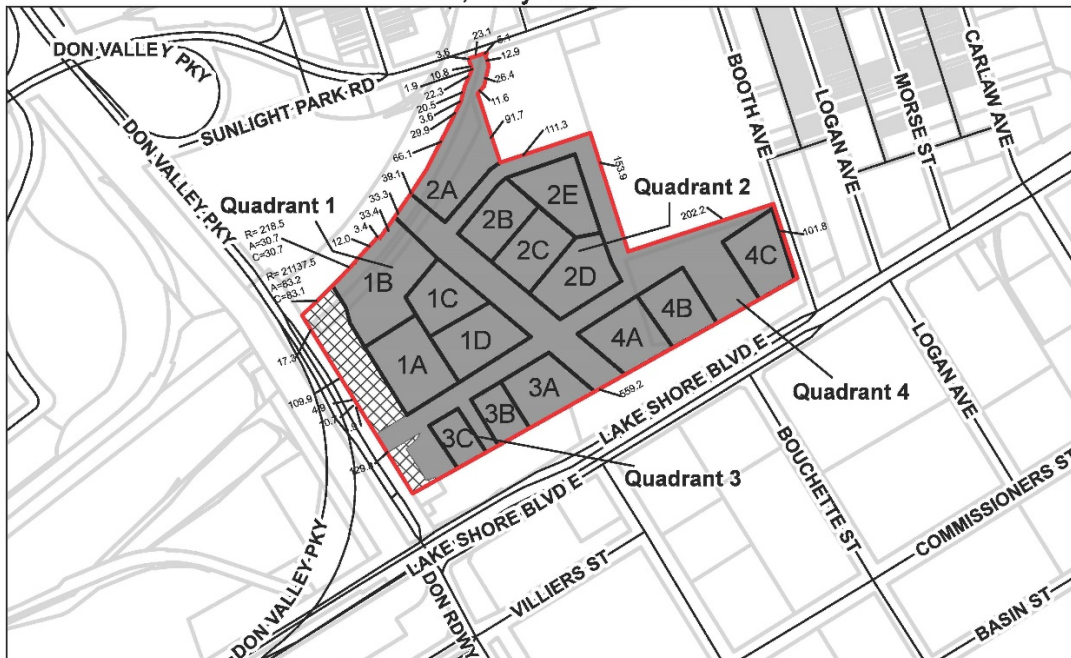
Max Laskin

ML/

cc: Roslyn Houser, Goodmans LLP
Client

Schedule "A"

Part of the West ½ of Lot 14, Broken Front Concession; Part of Lots 14 & 15, Broken Front Concession; Part of Water Lot in Front of Lots 13-15, Broken Front Concession; Lots 338-344, 347-355, and Part of Lots 243-245, 345, 346, 356-364, Part of Front Street, Part of Strange, Part of Palace Street on Registered Plan 105 and Part 1 on Registered Plan 568A, City of Toronto.



MAP No. 290

Map filed at the office of the Ontario Ministry of Municipal Affairs and Housing, 777 Bay St., Toronto, Ontario, Planning Act

Ontario Regulation: 329/22

Date: April 8, 2022

Original Signed By: Minister of Municipal Affairs and Housing

LEGEND

- East Harbour Lands
- OR Zone
- Height Zone
- East Harbour Mixed Use Area
- Roads
- Assessment Parcel

0 50 100 200
Metres
1 cm equals 66 metres

Ontario

**Quadrant boundaries align with numbering of Height Zones*

Map North (Degrees): 0°

THIS IS NOT A PLAN OF SURVEY
Information provided by the Ministry of Municipal Affairs and Housing, under licence with the Ministry of Natural Resources.
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Map Description: This is map no. 290 referred to in a Minister's Zoning Order. It shows lands which are located in Part of the West ½ of Lot 14, Broken Front Concession; Part of Lots 14 & 15, Broken Front Concession; Part of Water Lot in Front of Lots 13-15, Broken Front Concession; Lots 338-344, 347-355, and Part of Lots 243-245, 345, 346, 356-364, Part of Front Street, Part of Strange, Part of Palace Street on Registered Plan 105 and Part 1 on Registered Plan 568A, City of Toronto. We are committed to providing accessible customer service (<https://www.ontario.ca/page/accessible-customer-service-policy>). On request, we can arrange for accessible formats and communications supports. Please contact MMAH by email (mininfo@ontario.ca) for regulation details.