LOOPSTRA NIXON LLP
BARRISTERS AND SOLICITORS

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Chair Perks and Members of Planning and Housing Committee
City of Toronto
100 Queen Street West, 10th Floor, West Tower
Toronto, ON M5H 2N2

Attn: Councillor Perks

Dear Sirs and Mesdames:

RE: PH21.1 – City of Toronto Official Plan Amendment 804
829 The Queensway Inc.
829 The Queensway, Etobicoke
Our File: 28051-0002

On behalf of our clients, 829 The Queensway Inc. (collectively, the "**Owner**") we are writing to express their issues with the proposed Draft Amendment to the City of Toronto Official Plan (hereinafter "OPA 804") as it affects their landholdings located at 829 The Queensway in Etobicoke (the "**Subject Lands**").

The Subject Lands contain a pair of single-storey commercial uses as shown within the black outline in Figure 1, below.

The majority of the Subject Lands are designated Mixed Use Areas in the Official Plan. However, the element of the Subject Lands, which includes both existing buildings and areas used for accessory parking, is designated General Employment Area. As can be seen from the above aerial image, this portion of the Subject Lands is surrounded by a gas bar (to the east) and a parking area associated with the existing Costco located to the south and west.

It is our client's position that the southerly portion of the Subject Lands is not an Area of Employment per Bill 97 nor an Employment Area per the *Provincial Planning Statement 2024* ("***PPS 2024***").

Background

Through Bill 97, the Province introduced new legislative changes to the definition of "*Area of Employment*" in the P*lanning Act*. Specifically, "area of employment" now means:

> "*…an area of land designated in an official plan for clusters of business and economic uses, those being uses that meet the following criteria:*
>
> *1. The uses consist of business and economic uses, other than uses referred to in paragraph 2, including any of the following:*
>
> *i. Manufacturing uses.*
> *ii. Uses related to research and development in connection with manufacturing anything.*
> *iii. Warehousing uses, including uses related to the movement of goods.*
> *iv. Retail uses and office uses that are associated with uses mentioned in subparagraphs i to iii.*
> *v. Facilities that are ancillary to the uses mentioned in subparagraphs i to iv.*
> *vi. Any other prescribed business and economic uses.*
>
> *2. The uses are not any of the following uses:*
>
> *i. Institutional uses.*
> *ii. Commercial uses, including retail and office uses not referred to in subparagraph 1 iv."*

Municipalities, including Toronto, are required to amend their respective Official Plans to implement this change in definition.

It is our understanding, and our client's position, that the Legislature's intent in changing a statutory definition was to more effectively identify those areas to be identified as "areas of employment".

Essentially, “areas of employment” are to be areas where the prescribed uses (in paragraph 1, above) exist but where the following uses are non-existent: (i) institutional uses, and (ii) commercial uses not associated with manufacturing uses, uses related to research and development in connection with manufacturing and/or warehousing uses.

The intent was not to revoke existing use permissions – especially when already in place and established.

This distinction is critical. Respectfully, proposed OPA 804 appears to misinterpret the Legislature’s intent, leading and establishing unnecessary restrictions on these uses. The result will be sites where the existing use no longer conforms to the Official Plan but whose zoning is either legal non-conforming – or ***remains entirely legal***.

The clear intent is to protect traditional industrial uses in industrial/employment areas due to compatibility concerns while allowing for greater flexibility where existing offices, retail and institutional uses *already* inhibit industrial (or non-sensitive land uses) operations (or their establishment).

Of course, the intentional by-product of this distinction is that these other areas incorporate greater flexibility to allow for other sensitive uses (including both residential and institutional) *that do not generate compatibility* issues.

OPA 804

As discussed in the Staff Report filed for this agenda item (the “**Staff Report**”), OPA 804 proposes various amendments to Official Plan Employment Areas policies in Chapter 2, 3 and 4 of the City of Toronto Official Plan. Specifically, these changes limit office and retail uses within Employment Areas to *only* those which are ancillary to industrial, warehousing and other Core Employment Area uses.

The City previously attempted to implement Bill 97 and the issued but not yet in-force *Provincial Planning Statement* through OPAs 668 and 680 the latter being Official Plan Amendments where the City had jurisdiction as the approval authority.

It is our understanding that the Minister had issues with OPAs 668 and 680. Consequently, the Minister took the extraordinary step of promulgating a regulation to remove the City as approval authority for those OPAs.

However, it appears the Staff Report has elected to ignore that reality and double-down on the previous approach that *clearly* did not find favour with the Minister or Province.

