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October 17, 2024

Our File No.: 221676

Delivered Via Email (lisa.kelsey@hamilton.ca)

City of Hamilton Planning Committee
Hamilton City Hall
71 Main Street West
Toronto, ON L9H 2P9

Attention: Lisa Kelsey, Legislative Coordinator

Dear Sirs/Mesdames:

**Re: Item 11.2 – Implementation of Changes to Section 41 of the of the *Planning Act*
Site Plan Approval, in Response to Provincial Bill 185**

We are solicitors for 11096800 Canada Inc, who are the owners of the properties known municipally in the City of Hamilton as 166-190 Main Street West (the “**Lands**”). We are writing to express our client’s significant concerns with the draft site plan control by-law that is the subject of the above-noted item. Given these concerns, we urge that Planning Committee and/or City Council refer the matter back to City staff for additional consultation.

While we recognize that Bill 185 introduced the ability for municipalities to allow for lapsing of site plan control approvals, the recommendation of City staff goes beyond the legislative authority in the *Planning Act* by seeking to implement three-year lapsing for conditional site plan approvals, with a one-time, one-year extension. Put simply, this approach is *ultra vires* the *Planning Act*.

As you know, the City of Hamilton has a two stage site plan control approval process. Final approval is only granted when all the conditions required prior to issuance of a building permit are satisfied and final plans are approved in accordance with Section 41 of the *Planning Act*. The new authority in the *Planning Act* to allow for lapsing applies only to final site plan approval, not to conditional site plan approval.

Further, the staff recommendations do not account for necessary phasing when redeveloping large sites, such as the Lands, where the use of lapsing provisions could prevent a comprehensive approach to site plan approval that must be built in phases. At a minimum, City Council should endorse an alternative approach that would enable phasing of both conditional and final approvals for large sites. In particular, it is important that subsequent phases of a comprehensive redevelopment are not subject to lapsing provisions.

If such an approach is not endorsed by City Council, then our client requests that the Lands be exempt from the new site plan control by-law. Our client has received conditional site plan approval in respect of a significant phased redevelopment of the Lands. Since that time, our client has been working in good faith with City staff in respect of implementation of the conditional site plan approval, including the need for phased final site plan approval. However, the staff report for the above-noted matter suggests that existing applications will not be the subject of a transition clause. This is extremely prejudicial to our client and contrary to the agreement our client reached with City staff at the time of conditional site plan approval.

The use of lapsing provisions is not mandatory. City Council also has discretion in the use of any lapsing provisions. Our client's site plan application in respect of the Lands should clearly be exempted from the new site plan control by-law such that final site plan approval can be completed in accordance with the agreement reached with City staff.

We would appreciate receiving notice of any decision made by Planning Committee and/or City Council in respect of this item.

Yours truly,

Goodmans LLP



David Bronskill
DJB/