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August 28, 2020

BY EMAIL AND COURIER

Susan Cassel
City Clerk
City of Pickering
One The Explanade
Pickering, ON L1V 6K7
clerks@pickering.ca

Our File: 158735

Dear Ms. Cassel:

**Re: Appeals Pursuant to Subsections 22(7) and 34(11) of the Planning Act,
R.S.O. 1990, c P. 13, as amended
Applications for Official Plan and Zoning By-law Amendment
591 Liverpool Road, City of Pickering
City Files – OPA 19-001/P and A 05/19**

We act on behalf of Pickering Harbour Company Ltd. (“**PHC**”) with respect to the above noted matter. PHC is the owner of an 80 hectare land holding in the City of Pickering consisting both of the land and water which forms Frenchman’s Bay, a shallow bay on the north coast of Lake Ontario in South Pickering (“**PHC Lands**”). Since 1853, PHC has operated the Frenchman’s Bay Marina on the PHC Lands. These operations include the Frenchman’s Bay Marina offices and outdoor boat storage.

Over the years, a waterfront vision for the PHC Lands was prepared to assess how the PHC Lands can support future planning initiatives for public open spaces, recreation, and amenities, while enhancing opportunities for new residential, retail and commercial uses. In furtherance of the broader waterfront vision for the PHC Lands, PHC set out to make the necessary applications to secure permissions to permit the redevelopment of underutilised land in the area, including the PHC Lands and an adjacent city owned parking lot. Those underutilized parcels included lands owned by PHC known municipally as 591 Liverpool Road and currently occupied by the Frenchman’s Bay Marina offices and outdoor boat storage (“**591 Lands**”) as well as a City-owned parking lot municipally known as 505 Liverpool Road (“**505 Lands**”). In total, a 2.42 hectare area of the PHC lands was proposed for redevelopment.

A pre-consultation meeting took place on August 4, 2017 between PHC’s planning consultants, the Biglieri Group Ltd. (“**TBG**”), the Region of Durham, the City, and TRCA. The purpose of this pre-consultation meeting was to determine how PHC could proceed with redevelopment of the 591 Lands and the 505 Lands as part of the broader waterfront vision for the whole of the PHC Lands. At this meeting, a redevelopment proposal for the 591 Lands and the 505 Lands was presented and discussed, as was PHC’s broader waterfront vision, and development approval application requirements were determined and communicated to TBG.

Based on the advice of the parties in attendance at the pre-consultation meeting, PHC further developed its plan, and retained the necessary experts, in order to file an complete development application with the City.

On April 11, 2019, TBG (on behalf of PHC) made application to the City for Official Plan and Zoning By-law Amendment approval (the “**Application**”) to facilitate a comprehensive redevelopment proposal on the 591 Lands and the 505 Lands. The Application proposed two 23-storey mixed use buildings, as well as retail, commercial, and recreational uses. The Application was supported by extensive expert analysis including, but not limited to, land use planning and urban design, architecture, transportation, natural heritage, noise, wind, geotechnical, and hydrogeological reports. The Application was deemed complete on May 10, 2019.

A public open house respecting the Application was held on October 17, 2019 with approximately 250 people in attendance. Subsequently, on February 3, 2020, the City’s Planning and Development Committee held a statutory public meeting respecting the Application. A preliminary information report, dated February 3, 2020, was prepared by Staff and was available to the Committee and the public for consideration.

Following the February 3, 2020 statutory public meeting, a Notice of Motion was brought forward by a member of City Council, moving for the refusal of the Application. This Motion was debated by City Council in a meeting held on February 24, 2020. This Motion was defeated. A second Motion was brought forward by a member of City Council to refer the Application back to Staff for further review, and to permit Staff to make formal recommendations on the Application.

In response to public, Staff and Agency comments received at both the public open house, the statutory public meeting, and through the planning review process, PHC’s development proposal was significantly revised. Among other revisions, the height of the two mixed use buildings was reduced from 23 to 15-storeys; the 505 Lands were excluded from the development site, which had the effect of reducing the development site area to 2.16 hectares (“**Development Site**”); the environmental buffer along the east and south side of the Development Site adjacent to the environmentally sensitive Hydro Marsh was increased; and the size of the privately owned, publically accessible space was increased to 56% of the total developable area (the “**Revised Application**”).

The Revised Application was filed with the City on March 11, 2020. The Revised Application was supported by revised, and further, expert analysis which addressed public, Staff, and Agency comments.

A recommendation report, dated July 13, 2020, was presented to the City’s Planning and Development Committee at a meeting held on July 13, 2020. Notwithstanding the extensive supporting expert analysis, and significant revisions in response to comments received, Staff recommended to refuse the Revised Application, and the Planning and Development Committee voted to refuse the Revised Application.