Issues with OPA 804

The Owner does not believe that the changes proposed by OPA 804 are appropriate nor what the Province intended as noted above for the following reasons:

1. Doing so could lead to a detrimental impact on its properties and the ongoing operations and services its tenants provide – particularly as a result of the Subject Lands' split designation.

2. Our client takes particular issue with OPA 804's proposed removal of commercial permissions from the southerly portion of the Subject Lands, thereby creating doubt relative to the use as associated parking for permitted commercial uses.

3. Given their size and surrounding land uses, there is no reasonable argument that the southerly portion of the Subject Lands would be used for manufacturing or warehousing as is envisioned for Employment Areas by the Province.

4. In our submissions, this remnant Core Employment Area should be redesignated to Mixed Use Areas to match the rest of the designation on the Subject Lands. This will allow our client to cohesively develop the Subject Lands (the vast majority of which is designated Mixed Use Area) in order to provide for additional housing which is desperately needed in the City.

5. Given the size of the property and adjacent Mixed Use Areas immediately located to the west and south of the Subject Lands (previously approved through OPA 231 and OPA 653 respectively), it is ***highly*** unlikely that the Subject Lands will be used for any significant manufacturing or warehousing uses as they would likely be untenable and require substantial additional and costly mitigation features at the outset. However, those untenable uses are effectively what the lands will be permitted for under proposed OPA 804.

   It is our client's submission that this remnant Core Employment Area should be redesignated to Mixed Use Areas or a new designation (i.e. "Commercial") to allow our client to develop the Subject Lands as intended with their corporate head office.

   We note that such a use – and solution – does not result in an incongruent planning result in the context of OPA 231 and 653 ***while still*** providing for an employment use – office – to be utilized by a motivated and committed office user.

6. Again, the intent of Bill 97 and the *Provincial Policy Statement* and the *PPS 2024* is clear that ***areas to be subject to employment conversion policies*** **are limited to areas with traditional manufacturing, warehousing or related uses**. At the same time, mixed use development is to be encouraged outside of these specific and limited areas to maximize the land available to create housing opportunities.

   Where institutional and/or commercial uses are permitted / existing, those areas are no longer to be considered an "area of employment", as is the case for the Owner's lands.

7. Rendering sites as "legally non-conforming" through this initiative with often entirely legal zoning in place creates a peculiar and undesirable outcome that cannot qualify as "good planning." The Staff Report is woefully silent on the need to amend zoning by-laws (including what is likely many site-specific and prevailing zoning by-law amendments) to conform to new Official Plan policies.

As a result, the City will be creating immense prejudice for landowners and operators who will now be left in difficult positions regarding any financing in place or proposed. Further investment in such properties will be undermined by this unwanted "non-conforming" status which leaves sites in zoning "limbo" thereby undermining key economic development policies and initiatives of the City.

8. City staff have only indicated that various business parks should be removed from Employment Areas. However, this leaves numerous properties with retail and office uses as Employment Areas despite the direction of Bill 97 and the *PPS 2024*.

   This is only a token gesture and does not recognize properties, like the Subject Lands, which were intended for office and other commercial purposes.

   Instead, a fine-grain (parcel by parcel) review and analysis of the area is required to determine what should (or should not) be designated to meet the Province's definition of Areas of Employment as intended by the Province.

   In the case of the Subject Lands, OPA 804 should redesignate them ***in their entirety*** to Mixed Use Areas.

The above comments are *not* theoretical.

They are a real and substantial issue for the Subject Lands that largely consists of, or are planned by the Owner to include retail, service commercial and office uses.

The current approach taken by the Staff Report fails to fully consider the implications for landowners, retail and building industries, the public and other stakeholders. A decision of this scale requires a more inclusive dialogue, ensuring that impacted parties could provide input and that the City fully understands the impact of such changes.

Furthermore, given the Province's response to OPAs 668 and 680, we find it peculiar that Staff Report would advance an initiative without detailing a successful consultation with the Minister and the Province.

Frankly, it is perplexing that staff's very first step in the process of addressing the aforementioned conformity exercise was not getting clear direction from the Province rather than largely advancing the same, unapproved and obviously problematic analysis and position.

We therefore request the Planning and Housing Committee defer this matter for future review and consultation.

Should the City proceed with OPA 804, we would request it be modified to clearly state that uses which existed prior to OPA 804 being approved are, and will remain, in conformity with the Official Plan such that our clients' existing and future operations are not extinguished or otherwise hampered or prejudiced.

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We hereby request to receive notifications regarding any meetings, report and/or decisions to or made by City Staff, the City Council or any Committee of Council pertaining to this matter.

Yours truly,

LOOPSTRA NIXON LLP

Per: Aaron I. Platt
AIP

CC: Client
David McKay, *MHBC*