

July 10, 2024

**BY EMAIL TO:** [phc@toronto.ca](mailto: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 PH14.1 – Employment Area Land Use Permissions – Decision Report – Approval  
Proposed Official Plan Amendment 680  
39 Wynford Inc.  
39 Wynford Drive, Toronto**

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### **(i) Introduction**

Aird & Berlis LLP is counsel to 39 Wynford Inc. (“**Wynford**”), 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 “Employment Area Land Use Permissions – Decision Report – Approval,” dated June 24, 2024 (the “**Final Report**”). In the Final Report, Planning staff have recommended the approval of the City-initiated Official Plan Amendment (“**OPA**”) 680 (included as Attachment 1 to the Final Report), 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**”) by amending Official Plan permissions to limit permitted office and retail uses to those associated with primary employment uses. The Final Report and the proposed OPA 680 is intended to be considered by Planning and Housing Committee (“**PHC**”) on July 11, 2024 as Item PH14.1. These comments should be read in conjunction with our comments previously submitted on behalf of Wynford with respect to Official Plan Amendment 668 (“**OPA 668**”), which were provided to PHC in our earlier letter dated July 4, 2023 (the “**OPA 668 Letter**”).

### **(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 Wynford, 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 “**Wynford Conversion Request**”). The Wynford 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 Wynford Conversion Request is known municipally as Conversion Request No. 32. Throughout the MCR process, Wynford and its consultants have engaged with City Planning staff in support of the Wynford Conversion Request.

### **(iii) Concerns regarding Proposed OPA 680**

Wynford is concerned with OPA 680 as proposed for the same reasons that it previously identified to PHC in its OPA 668 Letter. In particular, it is premature to consider changes to the City’s Official Plan policies and permitted uses within *General Employment* and *Core Employment* designations at this time since the amended *Planning Act* 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 not yet approved and remain under 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 680 (as well as 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 680 (as well as OPA 668) does not provide sufficient clarity regarding the appropriate interpretation of “lawfully established” uses. Proposed OPA 680 does not provide

any further guidance regarding the concept of “lawfully established” uses within the context of Official Plan policy and designations. Rather, the policies of the proposed OPA 680 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, both the proposed OPA 680 and OPA 668 place an undue burden on landowners to demonstrate “lawfully established” compliance and/or legal non-conforming status.

#### **(iv) Proposed Modifications to OPA 680**

For the reasons outlined above, Wynford has fundamental concerns with the proposed policy changes in OPA 680. As a result, we request that PHC send proposed OPA 680 back to staff for further review and consultation with affected landowners, including Wynford.

However, if PHC intends to recommend approval of OPA 680 to City Council, we recommend that PHC make the following changes to the policy language of the amendment.

Firstly, a definition and policy direction providing clarity as to the meaning of “lawfully established” uses must be provided. As a result, we recommend that OPA 680 further amend Chapter 4.6, Employment Areas, by introducing a new policy as follows:

- “x. For the purpose of this Plan, uses in the *Core Employment Area* and *General Employment Area* designations are “lawfully established” if that use was permitted in the applicable zoning by-law on the parcel of land before ***[insert date, being day before subsection 1 (1) of Schedule 6 to the Helping Homebuyers, Protecting Tenants Act, 2023 (Bill 97) came into force]***.”

The above proposed definition makes clear that “lawfully established” for a property are those that were permitted in the applicable zoning by-law, allow those existing use permissions to continue to be protected and applicable to that site.

Secondly, OPA 680 should be further modified to allow not only associated office and retail uses in *Core Employment Area* and *General Employment Area* designations, but also those lawfully established uses that are currently permitted in the applicable zoning of a property located within an *Employment Area* designation. As a result, the following further amendments to Sections 1, 2, 3, 5, and 6 of the current draft of OPA 680 are recommended, and are intended to work in conjunction with the recommended new policy definition of “lawfully established” set out above (added wording shown in **red**):

1. Chapter 2, Shaping the City, 2.2.4 Employment Areas, is amended by deleting Policy 1 and replacing the policy as follows:
  1. *Employment Areas*, as shown on Map 2, are comprised of both *Core Employment Areas* and *General Employment Areas*, as shown on Maps 13 to 23 inclusive. *Employment Areas* are areas designated in this Plan for clusters of business and economic activities including:

- a) manufacturing;
  - b) research and development in connection with manufacturing anything;
  - c) warehousing and goods movement;
  - d) office and retail associated with activities set out in a) to c), above, or where lawfully established; and
  - e) facilities ancillary to activities set out in a) to d), above.
2. Chapter 2, Shaping the City, 2.2.4 Employment Areas, is amended by deleting Policy 2 d) and replacing the policy as follows:
- d) provide opportunities for new office buildings, where permitted or lawfully established;
3. Chapter 3, Building a Successful City, 3.5.1 Creating A Strong and Diverse Civic Economy, is amended by deleting Policy 2 a) and replacing the policy as follows:
- a) stimulates transit-oriented office growth in the Downtown and the Central Waterfront, the Centres and within walking distance of existing and approved and funded subway, light rapid transit and GO stations in other *Mixed Use Areas*, *Regeneration Areas* and *Employment Areas*, where permitted or lawfully established;
- ...
5. Chapter 4, Land Use Designations, 4.6 Employment Areas, is amended by deleting Policy 1 and replacing the policy as follows:
1. *Core Employment Areas* are places for business and economic activities. Uses permitted in *Core Employment Areas* are all types of manufacturing, processing, warehousing, wholesaling, distribution, storage, transportation facilities, vehicle repair and services, associated or lawfully established offices, research and development in connection with manufacturing anything, utilities, waste management systems, industrial trade schools, media, information and technology facilities, and vertical agriculture.
6. Chapter 4, Land Use Designations, 4.6 Employment Areas, is amended by deleting Policy 3 and replacing the policy as follows:
3. *General Employment Areas* are places for business and economic activities generally located on the peripheries of *Employment Areas*. In addition to all uses permitted in Policies 4.6.1 and 4.6.2, permitted uses in a *General Employment Area* also include all types of associated or lawfully established retail, including restaurants and service uses.

**(v) Conclusion**

In its current form, the proposed OPA 680 is premature and does not represent good planning. For the reasons set out above, Wynford requests that PHC refer this matter back to staff with direction to address the matters set out herein.

However, in the event that PHC intends to recommend approval of OPA 680 to City Council, we recommend that PHC make the above changes to the policy language of the amendment, specifically the addition of a definition and policy direction providing clarity as to the meaning of “lawfully established” and expressly permitting lawfully established uses (particularly those related to office and retail uses) in *Core Employment Area* and *General Employment Area* designations.

Finally, we ask that our office, as well as our client’s planning consultant Mike Dror of Bousfields (email: [mdror@bousfields.ca](mailto:mdror@bousfields.ca); telephone: 416-947-9744 ext. 241) be notified of any decisions made by PHC, City Council, or any other 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.

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