

May 18, 2018

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VIA EMAIL

File No.: 17892.00001

Mayor and Members of Council
City Hall
12th floor, West Tower,
100 Queen Street West
Toronto, ON M5H 2N2

Attention: Marilyn Toft (clerk@toronto.ca)

Dear Sirs/Mesdames::

**Re: Item PG29.4: TOcore: Downtown Plan Official Plan Amendment
292-298 Dundas St. W., 129 and 131 McCaul St., and 170 St. Patrick St.**

We act as legal counsel for Tribute (McCaul Street) Limited (“**Tribute**”), with respect to their August 31, 2017 application for a zoning by-law amendment for lands located on the north side of Dundas Street West between McCaul Street and St. Patrick Street and municipally known as 292 to 298 Dundas Street West, 129 and 131 McCaul Street, and 170 St. Patrick Street (the “**Site**”). The Site is within the proposed Downtown Official Plan.

The zoning by-law amendment is to permit a 38-storey mixed-use development that includes residential and community-related uses such as new outreach and administrative space for the St. Patrick’s Catholic Church, a new daycare facility, street-related retail uses, and an on-site public parkette. The application is now before the Local Planning Appeal Tribunal pursuant to section 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended (the “**Planning Act**”).

We have prepared this letter in response to the May 1, 2018, Planning and Growth Management Committee’s (“**PGMC**”) adoption, with amendments, of the staff recommendation to adopt the proposed Downtown Official Plan. We have reviewed the Staff Report dated April 17, 2018, the Supplemental Staff Report dated May 14, 2018, and the PGMC recommendations. In addition, our client has engaged land use planners, Bousfields Inc., to review the proposed Downtown Plan in relation to Tribute’s Site. A copy of Bousfields’ review is attached.

As a starting point, we must forcefully object to the assertion that this official plan amendment may be adopted pursuant to section 26 of the *Planning Act*. In order for the City to treat this proposed official plan amendment as part of a conformity exercise, it would need to undertake a

full and complete municipal comprehensive review considering all aspects of the Growth Plan for the Greater Golden Horseshoe, 2017 (the “**Growth Plan**”) on a City-wide basis. This has not been done.

In addition, Bousfields’ review of the Downtown Plan, and specifically in the context of Tribute’s Site, demonstrates it is not consistent with the Provincial Policy Statement, 2014 (the “**PPS**”) and does not conform with the Growth Plan. More specifically, the Downtown Plan does not optimize the use of land and infrastructure, particularly as it applies to Tribute’s Site.

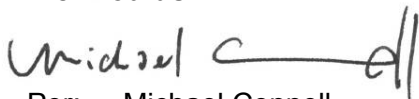
As a result, and as explained more fully in Bousfields’ attached review, we would recommend that City Council:

1. Defer consideration of the Downtown Plan to allow for the major transit station area assessments to be undertaken for lands within 500 metres of subway stations.
2. Include additional language in Section 1.0 with respect to a grandfather clause for applications submitted prior to approval of the Downtown Plan particularly those applications for which Council did not make a decision on within the statutory timelines.
3. Maps 41-3, 41-3-B and 41-3-C be amended to re-designate the Site from *Mixed Use Areas 3 – Main Street* to *Mixed Use Areas 2 – Intermediate*.
4. Map 41-2 be amended to exclude the properties on the north side of Dundas Street West from the McCaul Street to University Avenue from the Health Sciences District.

Thank you for your consideration of this request.

Yours truly,

WeirFoulds LLP



Per: Michael Connell

MC/MWC

cc: client
Encl.

May 18, 2018

Denise Baker, !
WeirFoulds LLP !
Suite 10, 1525 Cornwall Road, !
Oakville, ON, L6J 0B !

Dear Ms. Baker

**Re: 294, 292 and 298 Dundas Street West & 129 and 131 McCaul Street
(the “subject site”)
Proposed Official Plan Amendment - Downtown Plan – OPA 406**

Purpose and Background

This letter has been prepared in the context of a review of the proposed Downtown Plan with respect to the existing Zoning Bylaw Amendment (ZBA) and Site Plan Approval (SPA) applications filed by Tribute (McCaul Street) Limited (“Tribute”) for the subject site.

As you know, on August 31, 2017 Tribute filed complete ZBA and SPA applications to permit a 38-storey mixed-use development that includes residential and community-related uses such as new outreach and administrative space for the St. Patrick’s Catholic Church, a new daycare facility, street-related retail uses, and an on-site public parkette.

Further, the proposed development contains a unique mix of uses that will reinforce the long-standing presence of St. Patrick’s Catholic Church in the neighbourhood and contributes to the vitality and ongoing revitalization of the area as one of Toronto’s important arts and cultural districts.

The subject site is within the boundaries of proposed Official Plan Amendment No. 406 (the “Downtown Plan”), which was before the Planning and Growth Management Committee on May 1, 2018. The Committee’s recommendations included, among others, that City Council seek approval of the amended Plan from the Minister of Municipal Affairs of Ontario under Section 26 of the *Planning Act*.

