

August 3, 2023

BY EMAIL TO: growthplanning@ontario.ca

Our File No. 306443

Attention: Provincial Land Use Plans Branch
777 Bay Street, 13th Floor
Toronto, Ontario
M7A 2J3

The Honourable Steve Clark, Minister of Municipal Affairs and Housing
Ministry of Municipal Affairs and Housing
777 Bay Street, 17th Floor
Toronto, Ontario
M7A 2J3

Dear Minister Clark:

Re: ERO No. 019-6813
Review of proposed policies adapted from A Place to Grow and Provincial Policy Statement to form a new provincial planning policy instrument
Woodbine Entertainment Group
555 Rexdale Boulevard, City of Toronto

i. Introduction

Please be advised that Aird & Berlis LLP are counsel to Woodbine Entertainment Group (“**WEG**”), the owner of 555 Rexdale Boulevard in the City of Toronto (“**Woodbine Lands**”). The Woodbine Lands are approximately 277 hectares (684) acres in size and are generally bounded by Rexdale Boulevard to the north, Highway 27 to the east, Highway 427 to the west and the Metrolinx rail corridor to the south.

On April 6, 2023, the Minister of Municipal Affairs and Housing (the “**Minister**”) released Bill 97, the *Helping Homebuyers, Protecting Tenants Act, 2023* (“**Bill 97**”), which proposed to amend various sections of the *Planning Act, City of Toronto Act, 2006, Municipal Act, Development Charges Act, Building Code Act, 1992, Residential Tenancies Act, 2006* and *Ministry of Municipal Affairs Act*. These changes were made in conjunction with a proposed new provincial plan that was also released on the same day as Bill 97, the Provincial Planning Statement (the “**New PPS**”), which is intended to combine both the current Provincial Policy Statement (2020) and A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2020) (the “**Growth Plan**”). On June 8, 2023, Bill 97 received Royal Assent.

Amongst the changes made in Bill 97 is the addition of a new definition for “Area of Employment” and a provision regarding its application in section 1 of the *Planning Act*.

These changes in Bill 97 accompany the addition in the New PPS of a similar definition for “*employment area*” and proposed policies regarding same.

The Minister is now seeking comments from the public on the New PPS through the Environmental Registry of Ontario (the “**ERO**”). This consultation process for the New PPS is known as ERO No. 019-6813.

The purpose of this submission is to provide the Minister with our comments regarding the New PPS. In general, WEG generally supports the new definition of “*Employment Area*” as well as the policies of the New PPS which promote greater mixed use growth and intensification in *Major Transit Station Areas* (“*MTSAs*”) and the development of complete communities. **However, WEG remains concerned with how the new definition of “*Employment Area*” may be interpreted in the absence of clearer direction on the status of lands that include permissions for and/or have existing commercial and institutional uses on lands that are currently designated as *Employment Areas* in municipal official plans and which are expressly excluded from the definition.** In particular, we respectfully recommend that the Minister include clear policy guidance that confirms that lands with permitted or existing commercial or institutional uses are no longer subject to policies requiring *Employment Lands* conversions in order to be redesignated and that such lands may amend their official plan designation by way of an official plan amendment application pursuant to section 22 of the *Planning Act*. In addition, we also respectfully recommend that the Minister make changes to policies relating to intensification in *MTSAs* and impose timeframes for municipalities to update their official plans and zoning by-laws to be consistent with the New PPS.

ii. Description of Woodbine Lands and Woodbine Employment Conversion Request

The Woodbine Lands currently contain the Woodbine Racetrack complex, and ancillary/associated uses including slots and electronic gaming, off-track wagering, and various accessory buildings related to the racetrack operations (including dormitories and other noise sensitive land uses as well as the keeping of horses), with extensive surface parking areas. An integrated entertainment complex is under construction on the Woodbine Lands along its Rexdale Boulevard frontage which includes a recently opened casino, a performance venue, two hotels, and associated parking structures.

