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## WITHOUT PREJUDICE & CONFIDENTIAL

February 13, 2024

Our File No. 153644

Mr. Gabe Szobel  
Solicitor, Planning & Administrative Tribunal Law  
City of Toronto  
26<sup>th</sup> Floor, Metro Hall  
55 John Street  
Toronto ON M5V 3C6

Dear Mr. Szobel:

**Re: *Final Without Prejudice Settlement Offer***

**1196-1210 Yonge Street and 2-8 Birch Avenue, Toronto**  
***Ontario Heritage Act Appeals: OLT-22-004779 and OLT-22-004780 and OLT-23-000025 and OLT-23-000026***  
***Planning Act & City of Toronto Act Appeals: OLT-23-000155 and OLT-23-000156***

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Aird Berlis LLP act on behalf of Woodcliffe Landmark Properties Limited (“Woodcliffe”) in respect of its of lands known municipally as 1196-1210 Yonge Street and 8 Birch Avenue (collectively, the “**Site**”). The Site is located on the northwest corner of Yonge Street and Birch Avenue, north of the CP rail corridor and to the south of the Yonge-St. Clair area.

The Site is generally rectangular with frontages of 35 metres on Yonge Street and 32 metres on Birch Avenue providing for an area of 1,062 square metres. Along Yonge Street, the buildings are four-storeys with flat roofs and retail at grade. On Birch Avenue, the low-rise structures frame a shared courtyard.

In response to discussions with Community Planning, Urban Design and Heritage Planning staff, our client filed a without prejudice settlement offer, dated December 15, 2023, with the City of Toronto. Since that time, detailed design work and further discussions with City staff have resulted in some changes to the development proposal. These changes have been arrived at through consultation with City staff and have been agreed upon as part of a full resolution of the above-noted appeals.

We are pleased to provide you with the below summary of the updated development proposal, as illustrated and supported by the enclosed materials including:

- Architectural Plans prepared by KPMB Architects Inc. dated February 12, 2024;
- Heritage Impact Assessment prepared by ERA Architects Inc. dated February 12, 2024;
- Applications for permits pursuant to Sections 33 and 34 of the Ontario Heritage Act (“OHA”); and
- Draft Zoning By-law Amendment

(collectively, the “**Final Settlement Proposal**”) in support of Woodcliffe’s without prejudice settlement offer to resolve the above noted appeals.

It is our understanding that the Final Settlement Proposal, and specifically our client’s application for permits pursuant to Part IV of the *Ontario Heritage Act* will be the subject of an *in camera* report by Heritage Preservation Staff to the Toronto Preservation Board on March 28<sup>th</sup>. Further, it is our understanding that Final Settlement Proposal will be the subject of an *in camera* City Solicitor’s Report to the meeting of City Council commencing on April 17<sup>th</sup> for the purposes of seeking instructions on both the OHA and Planning Act appeals. This **without prejudice settlement** offer is made, in part, conditional upon those dates being achieved.

## **Background**

Woodcliffe filed for a rezoning and site plan application in November 2021. The applications were deemed complete as of December 1, 2021. A Preliminary Report dated January 26, 2022, was considered by Toronto and East York Community Council, and a community consultation meeting was held on February 22, 2022.

In the Preliminary Report, City staff identified a number of unresolved issues to be addressed through the development review process. Key issues relate to the size, scale and fit of the proposed development in the existing and planned context including the location within the Yonge-St. Clair Secondary Plan area and the relationship to the Summerhill Station Clock Tower. In addition to the planning matters, the City noted that the conservation strategy of the property’s potential heritage value as an issue.

Following the submission of the rezoning and site plan applications, the City requested, and Woodcliffe agreed, to waive the statutory timeframes associated with the City’s consideration of the Site’s heritage value under the *Ontario Heritage Act* (“**OHA**”). Woodcliffe’s cooperation was based on an expressed understanding from City staff that they were prepared to engage in meaningful discussions with Woodcliffe and their heritage consultant, ERA Architects Inc., on the heritage merits of the existing buildings. To the disappointment of Woodcliffe, City staff did not engage meaningfully with our Client before filing a report with the Toronto Preservation Board.

