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BY EMAIL

Toronto Preservation Board
City of Toronto
100 Queen Street West
2nd Floor, West Tower, City Hall
Toronto, Ontario
M5H 2N2

Attn: Lourdes Bettencourt

Dear Chair and Members of the Toronto Preservation Board:

Re: Draft Historic Yonge Street Heritage Conservation District Plan

We act on behalf of several landowners with properties located within the boundary identified in the Historic Yonge Street Heritage Conservation District Plan (the "Draft Plan").

We write in respect of the Draft Plan which was made available for review and comment on January 7, 2016. Our clients have been actively monitoring the Draft Plan's development and some have attended meetings with the City's retained heritage planners, DIALOG, to discuss the Historic Yonge Street area in advance of the Draft Plan being released. While our clients were given the opportunity for input, the text and accompanying illustrations of the Draft Plan were not available for comment during the pre-consultation process. We have now had the opportunity to review the Draft Plan with our clients and their heritage experts.

Our clients recognize the historical significance of the Historic Yonge Street area and understand the role that the Draft Plan will have in conserving, protecting and enhancing the integrity of heritage resources within this area. After reviewing the Draft Plan, however, we have identified a number of concerns, several clerical errors and a number of apparent inconsistencies as between the Draft Plan and other City Official Plan policies as well as recent City Council and Ontario Municipal Board decisions respecting site specific development approvals within the Historic Yonge Street area.

This letter summarizes general concerns respecting the Draft Plan and concerns which are unique to specific sites.

I. General Comments Concerning the Draft Plan

Objectives, Policies and Guidelines of the Draft Plan

The Draft Plan contains objectives, policies and guidelines for properties within the Historic Yonge Street area. While the objectives of the Draft Plan, as set out on page 12, are generally drafted in broad terms, the policies and guidelines appear to be drafted in a compulsory manner and if rigidly applied would result in excessively strict obligations which, in our clients view, will stifle and unnecessarily restrict development on Yonge Street.

In the City of Toronto Official Plan Section 3.1.5 policy 4 states:

Properties on the Heritage Register will be conserved and maintained consistent with the Standards and Guidelines for the Conservation of Historic Places in Canada, as revised from time to time and as adopted by Council.

Similarly, on page 7, the Draft Plan references that the *Standards and Guidelines for the Conservation of Historic Places in Canada* (2010) were applied in developing this plan. We believe this document provides a clear, consistent and fair benchmark for heritage conservation. We would point out however, that unlike the Draft Plan, this document does not impose prescriptive measures for how heritage conservation is to be achieved. Our client requests that the Draft Plan conform to the values-based framework of the *Standards and Guidelines for the Conservation of Historic Places in Canada* rather than the Draft Plan's apparent inflexible approach.

The proposed application and implementation of the Draft Plan objectives, policies and guidelines is not clear. Subsection 41.2(1) of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18 (the "*Heritage Act*") provides that where a heritage conservation district plan is in effect, the council of a municipality shall not carry out any public work or pass a by-law for any purpose that is contrary to the objectives set out in the plan. (*emphasis added*)

In accordance with the *Heritage Act*, it is the objectives of the Draft Plan, listed on page 12, to which a by-law or any public work must conform. It is unclear what status is to be accorded to the policies, guidelines and other sections and statements contained in the Draft Plan or how the policies, guidelines and other sections will be applied. We recommend that Chapter 9: "Implementation and Administration of the HCD Plan" be revised to clarify the manner in which the various components of the Draft Plan are intended to be applied.

Policies and Guidelines Respecting Building Massing

Policy 5.8.1 and the related guidelines below, impose a minimum setback of 10 metres from all elevations of a building on a contributing property that are adjacent to a street,

including Yonge Street and all streets intersecting with it. The word “street” is defined to include a public lane. In the case of non-contributing properties, Policy 6.4.3 and the related Guidelines also impose a 10-metre stepback measured from all property lot lines adjacent to a street (including a public lane).

These policies are problematic for three primary reasons. First, the required 10-metre stepback applies equally to both contributing properties and non-contributing properties.