The Woodbine Lands are designated *General Employment Areas* and *Core Employment Areas* in the City of Toronto Official Plan (the “**Official Plan**”) and are also subject to a comprehensive and site-specific planning framework which provides permissions for non-employment uses, including residential and other sensitive uses. A master planning exercise initiated by WEG contemplates the comprehensive redevelopment of the Woodbine Lands to allow for the achievement of a mixed use community which could deliver more than 25,000 housing units and over 17,000 jobs. This master planning

exercise has been undertaken in the context of WEG's ongoing discussions with Metrolinx to ensure the timely delivery of a GO station, parking facilities and a bus hub also within the Woodbine Lands on the Metrolinx rail corridor. Ensuring transit supportive densities – both residential and employment – are delivered in tandem with higher order transit is a cornerstone of the Province's Transit Oriented Communities (“**TOC**”) approach to planning which WEG has embraced for the Woodbine Lands.

On July 30, 2021, an employment area conversion request was submitted on behalf of WEG to the City in respect of the Woodbine Lands as part of the City's Municipal Comprehensive Review (“**MCR**”) process (the “**Woodbine Conversion Request**”). Following the approval by the City of the first tranche of employment conversion requests on July 22, 2022 through Official Plan Amendment No. 591 (“**OPA 591**”), WEG made further submissions to the Ministry of Municipal Affairs and Housing dated February 3, 2023 and May 9, 2023 in support of its conversion request. On July 19, 2023, City Council adopted Official Plan Amendment 653 (“**OPA 653**”), which partially approved the Woodbine Conversion Request by converting a portion of the northern part of the Woodbine Lands as *Mixed Use Areas*.

WEG also made submissions regarding Bill 97 and the related City of Toronto Official Plan Amendment 668 (“**OPA 668**”), which was adopted by City Council on July 19, 2023. During the ERO consultation period for Bill 97, WEG provided a letter to the Minister dated May 6, 2023 with comments on the then draft legislation. These comments included expressing general support for the new “*Area of Employment*” definition, while recommending that the Minister coordinate its approval with additional policies in the New PPS that would provide greater clarity on the Official Plan designation of commercial and institutional uses within existing employment areas. In addition, WEG also recommended that the Minister make additional changes to the *Planning Act* that would provide a greater directive to municipalities, including the City of Toronto, to update their Official Plan designations and policies as well as their zoning regulations to be consistent with the new “*Area of Employment*” definition in Bill 97 and the related policies of the New PPS.

iii. Submissions and Recommendations on the New PPS

a. Support for changes within the New PPS

The New PPS includes beneficial changes that direct municipalities and planning authorities to support growth and intensification in keeping with Provincial goals. **WEG is generally supportive of the changes within the New PPS including the following:**

- Policy 2.1.1 of the New PPS, which revises the language relating to planning horizon policies, requiring that municipalities allow sufficient land to be available to accommodate an appropriate range and mix of land uses for a time horizon of at least 25 years, as opposed to the previous directive to accommodate such uses for up to 25 years;

- Policies 2.2.1 (c) and (d), which continue to support the creation of much needed new housing in proximity to transit, by requiring planning authorities to promote densities which efficiently use land, resources, and public infrastructure and requiring those same authorities to prioritize intensification and require transit supportive development;
- Policy 6.1.6, which establishes a new policy requirement for planning authorities to keep their zoning by-laws up to date with their official plans and the New PPS by establishing permitted uses, minimum densities (as opposed to maximum densities), heights, and other development standards to accommodate growth and development; and
- The elimination of the identification of Provincially Significant Employment Zone (“PSEZ”) designations, through the replacement of the Growth Plan with the New PPS. The Woodbine Conversion Request sought to specifically remove the PSEZ designation for the Woodbine Lands since it conflicted with existing Site and Area Specific Policies (“SASP”) applicable to the site that permitting residential and other sensitive land uses.

b. Submissions and Recommendations on *Employment Areas*

WEG continues to have concerns regarding the lack of clarity provided by certain policies in the New PPS related to the new definition of *Employment Areas* and the need for specific policies addressing the redesignation of lands with permitted or existing institutional and commercial uses that are currently designated as employment lands in the Official Plan.

Comment: New PPS should include policies that provide clear direction on the removal of lands from Employment Areas.

