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February 6, 2023

Via Email to council@peelregion.ca

The Council of the Regional Municipality of Peel
Regional Administrative Headquarters
10 Peel Centre Drive, Suite A
Brampton, Ontario

Attention: Chair and Members of Council

Dear Sirs/Mesdames:

Re: Agenda Item 13.1 – City of Mississauga Major Transit Station Area Official Plan Amendments 142, 143, 144 and 146: Regional Staff Review and Recommendations Submission on behalf of the Dundas Landowners’ Association City of Mississauga Official Plan Amendment Nos. 142, 143 and 144

We are counsel to the Dundas Landowners’ Association (the “**DLA**”), an incorporated not-for-profit association representing the interests of certain small businesses and owners of land in the vicinity of Dundas Street East in the City of Mississauga (the “**Dundas Corridor**”). We write on behalf of our client to express its strong objections to the City of Mississauga (the “**City**”) Official Plan amendments that are before Regional Council.

As outlined further below, Official Plan Amendment Nos. 142, 143 and 144 (together, the “**City OPAs**”) suffer from fundamental flaws that undermine Regional objectives, policy direction in the newly-approved Region of Peel Official Plan (the “**ROP**”), and explicit direction that the Minister of Municipal Affairs (the “**Minister**”) provided in modifying the ROP. In particular, the proposed approach of including height limits within certain PMTSAs contravenes Ministerial modifications to the ROP and, if approved, would result in the need to accommodate more housing in other areas of the Region that are less able to accommodate it. Furthermore, Regional staff have not even evaluated whether the height policies conform to provincial policy or the ROP, as they have inappropriately limited the scope of their review to ensuring minimum densities are met.

In addition, we note that changes in circumstances since City Council first adopted the City OPAs make it unfair and inappropriate to approve the City OPAs without giving City Council a further opportunity to consider them. In particular:

- The version of the ROP that Council used to evaluate the City OPAs at the time of adoption has now been superseded with an approved version that is different in important ways following the Minister’s modifications;
- The Province has released new housing targets which call for the City to accommodate 120,000 new homes by 2031, which has significant implications on the amount of intensification to be accommodated within the City’s major transit station areas (“**MTSAs**”); and

REFERRAL TO _____
 RECOMMENDED _____
 DIRECTION REQUIRED _____
 RECEIPT RECOMMENDED _____

- As a result of the intervening election, City Council as currently constituted has not had an opportunity to consider the City OPAs (which were adopted by the previous Council with different members).

In these circumstances, the DLA strongly urges Regional Council to refuse to approve the City OPAs and remit them to the City for further consideration.

Background

The DLA's members make up a portion of the many entities that own lands or operate businesses along the Dundas Corridor. As Council is aware, the Dundas Corridor is planned to accommodate new higher-order transit, facilitated through significant public investments from all levels of government. This transformational investment in turn creates transformational opportunities for both the Dundas Corridor itself and the many small businesses that operate along it. Provincial policy direction is clear that there is an imperative to optimize public investments in higher-order transit infrastructure, particularly through mixed use development, in order to support complete communities.

Accommodating growth in these urban areas with existing and planned transit is also critical to limit growth pressures in areas that are less able to accommodate it. Provincial housing targets released in October 2022 after City Council adopted the City OPAs require the City to accommodate 120,000 new homes by 2031. For context, the Region's existing housing strategy provides a target of just 3,894 housing units per year for the City, or just over 31,000 homes by 2031. Under the new housing targets, the City is now required to quadruple the total number of homes completed by 2031 to achieve Ministerial direction. If the City fails to accommodate its required share, the pressure on other municipalities within the Region to accommodate development will only increase.

The City's MTSAs – with their abundant existing and planned transit infrastructure – are exactly where growth is directed and where it must be accommodated to avoid undue growth pressures elsewhere within the Region. However, the City OPAs fail to properly plan for such growth, by limiting heights to unreasonable levels among other things, as explained further below.