On July 11, 2022, without any notice to Woodcliffe or its consultants, a report from Heritage Planning staff was “walked on” to the agenda midway through the Toronto Preservation Board meeting while it was in process (the “**HP Report**”). The timing did not allow Woodcliffe to make a written or oral deputation or respond to the report’s conclusions, notwithstanding the HP Report was dated July 5, 2022, and presentation was dated July 8, 2022. Both the HP Report and presentation could have been shared in advance.

On September 28, 2022, City Council adopted Bylaws 1241-2022 and 1242-2022 to designate the properties on the Site pursuant to Part IV, subsection 29 of the OHA. We received notice of the passing of the Bylaws on October 27, 2022. On November 7, 2022, Woodcliffe filed a notice of appeal to the designating By-laws 1241-2022 and 1242-2022 to the Ontario Land Tribunal (the “**Tribunal**”). (OLT case numbers OLT-22-004779 and OLT-22-004780.)

On August 25, 2022, ERA Architects Inc., acting on behalf of Woodcliffe, filed two (2) Heritage Permit Applications for demolition under Section 34 of the OHA in respect 1196-1204 Yonge Street; and 1206-1210 Yonge Street. On November 23, 2022, City Council adopted City

Planning's recommendation that the demolition permits be refused. Notice of Council's decision was issued on December 1, 2022. Woodcliffe appealed that decision on December 14, 2022. (OLT case numbers OLT-23-000025 and OLT-23-000026.)

Woodcliffe disagreed with staff's issues raised in the Preliminary Report, particularly with respect to the proposal's impact and overall fit within the existing and planned context. In addition, our client became concerned that the ongoing heritage appeals would further delay staff's willingness to engage on the built form and planning related matters. Accordingly, on February 23, 2023, on behalf of Woodcliffe our office filed notice of appeals under sections 34(11) of the *Planning Act*, R.S.O. 1990, c.P13 and section 114 of the *City of Toronto Act, 2006*, for Council's failure to make a decision respecting the Zoning By-law and Site Plan Control applications.

The hearing of the appeals has been scheduled in two phases: Phase 1 has been rescheduled from December 14, 2023 to May, 2024 to address the appeal of the Designation By-law pursuant to Part IV of the OHA; Phase 2 is scheduled to commence on September 3, 2024 in respect of the Section 34 *Planning Act*, s.114 *City of Toronto Act* and Section 34.1(1) OHA appeals for the proposed redevelopment of the Site.

### Summary of the Revised Proposal

Our Client is prepared, on a **without prejudice** basis, to proceed to resolve both the OHA and Section 34 *Planning Act* appeals before the Tribunal based on the Final Settlement Proposal, as is summarized below and in the attached materials. The site plan referral pursuant to s.114 of the *City of Toronto Act* will be adjourned *sine die* to allow Woodcliffe to make a resubmission consistent with the Final Settlement Proposal and for the City to have sufficient time to process same.

In response to discussions with City staff in advance of the Phase 1 OHA hearing, the proposed development has been entirely redesigned, particularly as it relates to the conservation strategy as compared with the original application:

- The Final Settlement Proposal conserves the cultural heritage value of the Site through a combination of *in situ* retention (where feasible) and deconstruction and reconstruction in accordance with a Conservation Plan and Reconstruction Plan satisfactory to Heritage Planning staff; in particular:
  - the north side of the Site, the principal elevations at 1206-1210 Yonge Street will be retained *in-situ*; and
  - on the south side of the Site, at 1196-1204 Yonge Street and 2 Birch Avenue, building documentation, demolition, and reconstruction of the principal elevation along Yonge Street, and the secondary elevation along Birch Avenue, excluding the three-storey tail at the rear (8 Birch).

The conservation strategy was outlined in Memorandum prepared by ERA Architects Inc., dated December 11 2023, which has been reviewed and deemed acceptable by Heritage Planning staff via email dated December 12, 2023.

The conservation strategy is further explored and documented in the attached updated HIA prepared by ERA Architects Inc. dated February 12th, 2024 which is provided in support of applications for permits pursuant to Sections 33 and 34 of the OHA.