Second, the requirement for a 10-metre stepback is required from all streets and public lanes. This requirement is inconsistent with the policies contained in City-initiated Official Plan Amendment 183 (“OPA 183”), which requires a 10-metre stepback from Yonge Street only. A 10-metre stepback from all streets and public lanes would have the effect of rendering several of our clients’ properties, including those with recently approved site specific zoning by-law approvals, undevelopable.

Third, while our clients appreciate that the City seeks to maintain the street wall heritage attributes of Yonge Street, the Draft Plan contains no justification for its determination that a 10-metre stepback on all non-contributing properties is required in order to conserve the main street character of Yonge Street. Policies 5.8.1 and 6.4.3 and the associated guidelines recognize that stepbacks greater than 10 metres may be determined where the minimum 10 metre stepback does not conserve the cultural heritage value and attributes of adjacent properties. The Draft Plan however, does not similarly contemplate that a lesser stepback may be appropriate in certain circumstances.

It is our submission that the 10-metre stepback requirement as drafted is arbitrary and will unduly restrict, and in some cases prevent recently approved development within the Historic Yonge Street area. This requirement is likely to result in situations in which developments that would otherwise conserve the cultural heritage value and attributes of adjacent properties will not be permitted as they are unable to meet the 10-metre stepback from all streets and public lanes.

Our client requests that the mandatory minimum 10-metre stepback from all streets and public lanes be reconsidered and replaced with a flexible guideline that applies to the Yonge Street frontage only and is reasonable and workable in the context of this urban growth centre.

Policies and Guidelines Respecting the 75 Degree Angular Plane

The Draft Plan imposes a 75 degree angular plane for new development, additions or alterations to contributing and non-contributing properties. Contrary to OPA 183, the Draft Plan imposes the 75-degree angular plane requirement on all street and public lanes, and not simply from Yonge Street. Furthermore, for properties located within the Historic Yonge Street Character Area, according to Policies 5.8.2 and 6.4.4 and the related

Guidelines, the 75 degree angular plane is proposed to be measured from all building elevations facing all streets and public lanes starting at a height of 12 metres.

The requirement for a 75 degree angular plane for tall buildings in the Historic Yonge Street area was introduced in the context of OPA 183 and the associated North Downtown Yonge Guidelines. We note however that the policies respecting the 75 degree angular plane adopted by Council in OPA 183, require that the angular plane be measured from a height of 18 metres, not 12 metres. We aren't certain whether the reference in the Draft Plan to 12 metres instead of 18 metres is an error. If it is not an error, then there is no justification provided for this significant departure from this recently enacted City policy and several Zoning By-laws recently approved by City Council and the Ontario Municipal Board would fail to conform.

As will be discussed below, the imposition of a 75 degree angular plane as provided for in the above-noted policies and guidelines would render certain of our clients' recently approved projects unachievable on Yonge Street. We are requesting that the 75 degree angular plane requirement in the Draft Plan be removed and replaced with a more flexible guideline or, at the very least, one that is consistent with the policy direction of OPA 183.

There is concern that this formulaic approach to heritage conservation in the Historic Yonge Street area is untested. Given the similarity of the setback, stepback, and angular plane requirements of the Draft Plan that are commonplace among Urban Design Guidelines, but completely absent from the well established and accepted *Standards and Guidelines (2010)*, it appears as though the Draft Plan seeks to reinforce Urban Design concepts and further impose them as development control. Without further explanation, the Draft Plan lacks justification, as it fails to demonstrate the link between its prescriptive requirements and heritage conservation theory and practice or the objectives of the Draft Plan.

Implementation and Administration of the HCD Plan

It is unclear whether the provisions in Chapter 9 constitute Policies, Guidelines or simply background information. It is also unclear how the provisions within Chapter 9 will be used in implementing the Draft Plan.

We note in particular that section 9.3.1 of the Draft Plan states the following:

No contradictions have been identified between the objectives and policies of this Plan and the existing zoning by-laws.