The Policies Pertaining to Maximum Heights are Inappropriate

Our client has significant concerns with the policies in the City OPAs providing direction on heights and the maximum heights identified in associated mapping. The imposition of maximum heights does not conform with provincial policy or direction provided from the Minister in approving the ROP. Further, Regional staff appear to have a fundamental misapprehension about the role of the Region as approval authority. This misunderstanding appears to be the basis for Regional staff not recommending changes to the aspects of the City OPAs relating to maximum heights.

The Maximum Height Policies do not Conform with Provincial or Regional Policy

Both the Provincial Policy Statement and the Growth Plan for the Greater Golden Horseshoe promote intensification, particularly around transit stations, to facilitate complete communities that leverage public investment in transit and reduce reliance on vehicles. Under provincial policy, it is not enough simply to allow some degree of intensification in these areas – the Growth Plan provides that it is

imperative that existing and planned transit be optimized to support more compact built form and ensure growth is accommodated in the right locations. The ROP mirrors this direction. Policy 5.4.18.6 provides that the Region’s objective is “[t]o optimize all intensification opportunities across the Region and maximize development within Strategic Growth Areas.”

With three levels of government committing \$675 million to transit projects in Mississauga, including the Dundas Bus Rapid transit line, the Dundas Corridor is an excellent example of an area where such intensification is specifically directed, infrastructure must be optimized, and development must be maximized to achieve good planning.

The importance of the direction to optimize MTSAs is apparent in the modifications the Minister made to the ROP before approving it. Specifically, the Minister struck language in the ROP that required lower-tier municipalities, in planning for their MTSAs, to address maximum heights at their discretion. Following the Minister’s modification, the only direction in the ROP pertaining to heights for PMTSAs is that lower-tier municipalities are to establish minimum heights. Indeed, the direction to provide for minimum heights in MTSAs is the only reference to building height in the entirety of the ROP.

Importantly, the City OPAs were adopted before the Minister had reviewed and modified the ROP. Accordingly, at the time the City OPAs were adopted, the ROP policies that City Council was evaluating the City OPAs against permitted the imposition of maximum heights in MTSAs. It no longer does so. In these circumstances, at a minimum, City Council must have an opportunity to consider the City OPAs against the new policy framework that now applies, including in light of the Minister’s removal of policy language in the ROP pertaining to maximum heights.

Furthermore, even if maximum heights were permitted, the proposed maximums set out in the City OPAs are inappropriate. The maximum heights – which are as low as 4 to 9 storeys along large portions of the planned rapid transit corridor that is the Dundas Corridor – are woefully unresponsive to both provincial and Regional policy direction. Maximum building heights at these levels do not optimize the public investment in higher-order transit, nor do they maximize development within MTSAs as strategic growth areas. Suppressing building heights, and therefore new housing stock, to such an extent along areas with existing and planned rapid transit within the City will have knock-on effects elsewhere in the Region, increasing growth pressures in areas of the City without such infrastructure and in other municipalities. The City OPAs cannot be considered to conform with provincial or Regional policy and therefore must not be approved.

Regional Staff Appear to Misunderstand the Region’s Role as Approval Authority

Unfortunately, Regional staff have sidestepped the critical issues relating to the maximum height policies in their report to Regional Council. The report indicates that building heights “only become a matter of Regional interest if” they indicate that “the minimum densities in the [ROP] have not been adequately planned for.” This represents a fundamental misunderstanding of the Region’s role as approval authority for the City OPAs.

Under the *Planning Act*, the Region, as approval authority, must be satisfied that the City OPAs conform with provincial policy and the ROP in order to approve them. The Region cannot only concern itself with minimum densities. It must ensure conformity with all aspects of applicable policy. Section

3(5) of the *Planning Act* requires Regional Council's decision to be consistent and conform with provincial policy. Further, section 17(34.1) of the *Planning Act* specifically prohibits the Region from approving the City OPAs if they do not conform with the ROP.