As it relates to the changes to the proposed development above the heritage podium the following elements are particularly noteworthy:

- The overall height of the building has been increased from 15 storeys and 56.97 meters above average grade inclusive of the mechanical penthouse to 31 storeys and 114 metres, also inclusive of the mechanical penthouse.
- The increased height is offset by introducing appropriate setbacks on the west, east and north property lines.
  - The building is setback 5.5 metres from the West property line commencing at Level 4;
  - The building includes a 3 metre setback above the heritage elevation on the East (Yonge) elevation, commencing on Level 3 for the entire height of the building;
  - The building is setback from the North property line 5.5 metres between Levels 8 and 15;
  - At Level 16 the setback from the North property line increases to 9.5 metres at achieving an average 20m tower separation to the proposed development to the north; and
  - A 1.5 m setback is provided above the heritage streetwall on the South (Birch) elevation for a height of 3 storeys.

With respect to balconies, the following revisions have been agreed to with City Staff and are reflected in the enclosed draft ZBLA:

- Prohibition on continuous balconies;
- Prohibition on projecting balconies on the North, South and East elevations;
- Balcony restriction zone on the West elevation which permits intermittent projecting balconies to a depth of 2.4 m limited to a maximum of 60% of the elevation; and
- On the East (Yonge) elevation only inset balconies are proposed;

This Final Settlement Proposal is conditional upon the following implementation matters with respect to the OHA appeals:

- **Report to TPB and City Council** - as noted at the outset, the City has agreed that the Applications for permits pursuant to s.33 and 34, and the resolution of the appeal pursuant to s. 34.1 of the OHA will be the subject of a recommendation report by Heritage Planning staff to be considered, as a confidential report, at the March 28<sup>th</sup> meeting of the TPB, which in turn will be considered by City Council at its meeting commencing April 17th;
- **Review Designating By-laws 1241-2022 and 1242-2022** – In consultation with Woodcliffe and ERA Architects Inc., and as part of the resolution of the 34.1 appeal,

Heritage Planning Staff agree to review the proposed revisions to the Designating By-laws;

- **Rescheduled Hearing** – Following City Council’s consideration of the Final Settlement Proposal, the City agrees to work with our Client to request and schedule a hearing in writing to settle the OHA appeal so as to allow for the designation of the Site in accordance with updated Designating By-laws. In the event that City Council does not accept the settlement of the OHA appeal, the City will agree to have the OHA appeal heard in May, 2024 and in advance of the Phase 2 hearing scheduled for September 3, 2024.

With respect to the Phase 2 matters:

- **Staff Recommendation Report** - City staff agree to report out to City Council at its meeting commencing on April 17<sup>th</sup> recommending approval of the Final Settlement Proposal consistent with the terms set out herein;
- **City Role in Hearing if Settlement Accepted by Council** – Should City Council accept this settlement, the City will consent to and support a request for a settlement hearing on the Phase 2 matters following the decision of Council; in the event the matter proceeds to a contested hearing with the remaining party to the proceeding, the City will attend in support of the settlement at the hearing scheduled to commence on September 3, 2024;
- **Scheduling of Contested Hearing if Settlement Not Accepted by Council** – Should City Council not accept this settlement, the City agrees that Phase 2 matters will proceed to a hearing scheduled to commence on September 3, 2024; and
- **Filing of Revised Plans Pursuant to Procedural Order** – the City and Woodcliffe agree that Woodcliffe will file updated plans pursuant to the requirements of the Procedural Order for the Phase 2 Hearing. In the event of a Settlement with the City, those plans will reflect and be consistent with the Final Settlement Proposal.

With respect to the extant referral under Section 114 of the *City of Toronto Act*, Woodcliffe agrees to adjourn that referral *sine die* to allow for a resubmission consistent with this settlement offer and to work with City Staff to resolve any remaining issues thereto. In the event City Council does not accept the Final Settlement Proposal our client reserves the right to proceed with the s.114 referral.

On behalf of our Client and its consultant team, please accept our thanks and appreciation of the efforts that you and City staff have undertaken to reach a resolution of this matter.

Should you require any further information, please do not hesitate to contact the undersigned.

Yours truly,  
AIRD & BERLIS LLP

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