We are uncertain how this conclusion was arrived at given that we have identified several inconsistencies as between our clients' recently approved developments, in-force site specific by-laws and the Draft Plan.

Furthermore, section 9.3.1 of the Draft Plan does not appear to be included as an objective, guideline or policy and therefore it is unclear what status it has, or how it will be applied in a circumstance where a contradiction as between the Draft Plan and an existing by-law is identified. Greater clarity is required in this regard.

Finally, we note that the implementation section of the Draft Plan lacks transition policies. As will be discussed below, we have identified several inconsistencies as between recently approved development projects and the objectives, policies and guidelines of the Draft Plan. We request that transition policies be included in the Draft Plan so as to ensure that existing approvals are not jeopardized or delayed.

Definitions in the Draft Plan

Our clients are concerned with the proposed definition of “Historic Building Material” which includes “all material used to construct a structure, building, or landscape on a contributing property including those not visible from the public realm”. This definition appears to include the control of both the exterior and interior materials of a building and, if so, exceeds the authority set out in the *Heritage Act* which does not permit the designation of interior spaces. Further, we see no justification for including building materials, interior or exterior, which are not visible from the public realm.

As referenced in the sections above, in particular with respect to the Draft Plan policies for the 10-metre stepback and the 75 degree angular plane requirement, our clients also have concerns with respect to the proposed definition of “Street”. As noted above, the overly broad inclusion of all public laneways as constituting streets, will be problematic in its application to various policies and guidelines of the Draft Plan.

We also note that some defined terms are also defined in other City or Provincial policies. The term “Maintenance”, for example is defined in the *Standards and Guidelines for the Conservation of Historic Places in Canada* (2010). The existing definition in the *Standards and Guidelines* is different than that which is proposed in the Draft Plan. In a circumstance where there is conflict as between the Draft Plan and other policy documents, it is unclear which definition will prevail. In any event, we submit that there should be a consistent use of definitions.

The proposed definition of “Substantial” is, in our submission, vague and uncertain.

II. Conflicts as between the Draft Plan and Provincial Policy Objectives

The Draft Plan acknowledges that the Historic Yonge Street area is part of the built-up area and is an urban growth centre as identified by the *Growth Plan For the Greater Golden Horseshoe*. Despite this recognition, the Draft Plan does not discuss how the Objectives of the Draft Plan may be reconciled with the Province’s density targets. We submit that the policies of the Draft Plan will sterilize otherwise appropriate development along Yonge

Street and will directly conflict with the Province's plan to promote intensification in this part of the City.

III. Apparent Clerical Errors of the Draft Plan

- i. Policy 5.16.3(iii) Views Towards the Masonic Hall: The related guideline identifies the view towards the Masonic Hall as looking north from the north-west corner of Yonge Street and St. Joseph Street. However, the diagram on page 37 associated with this guideline, incorrectly illustrates the location from which this view is taken. This diagram also includes a view south along Yonge Street from the Isabella Street intersection, that has not been previously identified in OPA 183 or its associated Guidelines. It is unclear why this additional view has been included on the diagram and not described in the accompanying policy 5.16.3(iii). We request that the diagram on page 37 be corrected.
- ii. Illustration on page 15 identifying Contributing, Non-Contributing and Over-clad Properties: The property municipally known as 2A, 2B, 2C, 2D and 2E Dundonald Street, is identified on Schedule C as a non-contributing property. Our client agrees with this characterization. The illustration on page 15 of the Draft Plan however, characterizes this building as a contributing building. This is an error. This building was constructed in 1976 and is not listed on the City's Heritage Registrar. The building does not satisfy the City's criteria for contributing properties as provided in Policy 4.2.
- iii. Appendix B – Schedule of Contributing Properties: On page 73 and 100, the properties municipally known as 7, 9 and 11 Gloucester Street are correctly identified as contributing properties and are incorrectly identified as being part of the St. Nicholas Village Character Area. In accordance with the illustration provided on page 18 of the Draft Plan, these properties form part of the Residential Pockets Character Area and not the St. Nicholas Village Character Area. This should be corrected.
- iv. At its meeting on August 25, 26, 27 and 28, 2014, City Council stated its intention to designate 7, 9 and 11 Gloucester Street. On behalf of our client who owns 7 and 9 Gloucester Street, we request that these properties be shown as existing Part IV designations on the illustration shown on page 21 of the Draft Plan.
- v. The first Guideline following Policy 6.6.1 includes requirements respecting glazing within the first storey above-grade as being no more than 90% and no less than 70%. This range contradicts the range provided in the associated illustration which references the appropriate glazing for the first storey of a mixed-use building as being between 60% and 90 % and for a residential building as being between 40% and 50% . It isn't clear what is intended in this case.