Generally, the New PPS should work in coordination with the recently-approved Bill 97 by providing clear direction on the need to remove lands from an *Employment Area* (as defined in the New PPS) when such lands are located in *Strategic Growth Areas* and *MTSAs*, in order to permit and facilitate the creation of new housing and *transit-supportive* development. The New PPS includes policy directives that would support such a revision, including:

- Policy 2.2.1(d), which directs planning authorities to require *transit-supportive* development and prioritize *intensification* in proximity to transit;
- Policy 2.4.1.1, which directs *large and fast-growing municipalities* (including the City of Toronto) to identify and focus growth and development in *strategic growth areas* with minimum density targets and appropriate type and scale of

developments, in order to support *complete communities* and a range and mix of *housing options* and *intensification*; and

- Policy 2.4.2.1, which directs *large and fast growing municipalities* (including the City of Toronto) to delineate *major transit station areas* as falling within a 500-800 metre radius of transit in order to maximize the number of potential users within walking distance to a transit station.

Comment: Policies of New PPS should distinguish between general “employment uses” (including stand-alone commercial, retail and office uses) and the limited range of uses that meet the new definition of Employment Areas (such as manufacturing, warehousing and goods movement uses).

The new definition of *Employment Areas* specifically excludes institutional and commercial, including retail and office uses that are not associated with a “primary employment use.” Notwithstanding this exclusion, a number of New PPS policies in Section 2.8 – Employment continue to address “employment uses” more generally, and which apply to uses including commercial, office and retail uses that are no longer intended to be designated as *Employment Areas* as per the new definition. This includes the following policy:

- Policy 2.8.1.1(d) encourages *intensification* of “compatible employment uses” including office, retail, industrial, manufacturing and warehousing in “mixed-use development.” However Policies 2.8.2.2(a)-(e) seemingly contradict this directive for “mixed-use development” that includes both employment and residential uses, by requiring that planning authorities prohibit, amongst other things, residential and commercial uses in *employment areas*.

Policy 2.8.1.1(d) should be amended to clarify that the intensification of these types of “compatible employment uses” are encouraged in mixed-use developments on lands outside of defined *Employment Areas*.

Furthermore, the policies of the New PPS should recognize that employment uses in general, including those that no longer meet the definition of *Employment Areas*, such as commercial, office and retail uses, assist in achieving *Complete Communities* as intended by the planning statement. As a result, the New PPS should include policies clarifying that lands within *Strategic Growth Areas* and *MTSAs* are not required to be designated as *Employment Areas* in order to achieve an appropriate mix and range of employment uses.

Comment: The policies of the New PPS should clarify the designation status of lands that include permissions for employment uses, including commercial, retail and office uses, that no longer meet the new definition of Employment Areas.

As noted above, the New PPS definition of *Employment Areas* now excludes commercial, retail and office uses. In addition, Policy 2.8.2.2(c) now specifically requires planning authorities to prohibit standalone retail and office uses on lands within designated *Employment Areas*. However, this policy fails to take into account that many lands designated as *Employment Areas* in municipal official plans currently permit commercial, retail and office uses that would now be prohibited as a result of these changes. This includes the City of Toronto Official Plan, which permits a range of uses for *Core Employment Areas* and *General Employment Areas* designations in the Toronto Official Plan, including standalone commercial, retail and office uses, as well as the SASPs 29 and 296 that apply to the Woodbine Lands. The operation of Policy 2.8.2.2(c), without further clarification, may serve to unduly restrict the use of these lands to only those sensitive employment uses that meet the definition of *Employment Area*, whereas the Official Plan already recognizes these areas as being appropriate for non-sensitive retail and office uses.

This issue has not been addressed by the addition of the new sections 1(1.1) and 1(1.2) of the *Planning Act* through Bill 97, which only allows for the continuation of uses that are excluded from the related statutory definition of *Areas of Employment* where the use was “lawfully established on the parcel of land” before these section of Bill 97 are proclaimed. In many cases, the permissions for office and retail uses exist in the Official Plan for a parcel of land, but those uses would not meet the threshold of being “lawfully established” as the lands have not yet been redeveloped. Similarly, permissions for an office or retail uses that is interrupted or discontinued may be lost entirely as a result of Policy 2.8.2.2(c) of the New PPS and sections 1(1.1) and 1(1.2) of the *Planning Act*.

