



July 10, 2024

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File No. 0070704.0991

City of Toronto
City Clerk's Office
Registrar Secretariat
2nd Floor, West Tower
100 Queen Street West
Toronto, ON M5H 2N2

Attention: John D. Elvidge, City Clerk

Dear Mr. Elvidge:

Re: Planning and Development Committee July 11, 2024 Meeting's consideration of Draft Official Plan Amendment 680 - Bill 97 Area of Employment Official Plan Amendments

We are solicitors for Home Depot of Canada Inc., which leases land, and Home Depot Holdings Inc. (together "**Home Depot**") which is the registered owner of land throughout the City of Toronto on which Home Depot operates warehouse format retail facilities. The list of currently owned land includes the following:

1. Leaside (Store #7073) – 101 Wicksteed Avenue
2. Curity (Store #7012) - 7 Curity Avenue
3. Caledonia (Store #7134) – 825 Caledonia Road
4. Yorkdale (Store #7129) – 90 Billy Bishop Way
5. Dufferin (Store #7078) – 2375 Steeles Avenue West
6. Morningside (Store #7027) – 60 Grand Marshall Drive
7. Rexdale (Store #7114) – 1983 Kipling Avenue

Home Depot's warehouse format stores are currently a permitted use in all of the City of Toronto's *Employment Areas*. Most of them are located within the *General Employment Areas*.

Home Depot's planning consultants MHBC have previously filed comments on November 29, 2023 (attached), identifying Home Depot's concern with draft OPA 680 and how it would make these facilities a non-conforming use. This would hinder or even prevent needed alterations, updating, retrofitting, additions to or even minor redevelopment of those properties. This letter

proposes two options to avoid that situation which are more consistent with the intent of the legislative changes which prompted the drafting of OPA 680.

Request

Home Depot submits that it is appropriate and good planning (as well as crucial for Home Depot) for the City's Official Plan to continue to provide that employment lands on which retail, office and institutional uses are already developed or are suitable for those purposes, may continue to be used for those purposes. In particular, Home Depot's lands should be designated to permit their continued use as warehouse format stores, altered without the need for an Official Plan Amendment and recognized as an Employment use with many of the Employment policies continuing to apply, even if they are not to be subject to the provisions of the *Planning Act* that would apply to the redefined "areas of employment".

There is no urgency to immediately adopt the proposed OPA 680 given the redefinition of "areas of employment" has not yet been proclaimed into force. Rather, a more careful analysis of which lands should fall into these new "areas of employment" is needed and consideration of different ways of implementing that concept is needed. Most importantly, the policies of OPA 680 should recognize that with the redefinition of "areas of employment" by the *Planning Act*, "areas of employment" should no longer replicate or align exactly with the existing *Employment Areas*. A completely different way of thinking through what the City's Employment Areas should be and their relationship to "areas of employment" is needed. Perhaps creating a third, separate type of *Employment Area* that is not an "area of employment" is needed. Home Depot's request is that this should be more carefully considered, studied and implemented.

Rationale

The proposed OPA 680 is clearly an attempt to anticipate Bill 97's proposed re-defining of the phrase "area of employment" in the *Planning Act*. Lands re-defined out of an "area of employment" will lose the narrow protection from third party appeals granted by subsections 21(17.3) and 34(11.0.5) the *Planning Act* to "areas of employment". The Province intends, once those amendments come into force, for retail, office and institutional use lands to no longer be subject to those legislative restrictions.

The proposed amendments to the Act do not, however require all other planning policies which currently apply to those lands to be stripped away. There is no legislative direction for municipalities to strip lands which were once considered to be within an area of employment of use permissions already granted to lands. Put succinctly, even when the new definition of "area of employment" comes into force, there is no reason to render lands which have already been developed for retail, office or institutional purposes non-conforming.

The current approach of OPA 680 is to amend the Official Plan's *Employment Areas* policies in Chapters 2, 3 and 4 to simply prohibit currently-permitted retail, office and institution uses within both of the existing types of *Employment Areas*, unless they are ancillary to industrial warehousing and other *Core Employment Area* uses. There appears to have been no significant consideration given to whether some of the land currently designated as either *Core Employment Area* or *General Employment Area* should continue to be subject to many of the current employment (as opposed to industrial) policies which apply in those areas, even



if they are no longer to be considered “areas of employment” proposed to receive special treatment by the amendments to the *Planning Act*.

The term “Employment Lands” was coined in the late 1990s to describe a broader category of lands and deliberately chosen precisely because it was intended to include Commercial (i.e. retail, office and institutional uses) as well as Industrial (manufacturing, warehousing and industrial uses) lands. It was not intended to simply replace the term “Industrial” or “Industrial and Warehousing”. While the redefinition of “area of employment” means it will in the future only apply to industrial, warehousing and manufacturing lands, the policies the City has enacted for *Employment Areas* were policies that were intended to encompass all of the uses which generate employment, including office, retail and institutional uses. Throwing those policies out with respect to lands like those Home Depot owns is “throwing out the baby with the bathwater”.