The Staff recommendation was based on several grounds. These grounds for refusal included that the Revised Application was inconsistent with the Provincial Policy Statement and does not conform to the Growth Plan; does not conform with the growth and intensification policies of the City’s Official Plan, is inconsistent with TRCA Living City policies, and that Ontario Power Generation (“**OPG**”) is not in support of the Revised Application. OPG’s objections related to its concerns that a mixed-used development consisting of residential uses is not permitted within the Pickering Nuclear Generating Station (“**PNGS**”) exclusion zone for public health and safety

reasons. Contrary to the opinion of the Region of Durham (discussed below), it was Staff's position that the Revised Application did not conform with the Regional Official Plan.

The recommendation report was subsequently received by City Council at a meeting on July 27, 2020. At that meeting, City Council voted to refuse the Revised Application.

Our client is hereby appealing Council's decision to refuse to approve the Applications, as revised on March 11, 2020, pursuant to subsections 22(7) and 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended. The summary of the reasons for appeal is as follows:

The Revised Application is Consistent with the Provincial Policy Statement, 2020 ("PPS 2020")

The Revised Application is consistent with the PPS, 2020 and supports its vision for strong communities supported by the efficient use of land, resources, and infrastructure. The Development Site is located within an urban settlement area (policies 1.1.3.1 to 1.1.3.7). The Revised Application will assist in increasing the mix of residential uses in the neighbourhood, and incorporates intensification and redevelopment in South Pickering which aids in diversifying the existing housing supply to meet the long term needs of future and existing residents (policy 1.4.3). The Revised Application also implements infrastructure and public service facilities and public spaces that provide direct access to forms of active transportation and public transit (policy 1.5.1, 1.6.1, and 1.6.5), and seeks to protect the long-term ecological function and biodiversity of natural heritage systems (policies 2.1.1 and 2.2.2).

The Revised Application Conforms with the Growth Plan for the Greater Golden Horseshoe, 2019 ("Growth Plan, 2019")

The Revised Application conforms to the Growth Plan, 2019. The Revised Application helps to direct growth to built-up areas in the City through appropriate intensification which aids in achieving not only the 2031 population forecast projections allocated to the City of Pickering by the Region of Durham, but also those that are expected to be allocated to Pickering by the Region of Durham as a result of the Growth Plan 2019. The design of the proposed development encourages a vibrant, thriving community and supports the Growth Plan, 2019 direction to develop complete communities (policy 2.2.1.2.4). The proposal's compact built form is sensitive to the protection of surrounding natural heritage systems and water resources (policies 4.2.2, 4.2.3, 4.2.4). The Revised Application will also allow for the creation of new public open spaces, and provide opportunities for connections to the existing trail system along Lake Ontario in South Pickering (policy 4.2.5).

The Revised Application Conforms with the Region of Durham Official Plan ("ROP")

In a letter dated April 23, 2020, the Region advised PHC that PHC's requested amendment to the local Official Plan appears to conform with the ROP waterfront policies, and is exempt from Regional Approval.

The Revised Application conforms with the ROP, and no amendment to the ROP is required. The Development Site is designated *Waterfront Areas* in the ROP. *Waterfront Areas* policies anticipate that development may occur in *Waterfront Areas*, provided that there is no negative impact to key natural heritage or hydrogeological features (policy 10C.1.3). As noted above, the Revised Applications were supported by both environmental and hydrogeological studies, and

the proposed development sensitively responds to both environmental and hydrogeological concerns on and adjacent to the Development Site.

The Development Site is also adjacent to Frenchman's Bay, a feature which is identified as a *Waterfront Place* and *Natural Areas* in the ROP Greenlands System (policy 8A.2.11a). In accordance with the direction of the ROP, the Revised Application develops this *Waterfront Place* as a focal point along the Lake Ontario waterfront (policy 8A.2.12). *Waterfront Place* policies permit a mix of uses, including residential, commercial, marina, recreational, tourist, and cultural and community facilities (policy 8A.2.12). The Development Site is also located in close proximity to lands in South Pickering that are designated as *Living Areas*. The ROP states that it is the goal of the *Living Areas* designation to establish suitable areas for the provision of a full range of housing which will be developed in a cost-effective and efficient manner, and to create and maintain an attractive living environment that is safe, energy efficient and in harmony with nature (policies 8.1.15 and 8.1.16).

The Revised Application contemplates intensification of an underutilized parcel of land that is located within the current urban boundary of the City of Pickering (policies 4.3.1, 4.3.2c and d). The proposed development is designed to provide appropriate setbacks and buffers from natural heritage features adjacent to the Development Site, while providing opportunities for recreational activities for residents of the new buildings and the travelling public (policy 10.2.1). The Revised Application will also improve access to the waterfront by providing a public boardwalk along the southern edge of the Development Site (10C.1.4).

The Revised Application Conforms with the City of Pickering Official Plan ("OP")

The Revised Application conforms to the general intent of the OP. The OP was approved by the Region on September 24, 1997, and the current office consolidation of the OP is dated October 2018. The Development Site is currently designated *Marina Areas* in Schedule 1 of the OP, and is also located within the *South Pickering Urban Area* and the *Bay Ridges Neighbourhood* per OP Map 13. The Revised Application seeks to re-designate the Development Site to *Mixed Use-Community Node*.

