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July 23, 2024

VIA EMAIL (clerk@toronto.ca)

City Clerk's Office
Toronto City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Attention: Mr. John D. Elvidge, City Clerk

Dear Mayor and Members of Council:

RE: City Council Meeting on July 24, 2024 – Item # PH14.1 – Employment Area Land Use Permissions – Decision Report - Approval

Overland LLP acts on behalf of Nova Construction Company Ltd. (“**Nova**”) which is the registered owner of the lands municipally known as 1530-1536 Midland Avenue in the City of Toronto (the “**Site**”). On behalf of Nova, we made submissions to the City regarding Official Plan Amendment No. 668 (“**OPA 668**”) on July 17, 2023.

We attach our previous correspondence to City Council regarding OPA 668, which was considered by City Council in July 2023, but for which the Official Plan Amendment has not yet been enacted. and note that our submissions with respect to Official Plan Amendment No. 680 (“**OPA 680**”) also apply to OPA 668.

On behalf of Nova, we are writing to express our concerns with the current draft of OPA 680 which, in our view, directly undermines the legislative intent and policy direction behind the Province’s amendments to the *Planning Act* in Bill 97 described below.

Planning Act Amendments and the draft Provincial Planning Statement (2024)

The *Helping Homebuyers, Protecting Tenants Act* (“**Bill 97**”), which received Royal Assent on June 8, 2023, included an amendment to the definition of “area of employment” under Section 1(1) of the *Planning Act*. This new definition of what constitutes an employment area is also reflected in the current draft of the proposed Provincial Planning Statement (2024) (“**PPS 2024**”):

Employment Area: means those areas designated in an official plan for clusters of business and economic activities including manufacturing, research and development in connection with manufacturing, warehousing, goods movement, associated retail and office, and ancillary facilities. An employment area also includes areas of land described by subsection 1(1.1) of the Planning Act. Uses that are excluded from employment areas are institutional and commercial, including retail and office not associated with the primary employment use listed above. [emphasis added]

The new definition that is reproduced above specifically excludes institutional, commercial, retail and office uses from the definition of “areas of employment” where such uses are not associated with or related to manufacturing and warehousing uses.

The intention behind Bill 97 and the PPS 2024 is clear: in an effort to address residential housing needs across the Province, the protections that apply to employment lands shall only apply to traditional manufacturing, warehousing and related uses. Conversely, lands that are currently being used for other commercial/non-residential uses, such as institutional, commercial, retail and office space, or are planned to accommodate such uses, should not be considered “areas of employment” and are encouraged to be improved with a greater mix of uses, including residential uses where appropriate.

Concerns with OPA 680

OPA 680 will have the effect of removing institutional and commercial land use permissions, including office uses, from all of the City’s employment designated lands, without considering how this could negatively affect future development of those lands or current existing uses on those lands. This will perpetuate restrictions on the use and potential conversion of sites that are currently designated “General Employment” and “Core Employment” areas, which is contrary to the clear statutory intention of Bill 97 and the draft PPS 2024. For example, in the absence of a site-specific rationale, commercial/non-residential uses that are permitted today should continue to be allowed in the future, so that landowners have the ability to expand their operations without the need to go through the process of an application under the Planning Act to re-establish existing permissions, but also without the potential limiting imposition of a “legal non-conforming” regime (which seems to be the intent of the “lawfully established” policies in OPA 668).

In our submission, OPA 680 and OPA 668 represent a two-pronged effort to preserve the current status quo despite clear Provincial efforts to limit the scope of uses that fall within the protections of an “area of employment.” Together, these municipally initiated amendments will prevent the introduction of additional uses, including residential uses, on lands that can and should accommodate a greater mix of uses. Additionally, OPA 680 also eliminates existing land use permissions without any consideration of the site-specific implications of doing so. Insofar as Bill 97 was intended to unlock the redevelopment potential of underutilized sites that are not comprised of core employment uses, OPA 680 and OPA 668 represent a step backwards and reintroduce procedural hurdles that place non-residential lands in silos and frustrate the creation of complete communities.