This situation creates uncertainty for landowners regarding the available permitted uses of lands within currently designated *Employment Areas* in municipal official plans.

In order to address this issue, the policies of the New PPS should clearly indicate that existing permissions for commercial, office and retail uses on lands designated as *Employment Areas* in municipal official plans continue to apply, even before the official plan is updated to include policies permitting the continuation of “lawfully established” uses. Furthermore, in order to meet the clear policy directive of new *Employment Areas* definition, the New PPS policies should additionally clarify that such lands are no longer subject to the restrictive conversion policies for *Employment Areas*, and may be redesignated through an amendment to the official plan pursuant to section 22 of the *Planning Act*.

Comment: While WEG is supportive of policies that permit employment uses on lands outside of designated Employment Areas, and that permit a mix of land uses (including residential uses) on such lands, the New PPS should further strengthen and clarify these policies.

In particular, Policy 2.8.1.2 of the New PPS allows and encourages industrial, manufacturing and small-scale warehousing uses to be located outside of designated *Employment Areas* and adjacent to *Sensitive Land Uses* (including residences, day care centres and educational and health facilities) where they will not cause *Adverse Effects* in *Strategic Growth Areas* and other mixed-use areas with *Frequent Transit*. In order to meet the intention of this policy directive, we recommend strengthening Policy 2.8.1.2. by including a positive directive for municipalities to reassess existing *Employment Area* designated lands in and adjacent to *Strategic Growth Areas* and other mixed-use areas serviced by *Frequent Transit* (such as *MTSAs*) to determine if the lands can be redesignated out of *Employment Areas* while still allowing for these types of compatible employment uses.

Similarly, Policy 2.8.1.3 permits a diverse mix of land uses, including residential and employment uses, on lands for employment outside of *Employment Areas* to support the achievement of *Complete Communities*. We recommend strengthening Policy 2.8.1.3 by including a positive directive for municipalities to identify and redesignate lands within *Employment Area* designations that would be appropriate for mixed-use development, in order to remove such lands from their restrictive *Employment Area* designation. The New PPS policies should also include specific timeframes for municipalities to undertake these reviews, and permit the Minister to confirm if lands are appropriately inside of, or outside of, designated *Employment Areas* if the municipality fails to do so within a proscribed amount of time.

In addition, Policies 3.4.2 and 3.5.2 provide direction for development of *Sensitive Land Uses* in proximity to industrial, manufacturing and other major facilities, where potential impacts on these facilities from the new development is minimized and mitigated. In order to facilitate appropriate new mixed use development around transit investments, this policy should clarify that the mitigation criteria apply to permit the development of lands planned for residential and other *Sensitive Land Uses* within *Strategic Growth Areas* and other areas where *Frequent Transit* services are available. This change would further support a number of other growth policies in the New PPS.

Comment: The policies of the New PPS require additional clarity regarding how lands that have existing permissions or are currently being used for institutional and commercial (including retail and office) uses that are now expressly excluded from Employment Areas definition can be removed and redesignated in a municipal official plan.

The New PPS Policy 2.8.2.4 now permits planning authorities to remove lands from *Employment Areas* without the need for a municipal comprehensive review process, but only where certain enumerated criteria are met. In particular, criteria (a), which requires that there is an “identified need for the removal and the land is not required for *employment area* uses in the long term”, does not provide clear direction on its intended

application and is difficult to properly measure and demonstrate. Furthermore, the New PPS policies fail to provide certainty as to the process for these “removals”, in particular whether they are required to be implemented through a municipally-initiated official plan amendment or whether they can be initiated through an official plan amendment by a landowner pursuant to section 22 of the *Planning Act*. In the absence of a description of the process for removal, it is also unclear if an appeal right to the Ontario Land Tribunal would exist in this circumstance.

Importantly, it is unclear whether the criteria to “remove” lands from *Employment Area* designations in Policy 2.8.2.4 applies to parcels that have existing permissions or are currently being used for institutional and commercial (including retail and office) uses that are now expressly excluded from *Employment Areas* definition. It is WEG’s position that by excluding such uses from the definition of *Employment Areas*, the New PPS demonstrates a clear intent that these criteria should not apply. Rather, an additional policy should be added to section 2.8 of New PPS to clarify that lands that include permissions or existing uses otherwise excluded from the definition of *Employment Areas* may be redesignated by way of a privately-initiated official plan amendment without the need to demonstrate the criteria in Policy 2.8.2.4.

c. Submissions and Recommendations on MTSAs

WEG also proposes the following comments with respect to the New PPS policies regarding the delineation and development of lands within *MTSAs*.