Our client’s view is that draft OPA 680’s approach of removing retail, office and institutional uses from both of the *Employment Areas* in the Official Plan goes far beyond simply implementing the Bill 97 *Planning Act* changes.

The mis-step occurs when OPA 680 assumes that *Employment Areas* can only exist if they are also “areas of employment” as defined in the *Planning Act* and that the current boundaries of those two *Employment Areas* must remain the boundaries of the “areas of employment”.

We would suggest that the better approach is for the Official Plan to carefully identify those parts of the *Employment Areas* which meet the *Act’s* new definition of an “area of employment” as “Areas of Employment” while continuing to recognize all of the retail, office and institutional lands within the current *Employment Areas* as continuing to permit those uses and for an appropriate subset of the policies which currently apply to *Employment Areas* to continue to apply to those retail, office and institutionally focused lands.

We expect that the best implementation methodology is for there to either be

1. a separate Schedule or overlay identifying the “Areas of Employment” over some of the *Employment Areas*. Lands already developed for office, retail or institutional purposes would generally be excluded from these “Areas of Employment”; or
2. the creation of a third *Employment Area* designation for lands identified as primarily suitable for retail, office and institutional uses. Lands already developed for office, retail or institutional purposes would generally be moved into this third category. This third *Employment Area* could perhaps be called the *Commercial Employment Area* (as was contemplated by City Planning staff prior to the adoption of OPA 231).

In either option, we would expect most if not all of the *Core Employment Areas* would likely be identified as “Areas of Employment”. Lands in the *General Employment Areas* suitable for industrial, manufacturing or warehousing purposed would also be identified in the overlay as “Areas of Employment” or remain within a *Core Employment Area* or *General Employment Area*. Lands which have been already developed or recognized as being suitable for retail, office and institutional uses would either be excluded from the “Areas of Employment” overlay or placed into that new *Commercial Employment Area* designation where retail, office and institutional uses are permitted and to which an appropriate set of policies would apply.



Unique Circumstances for Warehouse Format Retail

With the consolidation of commercial uses with industrial and warehousing uses under the general term “Employment”, *Employment Area* initiatives took place that blurred the distinction between Commercial and Industrial uses which had previously existed. For example, retail activities were not only permitted, but encouraged in areas where the predominant character was warehousing or industrial. This is most apparent in places such as the Castlefield-Caledonia Design District where the Castlefield Home Depot is located.

The melding of the two concepts demonstrates how some Home Depot’s facilities are designed to take advantage of being located within an *Employment Area* and an environment that is predominantly industrial or warehousing in nature and should be dealt with in that fashion.

As a result, Home Depot wishes to engage in discussions with City staff about which of its existing facilities in the *Employment Areas* could continue to be recognized within the *General Employment Areas* or be placed in an “Area of Employment” as a permitted warehouse retail use, so they remain subject to the Planning Act’s provisions for “areas of employment”.

Regardless of which implementation approach is adopted, the Official Plan may need to recognize that some of Home Depot’s existing warehousing format stores in *Employment Areas* may, given their current environment which did not require consideration of potential sensitive uses, require careful consideration of whether or how future sensitive use developments can achieve compatibility. Particularly where those locations remain designated so they are “areas of employment” within the meaning of the *Planning Act*, compatibility policies that ensure that nearby lands are not easily converted for sensitive uses may be appropriate to ensure that no sensitive use development is permitted until the developer has demonstrated that compatibility to at least the Province of Ontario’s guidelines is achievable entirely at the developer’s cost.

Ensure Conformity

In any event, and regardless of what form OPA 680 proceeds in, it should be modified to clearly ensure that Home Depot’s use of its lands continues to be permitted so any alterations, updates or additions to its facilities would remain in conformity with the Official Plan so that Home Depot’s future operations remain feasible.

Summary

Home Depot requests that Planning and Housing Committee direct staff to undertake the review intended by the province to determining which lands now within the *Core Employment Areas* and the *General Employment Areas* should be identified for protection as “Areas of Employment” under the *Act*’s proposed redefinition of that term and which lands within those two designations should not be so identified because they have either already developed for retail, office or institutional uses or are primarily intended for retail, office or institutional purposes. Our two suggestions for implementation are either a third *Employment Area* designation perhaps to be called *Commercial Employment Area* which at least the Home Depot lands can be re-designated or a separate Schedule or overlay that identifies “Areas of Employment” (as defined in the *Act*) to which the relevant portions of the *Act* would apply. Consistent with that approach is a determination which of the existing *Employment Area*



policies should apply to those lands which are not "Areas of Employment" and adequate policies to ensure compatibility between Home Depot's warehouse format stores and any sensitive uses proposed prior to the sensitive land use being permitted by way of zoning by-law.

We would suggest that a number of the Home Depot facilities currently located within a *Employment Area* may, due to their characteristics, be appropriately left within the *General Employment Area* and remain subject to the *Planning Act's* provisions respecting "areas of employment.