We submit that it is premature to adopt OPA 680 on a City-wide basis without conducting a more comprehensive analysis of the specific properties affected. On behalf of our client, we urge City Council not to adopt OPA 680 in its current form and to refer this matter back to City staff so that existing employment lands can be reviewed on a case-by-case basis to determine which sites meet the new definition of “area of employment” under Bill 97 and the PPS 2024, and whether greater flexibility is warranted to encourage opportunities for redevelopment. Council should also reconsider moving forward with OPA 668 with its problematic approach to “lawfully established uses”, as outlined in our earlier correspondence.

We thank you for the opportunity to provide comments and request notice of any meetings and decisions related to this matter. Our contact information is provided herein.

Yours truly,
Overland LLP


Per: Michael Cara

Schedule "A"

Letter to City Council (dated July 17, 2023)

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July 17, 2023

VIA EMAIL

City of Toronto, City Clerk's Office
Toronto City Hall
10th Floor, West Tower
100 Queen Street West
Toronto, ON M5H 2N2

Attention: John D. Elvidge, City Clerk

Dear Sirs/Madams:

RE: Item PH5.2 – 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 Nova Construction Company Ltd. ("**Nova**"), owner of the lands municipally known as 1530-1536 Midland Avenue in the City of Toronto (the "**Site**").

On behalf of Nova, we are writing to express our concerns with the current draft of Official Plan Amendment No. 668 (the "**Draft OPA**") which, in our view, undermines the legislative intent and policy direction behind the Province's amendments to the *Planning Act* described below.

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 with or related to manufacturing or warehousing uses. As part of a parallel process, the Province proposed a new Provincial Planning Statement ("**Draft PPS**") containing a similar definition that limits 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 also include two transition provisions under Sections 1(1.1) and (1.2) that authorize municipalities to permit the continuation of institutional and commercial 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 above-noted amendments to the *Planning Act* are awaiting proclamation by the Lieutenant Governor and the Draft PPS is posted for public comment on the Environmental Registry of Ontario until August 4, 2023, and these changes are therefore 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 “Core Employment” 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 employment areas to industrial, warehouse, and certain associated or ancillary uses.

The Site is the subject of a conversion request that will also be considered by City Council on July 19, 2023 (Item No. PH5.3). Our client’s planning consultant (The Biglieri Group Ltd.) submitted correspondence to the City’s Planning and Housing Committee dated April 27 and June 1, 2023 in support of the requested conversion. An oral deputation was also undertaken by The Biglieri Group Ltd. in support of the requested conversion at the Planning and Housing Committee Meeting on June 1, 2023. We adopt the conclusions of those submissions that the Site ought to be supported for conversion to “General Employment Areas” and “Mixed Use Areas”. We note that the requested conversion would help to facilitate a significant increase to the number of jobs created by the Site (from 108 to 316 jobs), as well as 224 purpose-built rental units.

However, in addition to the site-specific attributes of the Site, regard should be had to the purpose of Bill 97 to refine the definition of “areas of employment” that, under the *Planning Act*, have heightened protections for conversions to other uses. Bill 97 confirms that, from a provincial policy standpoint, office, retail, and institutional uses should not be considered as business and economic uses akin to manufacturing and warehousing uses that attract the protections of the *Planning Act*.

Although Bill 97 allows a municipality to enact protections in respect of legally established uses that exist within employment areas, the Draft OPA applies that protection overly broadly and without any satisfactory planning rationale to determine whether such protections should be applied on any given lands. As a result, the Draft OPA attempts to preserve the current status quo despite clear legislative and policy changes that have been advanced by the Province, which limit the scope of uses that fall within the protections of an area of employment.

We urge City Council not to adopt the Draft OPA in its current form and request notice of all further meetings and decisions related to this item. Our contact information is provided herein.

Yours truly,
Overland LLP


Per: Michael Cara
Associate

- c. L. Shiff, Nova Construction Company Ltd.
- M. Testaguzza and S. Saraf-Uiterlinden, The Biglieri Group Ltd.