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June 10, 2016

BY EMAIL

Our File No.: 123361

City of London
London City Hall
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Attention: Mayor Brown (mayor@london.ca) and Members of Council
(citycouncillors@london.ca)

Dear Mayor Brown and Members of Council:

Re: London Plan (Third Draft – May 2016)
Comments on behalf of Esam Construction Limited in respect of Planning
Process as it Relates to Esam Lands

As you may be aware, Aird & Berlis LLP has been retained by Esam Construction Limited (“Esam”) in respect of its lands located at Wonderland Road North and Oxford Street West. We have previously written to Council in respect of the Environmental Assessment (the “EA”) which was initiated in 2007 and which has yet to be completed.

The purpose of this correspondence is to provide you with an overview of our client’s concerns with the planning process as it relates to the current draft of the London Plan (the “Plan”) which is coming before you for consideration in the next few weeks. Please note that a detailed letter providing comments on the proposed policies in the Plan was submitted to the City yesterday in advance of the public meeting scheduled for June 13th.

As members of Council may be aware, the Esam lands originally received draft plan approval for a subdivision from the Ministry of Municipal Affairs in September, 1990. That original draft plan provided for a mixed use community in a variety of forms along with commercial and retail uses. In the mid-1990s the City completed a Mud Creek Subwatershed Study, which included a modelling assessment identifying the impacts of a 100 year storm, and a Regional (250 year storm) for the Esam lands. Subsequent to that Subwatershed Study, a revised draft plan was approved by the City in July, 2000. The Staff reports which accompanied that approval recognized that while significant water course and floodplain alterations would have to occur as a result of the plan of subdivision, the proposed development was, nonetheless, appropriate and represented good planning for the lands.

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Since that time, our client has actively pursued final approval by meeting and rescheduling the draft conditions. A key element of those conditions, the completion of the EA, has been delayed by the City's intense processes for years notwithstanding the cost sharing of the EA costs by landowners.

Additionally, the Esam lands have been consistently identified in planning and engineering department forecasts as an active development file and have been acknowledged as such by City staff. Development charges resulting from this proposal have always been assumed by the City of London in its budgeting forecast. Importantly, key infrastructure required for the subdivision, including a culvert to manage stormwater on the lands, has been secured in the City's 2016 capital budget.

The proposed development for the lands also provide, most importantly perhaps, for the extension of Beaverbrook Drive which has been an assumption including in the modelling of all of the City's transportation master planning work for the area and for the broader community. It would not be an overstatement in our view to suggest that the development of the Esam lands in a manner consistent with the original draft plan of subdivision (as revised in 2000), has been a long standing planning assumption by the City of London. This has also been relied upon by our client in the actions which followed a 2000 approval.

In August of 2007, a cost sharing agreement was reached between land owners and the City to undertake the EA for the Mud Creek area. It is important to note that the scope of this EA was focused on the appropriate way to deal with storm drainage and stormwater management in the Mud Creek area. As Council may be aware, although public meetings were held, the actual development of the Plan was stalled by internal City staff issues and changes with respect to the scope of work.

In 2012 Delcan was appointed as the consultants for a new Mud Creek Subwatershed Study update. Importantly, this is not an environmental assessment but an update to the stormwater management work done in the early 1990s and 2000s. Work on the Mud Creek Subwatershed Study update commenced in 2012 and took over six months to complete. As of this letter, a final report had still not been released. Since that time, an updated scope of work for the EA was approved in November 2014. The results of that work have yet to be reported out to the community.

In the midst of the environmental work required to address stormwater management issues for the Esam lands and immediate area, the Plan has come forward for approval. In subsequent iterations of the draft Plan, the treatment of the Esam lands has become unduly complicated and onerous. The most recent land use schedules which accompany the Plan show a significant "Valley Lands" feature being applied to our client's property. When considered in concert with policies requiring significant setbacks from these features, the effect is to sterilize substantial portions of the Esam lands.

More fundamentally, we are unaware of and were not provided with notice nor consulted on the environmental work undertaken by City staff which lead to the determination of

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these features in the Plan. We would note that throughout the extensive land use planning process which has occurred on a detailed level for these lands, that no such features were identified that appeared worthy of designation by the City to date. In our respectful submission, the proposed application of these features without adequate study, on lands already approved for development, is unreasonable.


In addition to the sterilization of the Esam lands, the proposed treatment of the lands also has significant and in our view, unresolved impacts on the City's interests. In particular, the extension of the Beaverbrook Road long planned for infrastructure element in the City's transportation master plan, may be jeopardized. We question how the City would be able to justify extending a road through a significant natural heritage feature. We query whether the transportation planning which has been undertaken for the Plan continues to assume the extension of Beaverbrook. If that is the case, we ask how the City can on one hand propose to extend significant infrastructure through an environmental feature while on the other hand, using that environmental feature to sterilize the development approval given for the same lands.

In our respectful submission, the current version of the Plan represents a significant down designation of our client's lands and suggests an intent by the City of London to expropriate significant parcels of lands previously approved and designated for development through the proposed down designation.

On behalf of our client we urge Council to direct staff to modify the proposed Plan so that the approved development for the Esam lands can proceed in a manner which will also benefit the broader community.

Yours truly,

AIRD & BERLIS LLP



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