We would be pleased to discuss our comments further with your planning staff. We would also be pleased to discuss and work with your planning staff to develop any potential policy language or on other concepts that could achieve the same objectives.

Notice

We would ask to be provided with all notices regarding OPA 680 or any other steps taken by the City to implement Bill 97 amendments to the *Planning Act* including but not limited to those which re-define "Area of Employment". In particular we would ask for notice in accordance with the *Planning Act* of any decisions made with respect to or the adoption of OPA 680 so that our client may exercise its rights under the *Planning Act*.

Thank you for considering our submissions and we would welcome discussions on this matter.

Thank you.

Yours very truly,

MILLER THOMSON LLP

Per:



David Tang
Partner
DT/ac

Enclosure





PLANNING
URBAN DESIGN
& LANDSCAPE
ARCHITECTURE

November 29, 2023

Chair Perks and Members of Planning and Housing Committee

City of Toronto
100 Queen Street West, 10th Floor, West Tower
Toronto, Ontario
M5H 2N2

Sent by email: phc@toronto.ca

Dear Chair Perks and Members of Planning and Housing Committee:

**RE: PH8.14 – CITY OF TORONTO OFFICIAL PLAN AMENDMENT 680
HOME DEPOT OF CANADA INC.
OUR FILE: 9316HA-37**

On behalf of our client, Home Depot of Canada Inc. ("Home Depot"), we are providing this letter of concern regarding City of Toronto Draft Official Plan Amendment 680 (hereinafter "OPA 680"). Our client's existing sites and store operations in the City of Toronto within *Employment Areas* includes the following sites:

1. Leaside (Store #7073) – 101 Wicksteed Avenue
2. Curity (Store #7012) – 7 Curity Avenue
3. Caledonia (Store #7134) – 825 Caledonia Road
4. Yorkdale (Store #7129) – 90 Billy Bishop Way (proposed to be converted through OPA 591)
5. Dufferin (Store #7078) – 2375 Steeles Avenue West
6. Morningside (Store #7027) – 60 Grand Marshall Drive
7. Rexdale (Store #7114) – 1983 Kipling Avenue

Home Depot's stores are currently permitted in *Employment Areas*. As discussed in the staff report, the intent of OPA 680 would be to amend the Official Plan *Employment Areas* policies in Chapter 2, 3 and 4 of the City of Toronto Official Plan by limiting permitted office and retail uses within Employment Areas to only those which are ancillary to industrial, warehousing and other *Core Employment Area* uses. We understand that this is in response to Bill 97, introduced earlier this year whereby the definition of "Area of Employment" in the Planning Act was modified to exclude retail, office and institutional uses.

It is our understanding that the intent behind this legislative change was to remove office, retail and institutional uses as being protected as "Area of Employment" rather than revoking the use permissions wholesale as is proposed by City staff through OPA 680. This distinction is crucial. The proposed amendment appears to misinterpret the original intent, leading to unnecessary restrictions on these uses and ultimately leading to the sites becoming a legal non-conforming. Rather the intent was for municipalities to undertake detailed reviews and determine which lands should be protected as "Areas of Employment" (i.e. industrial, manufacturing, warehousing) and those that are not (office, retail and institutional).

Home Depot does not believe that the changes proposed by City staff are appropriate nor what the Province intended as noted above. Doing so could lead to a detrimental impact on its operations and services. Many of these stores have been existing and operating for an extensive time frame without impact to surrounding *Employment Areas*. Further, it effectively removes the distinction between the *Core Employment Areas* and *General Employment Areas* designations. Lastly, it would have a detrimental and undermining impact on such Employment Area initiatives that have been successfully implemented using broad employment uses (including retail and offices), such as the Castlefield-Caledonia Design District (where the Castlefield Home Depot is located).

We find that the current approach taken by City staff is an overreaction that has not fully considered the implications for landowners, retail and building industries, the general public and other stakeholders. A decision of this scale requires a more inclusive dialogue, ensuring that all affected parties have the opportunity to provide input and that the City fully understands the impact of such changes.

The proposed changes to the City of Toronto Official Plan designations for the several sites would effectively become a legal non-conforming use. Our client is concerned that this change in permission will exclude it from updating / retrofitting or redeveloping their properties which include their existing permissions for retail uses. There should be no limit or exclusion of these uses, as this would substantively impact and impede Home Depot's existing and future operations.

We therefore request the Planning and Housing Committee direct staff to undertake a thorough review as intended by the Province, deferring this matter (as drafted) and ensure that full and thorough consultation occurs after the thorough review occurs.

Should the City proceed with OPA 680 as described by City staff, we would request it be modified to clearly state that use permissions (not just existing operations) which existed prior to OPA 680 being approved are legally conforming and permitted in perpetuity such that our clients existing and future operations are not extinguished or otherwise hampered.

We kindly request to receive notifications regarding any decisions made by the City Council or Committee of Council pertaining to this matter.

If you have any further questions, please do not hesitate to contact the undersigned.

Thank you.

Yours truly,

MHBC



David A. McKay, MSc, MLAI, MCIP, RPP
Vice President & Partner

cc. Client