
AIRD & BERLIS LLP

Barristers and Solicitors

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June 20, 2016

Our File No.: 123361

City of London
London City Hall
300 Dufferin Avenue
P.O. Box 5035
London, Ontario
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Attention: The Clerk

Dear Mayor and Members of Council:

**Re: London Plan (Third Draft – May, 2016)
Comments on Proposed Designation of lands located at Wonderland
Road North and Oxford Street West**

As we have previously advised, Aird & Berlis LLP has been retained by the owner of the lands located at Wonderland Road North and Oxford Street West. We have previously written to Council in respect of the application of the draft London Plan to these lands as well as in respect of the environmental assessment process for the lands which was initiated in 2007 and which has yet to be completed.

In some of our previous correspondence we refer to the owner of the lands as Esam Construction Limited or as simply, Esam. Henceforth we would ask that your records indicate that Sam Katz Holdings Limited is the registered owner of the property.

This correspondence is further to our correspondence of June 9th and June 10th, 2016. Since the date of that correspondence, we have reviewed the most recent staff report and note that certain changes have been made as they relate to our client's property. To the extent that some of the changes respond to comments previously made by our office or our client's planning consultants MBTW, we thank staff for those modifications.

Unfortunately, our client remains opposed to the application of the draft London Plan in its current form in a number of respects including:

1. the lack of recognition for the plan of subdivision approved in 1990 for the lands;
2. the reduction in heights for certain of the residential blocks;
3. the application of an Open Space designation to lands which have been zoned to recognize the existing recreational use (bowling alley) and associated uses (surface parking) (Map 1); and

4. the creation of a Significant Valleylands overlay including the indication of a water feature (Map 6) as well as other environmental constraints (May 5), which are new in this draft and have not been present in the current Official Plan or earlier drafts of this plan.

We reiterate our client's long standing request that the London Plan's area specific policy for the lands recognize the approved development and provide appropriate guidance in the context of that approval for the development of the lands. Until such a set of policies can be developed with staff, we request that the London Plan not apply to our client's lands. In the event Council does proceed to approve the London Plan in its current iteration, our client will be compelled, for the reasons below and in our previous correspondence, to appeal the application of the London Plan to its lands.

In its current form, and in particular the application of Significant Valleylands and Unevaluated Wetlands features and attendant policies inappropriately and unfairly constrains the development opportunities on these lands notwithstanding that they have been draft approved for a residential development since 1990. While this is clearly contrary to our client's interest in our view there are also significant and negative impacts on matters of broader public interest. For example, the resulting sterilization of our client's lands will have significant impacts on the City of London in the context of revenue generation (lost opportunity for Development Charges and future tax revenue), compromising transportation planning (constraints on the future Beaverbrook extension) and the City's new transit initiatives (loss of transit supportive densities).

Specifically, our client objects to the application, as is seen in Map 1 of an Open Space designation on that portion of our client's property which have been zoned for recreational uses. The portion of the lands which currently contain a bowling alley and a large parking lot is inconsistent with the Open Space designation which is proposed. We reiterate our client's request, which has been made from the outset of this planning process that the designation reflect and implement approved zoning from the City of London for these lands.

In respect of Maps 5 and Maps 6 we continue to question the nature and extent of the change in the schedules from the 2015 draft to the current one which is before Council. We have received no response to our numerous enquiries, made both from this office and MBTW for background information with respect to the environmental work done to justify the application of the Significant Valleylands and Unevaluated Wetlands designations on these properties. As our correspondence of June 9, 2016 indicated, the application of these features, and the policies which require a 120 meter "trigger distance" from these features, has the effect of sterilizing the eastern half of our client's property. **No justification or explanation has been provided by City staff in this planning process to explain the dramatic shift from the current OP and even the 2015 draft of the London Plan.**

Recent information and investigation by our client and its consultants suggests that the principle reason for the proposed environmental features is that staff contend there is naturally occurring water on our client's property which can, at times, contribute to flooding along Oxford Street. It is important for Council to understand that the water on the

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property is a result of the unmanaged municipal storm water being drained from existing residential developments to the north, northeast, and east, as well as from municipal streets including Oxford Street. This is municipal storm water which the City of London is discharging on to our client's lands, without quality or quantity control, and without permission from our client. Additionally, it is our expectation that this discharge of untreated storm water on our client's property may have had the effect of importing environmental contaminants such as road salt, fuel, and other metals on to our client's property. Our client is currently undertaking an assessment of the site to better understand the impact of the unlawful and unmanaged storm water from the City system.

As a consequence of this recent information, it is our client's view that the City now is using the planning process associated with the London Plan to sterilize lands which it has significantly downgraded and damaged as a result of its own actions.

We understand that the current iteration of the Stormwater EA for the lands is ongoing and that a draft will be issued shortly. It is our expectation that this process will be fully transparent and that the background research, including all environmental studies, will be made available with adequate time provided for our client's experts to review prior to the EA coming forward to committee or Council for consideration.

As a result of the above and our previous correspondence to the City, we are requesting that Council:

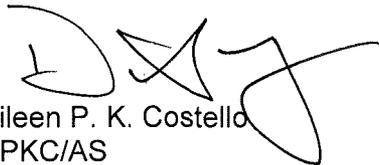
- 1. direct staff to meet with our client and its consultants to develop a site and area specific policy as set out above; and**
- 2. not approve Maps 1, 6 and 5 as they relate to our client's property.**

To do otherwise will necessitate an appeal of the London Plan by our client in order to undo this unreasonable, unfair and unjustified change in designation as it relates to client's property.

To put it simply, in our view the London Plan represents an expropriation of our client's property through the application of the Significant Valleyland and Unevaluated Wetland features, the Open Space designation, and the various policies in the plan relating to "trigger distances" from such features. These efforts by the City of London to devalue and sterilize our client's lands will be vigorously resisted.

Yours truly,

AIRD & BERLIS LLP



per: Eileen P. K. Costello
EPKC/AS

c: Client
Consultants
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