- vi. Policy 7.1.1 and Laneways and Circulation Route Hierarchy illustration: The proposed diagram associated with this section of the Draft Plan suggests that there is a laneway, running parallel to Yonge Street, connecting Dundonald Street to Gloucester Street. We can confirm that this laneway is not a public laneway, does not function as a thoroughfare and, in fact, there is a chain link fence erected that restricts vehicular access. As will be referenced below in greater detail, a development for our client's site at 599 Yonge Street has been approved by the Ontario Municipal Board, with the support of City Council, which does not incorporate or require a public laneway connecting Dundonald Street to Gloucester Street as a circulation route. This illustration should be corrected to remove the reference to the laneway at the rear of this property.

IV. Recognition of Site Specific Developments

- i. 501 to 521 Yonge Street, 6 to 8 Alexander Street and 23 Maitland Street

Our client, Lanterra 501 Yonge Developments Limited, is the owner of the property municipally known as 501 to 521 Yonge Street, 6 to 8 Alexander Street and 23 Maitland Street (collectively "501 Yonge Street"). At its meeting on November 13, 14, 15 and 18, 2013, City Council enacted site specific Zoning By-law 139-2014 to permit a redevelopment of 501 Yonge Street with a mixed-use development including two towers of 23 and 52 storeys on a 4 to 7 storey podium containing retail uses at grade, above-grade parking and amenity space.

Despite the statement made at section 9.3.1 of the Draft Plan, it is apparent that our client's approved development and in force site specific Zoning By-law (By-law No. 139-2014), does not comply with all of the Policies and Guidelines of the Draft Plan, including Policies 6.4.3 and 6.4.4 and their related Guidelines referred to above. There are other areas of inconsistency as well. For example, this approved project includes above-grade parking whereas Policy 7.3.2 of the Draft Plan states that parking is to be located underground.

We are writing to request that 501 Yonge Street be removed from the Draft Plan. In the alternative, we request that the Draft Plan be revised to specifically recognize our client's approved development and confirm that nothing in the Draft Plan will preclude the issuance of building permits associated with this approved development.

- ii. 587 to 599 Yonge Street, 2 and 4 Dundonald Street and 7 and 9 Gloucester Street

Our client, Cresford Capital Corporation, is the beneficial owner of the property municipally known as 587 to 599 Yonge Street, 2 and 4 Dundonald Street and 7

and 9 Gloucester Street (collectively “599 Yonge Street”). In late 2014, as part of a settlement supported by City staff and City Council, Ontario Municipal Board approved a site specific zoning by-law to permit the redevelopment of 599 Yonge Street with a tall building development.

In accordance with the approved zoning and executed Section 37 Agreement for this development, the owner is required to:

- A. retain the south and west facades of the character building known as 587 Yonge Street and located at the southwest corner of the site (north east corner of Yonge Street and Dundonald Street – the “Character Building”) and incorporate these facades into the final design of the base of the building, or (*emphasis added*);
- B. replace the Character Building with a three storey brick feature in keeping with the built form and character of the south and west facades of the Character Building substantially in accordance with the architectural drawings submitted by Hariri Pontarini date stamped by City Planning March 14, 2014 and to be further refined through the site plan approval process.