Based on the staff report before Regional Council, it appears that staff have not even evaluated whether the policies in the City OPAs pertaining to maximum building height conform with direction in the ROP, including the direction to optimize all intensification opportunities in the Region and maximize development within strategic growth areas. As outlined above, it is plain that the maximum height policies do not achieve conformity. Regional Council cannot approve the City OPAs in these circumstances.

Land Uses

The land use mapping within the City OPAs (particularly OPA 144) pertaining to the Dundas Corridor in particular also does not conform with provincial policy or the ROP.

The ROP recognizes the important role of the Dundas Corridor in supporting mixed-use intensification along the planned higher-order transit corridor to support complete communities. Critically, the ROP removes the Dundas Corridor from the Regional Employment Area. While other lands in the area further south without frontage on Dundas Street East remain within the Regional Employment Area, nearly all lands fronting on Dundas Street East were removed. This approach appropriately reflects applicable policy direction. It provides existing industrial operations the protection afforded to employment-designated lands, while also recognizing that the lands with immediate frontage on Dundas Street East must accommodate a mix of uses in order for the Dundas Corridor to achieve the objectives set out in provincial policy as well as those established by the Region.

Disturbingly, however, the City OPAs fail to implement the policy direction in the ROP, as well as provincial policy. Notwithstanding that the New ROP removes lands along the Dundas Corridor from the Regional Employment Area, OPA 144 applies a land use designation to these lands that would prohibit residential uses. This approach ignores applicable policy direction at every level. First, the Growth Plan assigns the responsibility for designating employment lands within the Region to the upper-tier municipality, not the lower-tier municipality. Second, the land use designations proposed would conflict with the ROP. As noted above, the lands along Dundas Street East are not within an Employment Area under Schedule E-4 of the New ROP. Policy 5.8.16 of the ROP directs local municipalities to designate Employment Areas in accordance with Schedule E-4; in other words, local official plans must include Employment Area designations that correspond to Schedule E-4. Precluding residential uses along the Dundas Corridor is inconsistent with this direction.

In their report to Council, Regional staff have indicated that language in the ROP which states that “[l]ocal official plans may also support employment uses outside of Employment Area designations” allows the City to designate additional lands reserved exclusively for employment uses. However, this represents a serious misreading of the ROP. The language quoted above is not found anywhere in the operative policies of the ROP; rather, it is in non-policy explanatory text. Such non-policy text cannot override the operative policies of the ROP.

Members of the DLA have been following the City's planning process for the Dundas Corridor for years, through the Dundas Connects Master Plan process. That Master Plan appropriately contemplates a bold and highly urban future for the corridor, premised on a vibrant mix of uses, that will make it a unique destination, facilitated through transit-supportive intensification. In accordance with that vision, small business owners that are part of the DLA wish to develop mixed-use buildings on their properties where their families could live above, while they operate their family businesses on the ground floor. This is precisely the type of mixed-use development that would make the Dundas Corridor a vibrant, transit-supportive corridor. Yet, the City OPAs attempt to preclude such scenarios, without justification.

The approach to land uses along the Dundas Corridor in the City OPAs is untenable and must be revised in order to conform with applicable policy. At minimum, in the event City's overarching employment areas mapping does not change, the land use designation applicable to the corridor on Schedule 11g of OPA 144 should be revised to Mixed Use Limited, which permits residential uses provided certain criteria are satisfied.

Conclusion

The imperative of optimizing available supply of land to support complete, mixed-use communities in the vicinity of higher-order transit is clear, both in provincial policy and the ROP. Unfortunately, the City OPAs do not adequately reflect this fundamental direction. In these circumstances, and in light of the substantial changes in circumstances since City Council (as previously constituted) adopted the City OPAs, the DLA urges Regional Council to refuse to approve the City OPAs and remit them to the City, with direction to reconsider the maximum height policies as well as the land use mapping pertaining to the Dundas Corridor.

We appreciate the opportunity to provide these comments and thank Council for its consideration.

Yours truly,

Goodmans LLP



Max Laskin
ML/

cc: Client
Minister Clark, Ministry of Municipal Affairs and Housing