Goodmans LLP

Barristers & Solicitors

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7

Telephone: 416.979.2211
Facsimile: 416.979.1234
goodmans.ca

Direct Line: 416.849.6938
mlaskin@goodmans.ca

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Our File No.: 210031

Via Online Submission

Municipal Services Office – Central Ontario
777 Bay Street, 16th floor
Toronto, ON
M7A 2J3

Attention: Jennifer Le

Dear Sirs/Mesdames:

Re: ERO No. 025-0468
New City of Mississauga Official Plan
Written Submission on Behalf of Calloway REIT (Mississauga) Inc.

We are counsel to Calloway REIT (Mississauga) Inc. in respect of the lands known municipally in the City of Mississauga (the "**City**") as 2150 Burnhamthorpe Road West (the "**Property**"). Our client is affiliated with SmartCentres, one of Canada's largest fully integrated REITs and a major landowner and developer in communities across Ontario.

We write on behalf of our client to express concerns with a narrow, but important, aspect of the City of Mississauga Official Plan 2051 (the "**New OP**"), which we understand is now before the Ministry of Municipal Affairs and Housing (the "**Ministry**") for approval.

As outlined further below, the New OP includes policies that require affordable housing in connection with the redevelopment of certain mall sites in the City, including the Property (the "**AH Policies**"). These policies, which are a holdover from an initiative advanced during former Mayor Crombie's leadership, have no statutory authority in the *Planning Act*, have already been determined to be illegal by the Ontario Land Tribunal ("**OLT**"), and effectively preclude the delivery of housing on lands that are critical to achieving this government's objective of building 1.5 million new homes by 2031. It is critical that the New OP be modified to remove the AH Policies, both to allow for the delivery of housing on the Property and to protect the Province's broader interest in ensuring municipalities do not undermine the careful regulatory regime the Province has established relating to affordable housing.

Background

The Property

The Property is a large rectangular parcel with a total area of approximately 10.1 hectares (24.9 acres), and comprises the block bounded by Burnhamthorpe Road West, Erin Mills Parkway, The Collegeway and South Common Centre Road. The Property is occupied by a local retail mall, known as the South Common Centre, and associated surface parking areas.

The Property is very well served by existing transit. MiWay bus stations effectively surround the Property on all sides, serving Route 1 (Dundas) and Route 36 (Colonial-Ridgeway), while also providing convenient transfers to many additional routes. South Common Centre Road serves as a MiWay transit terminal, as recognized in Schedule 4 of the New OP. The New OP also identifies Erin Mills Parkway, located along the eastern frontage of the Property, as a Transit Priority Corridor.

Recognizing this transit context, both the in-force City of Mississauga Official Plan (the "**In-Force OP**") and the New OP identify the Property as intended for intensification. The Property is located within the South Common Community Node under the In-Force OP and within the South Common Growth Node in the New OP. Under the New OP, Growth Nodes are identified as Strategic Growth Areas, which are areas identified to be the focus for accommodating intensification and higher-density mixed use development in a compact built form. Applicable policies provide for a maximum density of 3.75 FSI for individual properties and building heights of up to 18 storeys, though taller buildings are permitted provided certain policy tests are met. Both the In-Force OP and the New OP also designate the Property as Mixed Use.

Importantly, while policy directly strongly supports the intensification of the Property, the Property is not within a Protected Major Transit Station Area ("**PMTSA**"). Accordingly, inclusionary zoning ("**IZ**") does not apply to the Property.

Consistent with the overall policy direction for the Property to support intensification, our client has prepared and shared with the City a development concept plan that shows a comprehensive redevelopment of the Property with 10 residential towers, along with new open spaces and a series of mid-rise buildings oriented along a new north-south retail street. While a redevelopment of the Property along these lines would deliver thousands of new homes, advancing it is not possible in the face of the AH Policies as described further below.

The Origin of the AH Policies: Mayor Crombie's OPA 115

The AH Policies in the New OP are a holdover from an earlier initiative, commenced during former Mayor Crombie's leadership. In 2020, the City adopted an amendment to its official plan known as OPA 115 to introduce certain policies that would apply to specific Nodes that contain shopping malls, including the Property. OPA 115 included policies requiring that a minimum of 10% of

housing units be provided as "below-market" or affordable housing for each development application proposing more than 50 residential units.

Our client, among other landowners, appealed OPA 115 to the OLT. After a full 8 day hearing, the OLT determined the policies requiring affordable housing were beyond the City's legal authority and therefore illegal. The City filed a review request of the OLT decision, which the Chair of the OLT dismissed. The City continues to seek to challenge the OLT decision. However, no stay of the OLT's determination has been sought or granted. The OLT's decision remains in effect and the AH Policies are illegal as confirmed by the specialized tribunal the Province has empowered to determine such matters.

Despite the OLT having determined the policies requiring affordable housing are illegal and refusing to approve them as part of the In-Force OP, the City has now included the very same policies in the New OP. Specifically, the AH Policies in the New OP as they relate to the Property consist of policies 14.2.11.5.1 and 14.2.11.5.3 to 14.2.11.5.6. These policies are identical to those the Tribunal determined were illegal. As outlined further below, the Province cannot allow these policies to stand as part of its approval of the New OP.

The AH Policies Must be Removed

The New OP must be modified to remove the AH Policies. As outlined further below, the AH Policies are illegal and undermine the careful IZ regime in the *Planning Act* and preclude any prospect of advancing new housing on the Property. Further, removing the AH Policies would be consistent with the Ministry's approach to other affordable housing policies that have come before it for approval.

