

August 4, 2023

BY EMAIL TO: growthplanning@ontario.ca

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
Nits Investments (Dolphin Gaming)
756 Warden Avenue, City of Toronto

i. Introduction

Please be advised that Aird & Berlis LLP are counsel to Nits Investments (“**Dolphin Gaming**”), the owner of 756 Warden Avenue in the City of Toronto (the “**Subject Site**”).

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, 2001, Development Charges Act, 1997, 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. **Dolphin Gaming is 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, as a recreational use that provides both significant benefits to the local economy through employment opportunities as well as substantial charitable contributions to local organizations and causes, we also recommend that the Minister provide a policy clarifying that charity bingo hall uses are permitted within designated *Employment Areas*.** Finally, we respectfully recommend that the Minister impose timeframes for municipalities to update their official plans and zoning by-laws to be consistent with the New PPS.

ii. Description of Subject Site and Dolphin Gaming’s Bingo Hall Use

Dolphin Gaming is the operator of a charity bingo hall and electronic gaming facility, which is currently located nearby to the Subject Site at 1911 Eglinton Avenue East. Dolphin Gaming has operated at this existing location since 1997. Dolphin Gaming’s bingo hall provides significant charitable contributions to over 100 different organizations within the local Scarborough community and across Toronto. As a result of a future development proposal for the existing location, Dolphin Gaming has been required to find a new site for its business, and has acquired an interest in the Subject Property. Like the Subject Site, Dolphin Bingo’s existing location at 1911 Eglinton Avenue East is identified as *Employment Areas* in Map 2 (Urban Structure) and is designated as *General Employment Areas* on Map 20 (Land Use Plan) of the Toronto Official Plan (the “**OP**”). Neither the existing location nor the Subject Site are located within a Provincially Significant Employment Zone (“**PSEZ**”).

The Subject Site is a corner location, generally bound by Comstock Road to the north, Warden Avenue to the east, Hymus Road to the south, and the property municipally known as 69 Comstock Road to the west. The property has an approximate site area of 24,260 square metres. The Subject Site has approximate frontages of 210 metres along Warden Avenue, 110 metres along Hymus Road, and 115 metres along Comstock Road.

The Subject Site is currently vacant. It is in close proximity to public transit. It is approximately 1000 metres north from the Warden Subway Station at the intersection of Warden Avenue and St. Clair Avenue East, which is located on Toronto Transit Commission (“TTC”) Line 2 (Bloor-Danforth). It is also approximately 800 metres south from the future Golden Mile Light Rail Transit (“LRT”) Station at the intersection of Warden Avenue and Eglinton Avenue East, which is located on the Metrolinx Eglinton Crosstown line. Finally, the Subject Site is located directly adjacent to two TTC Bus Stops at Warden Avenue and Hymus Road and at Warden Avenue and Comstock Road, both of which form part of route 68 running north and south along Warden Avenue.

Dolphin Gaming made submissions regarding City of Toronto Official Plan Amendment 668 (“OPA 668”), which is related to the changes to the statutory definition of “Area of Employment” in the *Planning Act* made by Bill 97. OPA 668 was adopted by City Council on July 19, 2023. In their letter to City Council dated July 19, 2023, Dolphin Gaming noted that the proposed OPA 668 as recommended by City Planning staff is not sufficient to implement the clear intention of the new *Planning Act* definition of “Areas of Employment”, which now expressly provides that institutional and commercial uses, are not intended to be subject to restrictive *General Employment Areas* and *Core Employment Areas* designations. Rather, the letter recommended that City Planning staff should undertake a more detailed and site-specific assessment of the appropriateness of the *General Employment Areas* and *Core Employment Areas* designations on lands which are currently planned and have existing permissions for a wide range of non-residential uses, including institutional, commercial, and office uses, and determine whether those sites should appropriately be redesignated given the new statutory definition of “Areas of Employment” and the policy framework proposed in the New PPS. In addition, the letter recommended City Planning staff should also evaluate the appropriateness of including certain recreational uses such as bingo halls on *Employment Lands*.

iii. Submissions and Recommendations on the New PPS

a. Submissions and Recommendations on *Employment Areas*

Dolphin Gaming 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, as well as the need for a policy clarifying that bingo hall uses are permitted within *Employment Areas*.

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 commercial, 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. 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 sections 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: 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 the *Employment Areas* designation 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 the *Employment Areas* definition. It is Dolphin Gaming’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 the 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.

Comment: A new policy should be added to the New PPS to clarify that charity bingo hall uses are expressly permitted within designated Employment Areas.

The charity bingo hall use that exists at Dolphin Gaming’s current location at 1911 Eglinton Avenue East and that it intends for the Subject Site, is a recreational use that provides both significant benefits to the local economy through employment opportunities as well as substantial charitable contributions to local organizations and causes. Both the current bingo hall location and the Subject Site are designated as *Employment Areas* and *General Employment Areas* within the Toronto Official Plan. The applicable zoning by-law for both these properties, the former City of Scarborough Employment District Zoning By-law 24982, permits “Recreational Uses” for the zones applicable to these sites.

The definition of *Employment Areas* does not provide sufficient clarity whether a bingo hall use is permitted on lands with an employment designation. Given the unique attributes of bingo hall uses, and their significant economic contribution through the creation of jobs and the charitable support that they provide to the local organizations, such uses should be facilitated and promoted by the New PPS policies and permitted within *Employment Areas*. As a result, Dolphin Gaming recommends that the Minister provide a policy that clearly permits charity bingo hall uses within designated *Employment*

Areas. As noted above, the existing Dolphin Gaming bingo hall at 1911 Eglinton Avenue East, like many other similar charity bingo hall uses in Toronto, already exist in lands designated as *Employment Areas*, demonstrating their compatibility with other sensitive employment uses and their appropriateness to be included in these types of areas from the perspective of good land use planning. Furthermore, for the reasons explained here, including a policy in the New PPS clarifying that charity bingo hall uses are expressly permitted within designated *Employment Areas* is in the public interest.

b. Submissions and Recommendations on Implementation

Dolphin Gaming 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, that planning authority 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.

Dolphin Gaming 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

A handwritten signature in black ink, appearing to read "Alexander J. Suriano". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Alexander J. Suriano
AJS/cb

cc: Client

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