In satisfaction of this requirement, it is our client’s intention to proceed with option B – replacement of the Character Building. As was agreed with the City, and secured in the Section 37 Agreement, the design of this replacement Character Building will be refined through the site plan approval process. The Draft Plan identifies 587 Yonge Street as a contributing property. If the Draft Plan is applied to 599 Yonge, the demolition and replacement of the Character Building would not be permitted and could not be completed as contemplated by City Council and secured through the Section 37 agreement.

We also note that Policy 5.9.1 and the Guidelines below, require the conservation of storefronts in the design of additions and alterations to contributing properties and includes a requirement that the commercial store fronts must not be taller than one store at-grade (approximately 4.5 metres). This requirement is contrary to our client’s approved development which permits the ground floor commercial height to be 6.3 metres.

As with the case of 501 Yonge Street, the approvals associated with 599 Yonge Street do not comply with all of the Policies and Guidelines of the Draft Plan, including but not limited to Polices 5.8.1, 6.4.3, 5.8.2 and 6.4.4 and related Guidelines. We therefore request, that 599 Yonge Street be removed from the Draft Plan. In the alternative, we request that the Draft Plan be revised to recognize our client’s approved development and confirmation that nothing in the Draft Plan will preclude the issuance of building permits associated with this development in

the form approved by the Ontario Municipal Board and in accordance with City Council's direction.

iii. 11 Wellesley Street

5-25 Wellesley Street West, 14-26 Breadalbane Street and 155 St. Luke Lane

Our client, Lanterra Developments (Bay Wellesley) Limited, is the owner of the above-referenced properties (collectively "11 Wellesley Street"). At its meeting on August 25-28, 2014 City Council enacted site specific Zoning By-laws 1063-2014 and 1064-2014 to permit the redevelopment of the above-referenced lands with a new mixed-use development, including a 60-storey tower incorporating residential, retail and office uses, and a new public park. Vehicular and loading access for this development, will occur from St. Luke Lane. St. Luke Lane is a public lane which connects Breadalbane Street to Wellesley Street and also provides service access to the rear of certain buildings fronting on Yonge Street.

According to Section 4.1 of the Draft Plan, which does not appear to be either an Objective, Policy or Guideline, the boundary of the Draft Plan is intended to include buildings fronting along Yonge Street that support and define its main street character, buildings fronting to side streets which intersect with Yonge Street, the St. Nicholas Village, buildings fronting on to College/Carlton Streets, and properties on both sides of Yonge Street that define the public realm and pedestrian experience of the street. This description would not include properties fronting on the east side of St. Luke Lane which do not abut Yonge Street or an intersecting side street.

Opposite the proposed 11 Wellesley development, on the east side of St. Luke Lane, there is a small non-contributing building at 145 St. Luke Lane. A business called Saved by Technology, operates out of the building. At present, the building has a door which opens directly on to St. Luke Lane. Our client was requested to relocate this door, and a related window, to the north side of the Saved by Technology building in order to avoid any future conflicts with increased traffic in the public lane arising as a result of the redevelopment. The Saved by Technology property does not meet any of the criteria identified in Section 4.1 of the Draft Plan. It does not front on nor have access to Yonge Street, nor is it identified as the location of a contributing building. Indeed, on the illustration on page 15 of the Draft Plan, it is not identified as having a building at all, and the land is simply shown as vacant. In order that our client can relocate the door and perform the related work to the building at 145 St. Luke Lane, we are writing to ask that 145 St. Luke Lane be excluded from the boundary of the Draft Plan.

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Conclusions

It is clear that the Draft Plan in its current form raises significant concerns for a number of our clients, in particular for those properties that were the subject of recent development approvals. We therefore request that the Toronto Preservation Board recommend that the Draft Plan be referred back to staff in order that the above-noted comments can be addressed prior to final consideration by Community Council and City Council. We would be happy to meet with City staff and/or your retained heritage planners to discuss these concerns.

We will be in attendance at the Toronto Preservation Board on February 10, 2016 to speak to this matter. Thank you very much.

Yours truly,

AIRD & BERLIS LLP



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cc: Clients
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