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October 7, 2009

VIA FACSIMILE, PRIORITY POST & E-MAIL

Chair and Members of Regional Council
The Regional Municipality of York
17250 Yonge Street
Newmarket ON L3Y 6Z1

Attention: **Mr. John Waller**
Director, Long Range and Strategic Planning

Dear Sirs/Mesdames:

Re: Proposed New Region of York Official Plan (the "Draft")

We are the solicitors for Deltera Inc. and Postwood Developments Limited, the owner of property known municipally as 145 Wellington Street West in the Town of Aurora, both members of the Tridel Group of Companies.

Our clients are experienced builders and developers in the Greater Toronto Area, and on their behalf we will be providing preliminary comments on a number of planning matters. However, we note at the outset that Tridel has particular experience in developing buildings intended for LEED certification.

As a preliminary, general comment, we submit that while the Draft asserts that it implements the Growth Plan for the Greater Golden Horseshoe, we believe that some of the new policy directions can be seen to be contrary to that objective. It is important to recognize that the statutory direction is that the official plan is to conform to the Growth Plan, not just to some parts of it. Therefore, while conformity to the specific numerical benchmarks found therein is necessary, it is not sufficient.

The Growth Plan's direction to optimize the use of land and infrastructure is fundamental. Merely meeting a benchmark will not be "optimizing" in all circumstances (if it ever is).

Thus, for example, in providing the directions for local municipal official plans respecting intensification, the failure to require the local municipality to look for appropriate

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opportunities to accommodate intensification beyond the minimum target means that the Growth Plan direction for optimization is being ignored.

Another example of where the Draft is not implementing the Growth Plan is a retreat, in some cases, from the linkage of transportation infrastructure and urban form. For example, the existing Regional Plan links Local Corridors policy to regional roads and transit: the Draft leaves the identification of Local Corridors to local municipalities, which obfuscates the relationship to transit infrastructure and obscures the responsibility.

Another problem with the Draft are the numerous references to external documents, such as the York Region Housing Supply Strategy or the York Region 2031 Intensification Strategy. The wording which refers to such documents does not clearly indicate the status to be afforded to them. If they are intended to be part of the official plan, it should be specifically so indicated so it will be known whether any amendment to such a document will require an official plan amendment. In this case, we can analyse each document to determine if its terms are acceptable and understandable policy. For example, the Transit Oriented Design Guidelines refer extensively to the current Official Plan: are those policies therefore grandfathered?

If such documents are not intended to be part of the official plan, the Draft should specifically say that they will not be given the status of official plan policy.

On a related topic, the Draft purports in some cases to mandate controls which are entirely discretionary to another public body. An example is 2.2.3, where the criteria for mapping environmental features come at the discretion of the Province. The Region, should not off-load responsibility in a policy area it occupies.

Another general issue is the proposal in section 8.4.10 and 11 that the Draft be given retrospective application. We submit that this is contrary to a basic purpose of land use planning, that parties can order their future affairs based on a known policy framework and process.

Moving to more specific matters, we submit that a number of the policies respecting the mix and range of housing requires rethinking. In particular, the wording provided with respect to affordable housing is mandatory. This is problematic. Looking at both the policies and the definition, this means that 25% of new housing units must be price controlled. Each local municipality would be responsible for determining how to secure this mandatory price point. Given the instruments available under the *Planning Act*, unless senior governments suddenly decide to massively fund affordable housing in the Region, this would appear to mean that if sufficient compliance could not be achieved using bonusing provisions under section 37 of the Act, then conditional zoning would be the only other option. Conventional housing would need to subsidize the affordable, dramatically increasing its cost. The situation would be most acute in Regional Centres and along Regional Corridors, where 35% of new units must be price controlled. Thus these policies maximize the barriers to development in

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exactly the locations where the Growth Plan says it should go. We also note that the policy purports to mandate different tenures, which even if legal, again creates significant barriers to the needed intensification (the issue is, of course, most serious in an intensification scenario where the willingness to redevelop a parcel with an existing use depends on achieving sufficient economic value to justify the change).

Some of these same issues are relevant in the consideration of appropriate sustainable building policies. We submit that given the legislative framework now in place it is critical that the policy framework carefully reflect a balanced planning approach or the implications will be extremely negative for the public interest.

Section 5.2 of the Draft makes construction meeting LEED standards on "all new mid-and-high-rise residential, mixed-use, major office, commercial and institutional development" mandatory. This is exactly the type of development which is encouraged for Regional Centres and Corridors. Thus development costs are increased for higher density building forms in Regional Centers and Corridors. This discourages the very development which best provides for the efficient use of land and infrastructure, as required by the Growth Plan and as called for in the Provincial Policy Statement. It also discourages buildings in forms and locations which are particularly suitable for affordable housing. If a proper policy balance is not reached, those important provincial objectives will not be achieved.

The specific policies imposing "LEED" requirements are also problematic. At the outset, it is not clear whether the policy intent is to require "LEED" standards that exist today or those that might exist in future? Who decides what is an "alternative equivalent"?

The introduction of this uncertainty is inappropriate in planning terms and exacerbates the problem of discouraging development which efficiently uses land and infrastructure. If these issues are not addressed now the problems created will be implemented: it is trite to say that the Region's Official Plan prevails over any local plan, but it bears remembering that with the last set of amendments to the *Planning Act* a statutory basis for requiring such things as sustainable design elements was created, provided that they can be justified.

A number of the policies in Section 5.2 are problematic for additional reasons. For example, it is not clear, in section 5.2.11, what it means to "maximize stormwater...quantity". Furthermore, while infiltration is typically desirable, "maximizing" such may create problems in some circumstances.

Our clients are prepared to work to find solutions that work for all the stakeholders in this very important process. We ask that staff be directed to hold further consultations on the Draft and to report back on the outcome. If the Draft was to proceed without amendments to address the matters raised herein our clients would object.

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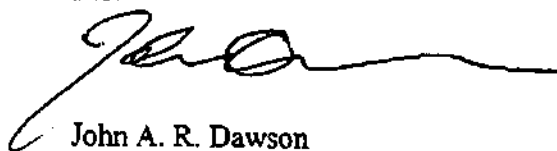
Thank you for your attention in this matter. Should you wish to discuss any of the foregoing or the matters raised by the Draft more generally, please do not hesitate to contact us.

Thank you for your attention in this regard.

Yours very truly,

McCarthy Tétrault LLP

Per:



John A. R. Dawson

JARD/skf

c: Denis Kelly