The OP Directs that City Council shall maximize the efficiency of existing infrastructure and minimize the consumption of vacant land by establishing a target of approximately 11,500 additional residential units within the South Pickering Urban Area by the year 2016 through infill development of vacant or under-utilized blocks of land (policy 6.5(d)). The Revised Application supports appropriate mixed use, infill development along the waterfront, and within the City of Pickering urban boundary which contributes to the established intensification target for the South Pickering Urban Area. The Development Site is currently underutilized, and the proposed development can be accommodated by existing infrastructure, including transportation and servicing (policy 6.5).

The proposed development incorporates a compact built form which respects the existing and emerging character of the community in terms of built form, massing, setbacks (policy 3.2(d)). The development also helps to facilitate opportunities for outdoor recreation, active transportation, and public access to the waterfront (policies 10.17(d) and 11.17(d)) and offers a variety of housing forms, while offering ground-related neighbourhood commercial uses to serve the daily needs of residents (policies 6.2 and 6.3).

The Revised Application Responded to Community, City and Agency Concerns

The Revised Application has been the subject of community consultation, and as revised, has been supported by extensive expert analysis in the areas of land use planning and urban design, architecture, transportation, natural heritage, noise, wind, geotechnical, hydrogeological, and others. This Revised Application is the result of responding to public, City, and Agency comments and concerns through a significant revision in March 2020, and the submission of extensive expert analysis.

OPG Comments

As noted above, OPG's objections to the Revised Application related to its concerns that a mixed-used development consisting of residential uses is not permitted within the PNGS exclusion zone for public health and safety reasons.

In December 11, 2015, OPG issued a report called "Repurposing Pickering", as part of the planning exercise for the end of commercial operations for the PNGS. OPG has since confirmed that the PNGS will end commercial operations in 2024, and decommissioning will begin in 2028. PHC is aware that the PNGS exclusion zone is likely to change as the PNGS ceases its commercial operations and begins the process of decommissioning. Accordingly, it is expected that the Development Site will be excluded from the exclusion zone. Nevertheless, OPG advised, and Staff accepted, that the Revised Application was premature solely because it is located within the current PNGS exclusion zone. While PHC concedes that residential uses within the PNGS exclusion zone are currently prohibited, PHC is seeking approvals to permit *future* residential uses. Although occupancy is appropriately deemed premature, planning for predictable redevelopment is appropriate at this time, and the Revised Application is not premature.

TRCA Comments

TRCA's objections to the Revised Application related to its concern that the PPS and the TRCA Living City Policies have not been demonstrated as the location of the shoreline hazard has not been identified. TRCA noted, however, that if the shoreline hazard is at least 10 metres from the proposed development limit, then TRCA can support the proposed development with conditions. Subsequent to Council's decision to refuse the Revised Application, PHC's shoreline engineering consultant, Shoreplan Engineering Ltd., has met with TRCA in order to scope the requirements of the Shoreline Hazard Study. A Shoreline Hazard Study is currently being prepared to properly identify the location of the shoreline hazard.

The Revised Application Represents Good Planning

The Revised Application conforms to and is consistent with the applicable policy framework and represents good planning. The Revised Application is the next stage of a larger waterfront vision to transform Frenchman's Bay into a focal point along Lake Ontario, with a variety of residential, commercial, and recreational uses. The Revised Application provides sensitive intensification and redevelopment within a settlement area and makes efficient use of an underutilized site in support of urban growth.

The proposed development incorporates a compact built form which respects the existing and emerging character of the community in terms of built form, massing, and setbacks. The proposed development is carefully designed to ensure appropriate compatibility with, and transition to, surrounding neighbourhoods. The Revised Application helps to facilitate

August 28, 2020

Page 6

opportunities for outdoor recreation, active transportation, and public access to the waterfront. Finally, the proposed development adequately protects surrounding natural heritage features through appropriate setbacks and buffers, and the Proposal can be accommodated by existing infrastructure, including transportation and servicing.

Overall, the proposal is appropriate and desirable development.

Appeals

Accordingly, we are filing our client's appeals of Council's refusal to adopt the requested Official Plan and Zoning By-law amendments as requested in the Applications, as revised on March 11, 2020 pursuant to subsections 22(7) and 34(11) of the Planning Act, R.S.O. 1990, c. P.13, as amended, and reserve the right to augment the above-noted grounds of appeal.

In support of our client's appeals, please find enclosed the following:

1. Two (2) completed Appellant (A-1) Forms; and
2. Two cheques in the amount of \$1,100.00 each, payable to the Minister of Finance representing the Tribunal's filing fees for these appeals,

If you require any further information please do not hesitate to contact the undersigned.

Yours truly,

AIRD & BERLIS LLP



N. Jane Pepino C.M., Q.C., LL.D.

NJP/MH/tp

cc.

Pickering Harbour Corporation Ltd.

Anthony Biglieri, Biglieri Group Ltd.

Mike Pettigrew, Biglieri Group Ltd.

David Spencer, Schneider Ruggiero Spencer Milburn, LLP

Enclosure

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