The AH Policies are Illegal as Confirmed by the OLT

The *Planning Act* does not provide any statutory authority for a municipality to require affordable housing outside of PMTSAs through official plan policies such as the AH Policies. As the OLT has confirmed, the AH Policies are illegal and cannot form part of an approved official plan.

As the Ministry knows, the *Planning Act* establishes the legal framework within which municipalities must operate when it comes to planning matters. As it relates to affordable housing, the Province has deliberately established a regime that allows municipalities to require affordable housing through one means only: IZ. This approach ensures the Ministry maintains supervisory control over municipalities' affordable housing requirements to protect provincial interests, recognizing the effect affordable housing requirements can have on housing supply more generally. Specifically:

- IZ is only permitted in PMTSAs, which are in turn subject to Ministry approval.[1] The limitation of IZ to PMTSAs was an explicit legislative policy of this government, implemented as part of its first Housing Supply Action Plan in 2019 and enacted through Bill 139. Since PMTSAs are subject to Ministry approval, this approach allows the Province to confirm the locations and boundaries of PMTSAs are scoped to those lands that can accommodate affordable housing, thereby ensuring affordable housing requirements do not stymie the supply of new market housing that supports overall housing affordability.

- IZ by-laws are subject to Provincial regulation. Through Ontario Regulation 232/18 (the "**IZ Regulation**"), the Ministry can ensure IZ by-laws do not impose inappropriate or unduly onerous requirements. As you know, the Ministry recently amended the IZ Regulation to provide that IZ by-laws cannot require more than 5% of total units or floor area to be provided as affordable housing.

- The *Planning Act* and the IZ Regulation require municipalities to prepare an assessment report before enacting an IZ by-law that analyzes household incomes, existing and planned housing supply, average prices and rents, and the IZ by-law's potential impacts on the housing market and financial viability of development. This analysis, required to be prepared by a qualified person independent of the municipality, further helps ensure that the IZ by-law is properly calibrated to avoid negatively affecting housing supply.

It is clear that the Province has deliberately set up a rigorous framework for policies that require affordable housing – and for good reason. Given the dynamics of the housing market, improperly calibrated policies that have the effect of precluding intensification, and particularly the development of new housing, threaten to undermine the fundamental objectives driving provincial policy and ultimately make the affordability crisis worse.

The AH Policies directly undermine this carefully crafted legislative scheme. They would require affordable housing on lands that are not within a PMTSA, flying directly in the face of this government's 2019 amendments to the *Planning Act*.

The City, through the OLT appeal process, conceded that IZ does not apply and does not allow it to require affordable housing on the Property. Instead, it relied on a novel interpretation of a single provision in the *Planning Act*, subsection 16(1)(a.1), to say that they can require affordable housing whenever and wherever it wants, free of the constraints – and Provincial control – the *Planning Act* deliberately impose. In other words, it would render the entire IZ regime useless. The OLT rightly rejected this argument and concluded the AH Policies were illegal.

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[1] IZ is also permitted in development permit system areas, where the Minister has ordered the municipality to establish a development permit system in a specific location. In that case, again, the Province controls the area to which IZ would apply.

Now that the City has taken the brazen step of including the AH Policies in the New OP in the face of the OLT's determination that they are illegal, the Ministry must modify the New OP to remove the AH Policies. Failing to do so would risk signalling to municipalities that they can require affordable housing in whatever amount and wherever they wish, effectively undermining this government's carefully crafted IZ regime and, in turn, its central policy objective of delivering substantial new housing supply. In these circumstances, protecting the provincial interest requires modifying the New OP to remove the AH Policies.

The AH Policies Prevent the Delivery of Housing

The AH Policies are not only illegal, they also have real, on-the-ground consequences that prevent our client from advancing the redevelopment of the Property and therefore the delivery of new housing.

As noted above, the AH Policies require 10% of housing units to be provided as affordable housing. This requirement is extremely onerous. The 10% requirement, imposed on lands outside of PMTSAs where affordable housing requirements are not permitted, is double the maximum 5% requirement permitted under the IZ Regulation on lands where affordable housing requirements are permitted.

During the OLT hearing regarding OPA 115, expert witnesses provided evidence outlining the infeasibility of the AH Policies. Since that time, market conditions have deteriorated substantially. In the current climate, the AH Policies effectively make development impossible, precluding any opportunity to advance the redevelopment of the Property toward the deliver of the thousands of new homes it is capable of accommodating. The AH Policies are inconsistent with provincial policy objectives and must be removed from the New OP.

Removing the AH Policies would be Consistent with Ministry Practice

We note that the Ministry has made decisions to remove affordable housing requirements from OPAs on previous occasions. In January of 2025, the Ministry modified a series of City of Toronto OPAs arising from conversion requests (OPA 644, 653 and 692) to remove policies requiring affordable housing perhaps for similar reasons to those outlined above. In those OPAs, policies requiring affordable housing were modified to policies encouraging affordable housing. However, most of those policies applied to lands within PMTSAs and resulted from land use changes. In this case, removal of the AH Policies is required given the Property is outside of PMTSAs, is already designated Mixed Use, and the AH Policies have already been determined to be illegal.

Conclusion

On behalf of our client, we ask the Ministry to modify the New OP prior to approval in the manner set out above. Our client appreciates your consideration of these matters and would welcome the opportunity to discuss these comments with Ministry staff.

Yours truly,

Goodmans LLP

Max Laskin
ML/
cc: Client