Comment: The delineation of MTSA boundaries should be permitted to extend beyond 800 metres in situations in which lands within the radius are not available or are not appropriate for development due to site-specific considerations.

The policies regarding the delineation of *MTSAs* should take into consideration the need to go beyond a radius of 800 metres where site-specific conditions, such as major infrastructure, newly-defined *Employment Areas* or unique uses such as the existing Woodbine horse racetrack, would result in unduly limiting the geographic area available for inclusion within the transit station area. Rather, we recommend that Policy 2.4.1.2 be revised to specify that lands which remain within a reasonable walking distance beyond the 800 metres be permitted to be included in the *MTSA* in such circumstances.

Comment: The density targets for MTSAs in Large and Fast-Growing Municipalities should be increased to accommodate the significant investment in transit infrastructure.

Given the significant investment in expanding and integrating the GO Transit system, in particular the rail system through the creation of new stations and multi-transit hubs, we recommend that density targets for *MTSAs* in defined *Large and Fast-Growing Municipalities* (which includes Toronto) should be increased. Particularly in Toronto, the

GO Transit rail system is being used by commuters in a similar capacity as traditional subway and light rail systems, and is being designed to integrate and connect into those systems. WEG respectfully submits that the 150 residents and jobs per hectare for *MTSAs* served by commuter or regional inter-city rail (as outlined in Policy 2.4.2) does not accurately reflect the level of intensification that can be accommodated to justify the investment in these new transit facilities. Rather, a more appropriate density target for these types of *MTSAs* is 200 residents and jobs per hectare. This is the same density target that is applied to *MTSAs* served by subways in Policy 2.4.2, and more appropriately reflects the modern usage of the type of integrated GO Transit commuter and regional inter-city rail services that is planned for the Woodbine GO Station.

d. Submissions and Recommendations on Implementation

WEG supports the New PPS's intention to have municipalities update their official plans as necessary to implement the policies of the New PPS. This goal is described in the related implementation document titled, "Proposed Approach to Implementation of the proposed Provincial Planning Statement", dated April 6, 2023 that was posted concurrently with the New PPS.

However, neither the New PPS nor the *Planning Act* as amended by Bill 97 provide any significant direction to municipalities to require such updates. Pursuant to the *Planning Act*, municipalities are still subject to the same five (5) and ten (10) year official plan review cycles, which were not amended by Bill 97.

Comment: The New PPS should include a specific timeframe within which municipalities must update their official plans and zoning by-laws to be consistent with the policies of the plan. Further, these official plans and zoning by-laws should be subject to approval by the Minister and/or subject to appeal to the Ontario Land Tribunal.

The New PPS includes Policy 6.1.7, which states that where a planning authority decides on a planning matter before their official plan has been updated to be consistent with the New PPS or before applicable planning instruments have been updated accordingly, it must still make a decision that is consistent with the New PPS.

While this Policy is helpful in requiring municipalities to follow the direction of the New PPS, we recommend providing a specific timeframe for the updating of municipal official plans and zoning by-laws to be consistent with the policies of the New PPS, and to allow the Minister to intervene in instances where such timeframes are not followed. Furthermore, the updated official plans and zoning by-laws that result from municipalities undertaking a consistency exercise should be subject to approval by the Minister and/or subject to appeal to the Ontario Land Tribunal in order to ensure that the instruments appropriately implement the policy direction of the New PPS as intended.

iv. Conclusion

We thank you for the opportunity to provide comments on the New PPS.

WEG and its consultant team, including our office, would be pleased to provide any additional information or materials, or take part in any discussions, which may assist the Minister in the consultation process regarding the New PPS.

Yours truly,

Aird & Berlis LLP



Eileen P. K. Costello
EPKC/AJS/NM

cc: Client

Tyler Peck, WND Associates

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