Based on our review of the Downtown Plan, as well as the Supplementary Staff Report dated May 14, 2018, in the context of the subject site, it is our opinion that the Plan, as currently drafted, is not consistent with the Provincial Policy Statement, 2014 (the “PPS”) and does not conform with the Growth Plan for the Greater Golden Horseshoe, 2017 (the “Growth Plan”). More specifically, the Downtown Plan does not optimize the use of land and infrastructure, particularly as it applies to the subject site. **As a result, we would recommend that City Council be requested to:**

1. ! Defer consideration of the Downtown Plan to allow for the major transit station area assessments to be undertaken for lands within 500 metres of subway stations.
2. ! Include additional language in Section 1.0 with respect to a grandfather clause for applications submitted prior to approval of the Downtown Plan particularly those applications for which Council did not make a decision on within the statutory timelines.
3. ! Maps 41-3, 41-3-B and 41-3-C be amended to re-designate the subject site from *Mixed Use Areas 3 – Main Street* to *Mixed Use Areas 2 – Intermediate*.
4. ! Map 41-2 be amended to exclude the properties on the north side of Dundas Street West from the McCaul Street to University Avenue from the Health Sciences District.

Our analysis in support of the above recommendations is provided below.

Site and Surroundings

The subject site is located on the north side of Dundas Street West, between McCaul Street and St. Patrick Street and is known municipally as 292 to 294 Dundas Street West, 129 and 131 McCaul Street, and 170 St. Patrick Street

The St. Patrick’s Catholic Church (“St. Patrick’s Church” or “the Parish”) is located at 137 McCaul Street, immediately north of the Site. The Parish has been in its current location since the early 1900s and was previously located in another church building dating back to the mid-1800s (now Our Lady of Mount Carmel Catholic Church) located at 202 St. Patrick Street. Given its long history in the

neighbourhood, the Parish has established strong faith-based connection to the area and forms an integral part of the social fabric in the community.

The Parish offers a broad range of counselling and outreach services from the existing buildings on the Site. Over time, the size and scope of these programs has increased, and with the age and condition of the existing buildings, the Parish has identified a need for new and updated office and community meeting space. To address this need, the Parish has entered into a partnership with Tribute (McCaul Street) Limited to help secure new facilities as part of the proposed development on the Site.

The subject site is located in Downtown Toronto, on the edge of the Financial District with the Grange Park neighbourhood to the west. Over the last several decades, the area has evolved into an eclectic mixed-use neighbourhood that contains a broad range of commercial, arts and cultural, institutional, residential and recreational uses

Among the notable institutions are the recently renovated Art Gallery of Ontario (AGO) and OCAD University (formerly the Ontario College of Art and Design). To the east along University Avenue are a cluster of approved tall buildings, including a recently approved 55-storey building (Residences of 488 University Avenue) which will include an 18-storey podium containing office space and residential units above (488 University Avenue) and a recently approved 55-storey building which will include a 9-storey podium comprised of office space and a residential tower above (481 University Avenue). At 426 University Avenue is the recently completed 42-storey residential building (Residences of RCMI).

From a transit perspective, the area surrounding the subject site has excellent access to rapid transit and surface transit services. The St. Patrick subway station is located approximately 170 metres east of the subject site. The subject site fronts onto Dundas Street which is served by the 505 Dundas streetcar route which operates between Dundas West Station and Broadview Station on the Bloor-Danforth, generally in an east west direction.

Planning and Regulatory Framework

The following overview provides a summary of the relevant applicable policies and guidelines, and should not be considered an exhaustive description of the entire policy framework that applies to the subject site.

Provincial Policy Context

Policy 1.1.3.2 of the PPS supports densities and a mix of land uses which efficiently use land, resources, infrastructure and public service facilities, and which are transit supportive where transit is planned, exists or may be developed. Policy 1.1.3.3 provides that planning authorities shall identify appropriate locations and promote opportunities for intensification and redevelopment, where this can be accommodated taking into account existing building stock or areas and the availability of suitable existing or planned infrastructure and public service facilities. In addition, Policy 1.1.3.4 promotes appropriate development standards, which facilitate intensification, redevelopment and compact built form, while avoiding or mitigating risks to public health and safety.

The efficient use of infrastructure (particularly public transit) is a key element of provincial policy (Section 1.6). With respect to transportation systems, Policy 1.6.7.4 promotes a land use pattern, density and mix of uses that minimize the length and number of vehicle trips and support the current and future use of transit and active transportation.

The subject site would be considered to be part of a “strategic growth area” pursuant to the Growth Plan (i.e. a focus for accommodating intensification and higher-density mixed uses in a more compact built form). “Strategic growth areas” include urban growth centres, major transit station areas, and other major opportunities that may include infill, redevelopment, brownfield Sites, the expansion or conversion of existing buildings, or greyfields. The subject site is located within the Downtown Toronto “urban growth centre” and within a “major transit station area” (i.e. within 170 metres of the St. Patrick subway station).

The Growth Plan (2107) includes a number of additional policies applying to “major transit station areas”. In particular, Policy 2.4.4(1) requires that “priority transit corridors” shown on Schedule 5 will be identified in official plans and that planning will be prioritized for “major transit station areas” on “priority transit corridors, including “zoning in a manner that implements the policies of this Plan”. In this regard, Schedule 5 shows the Yonge-University and the Bloor-Danforth subway lines as “existing higher order transit”.

Policy 2.2.4(9) provides that, within all “major transit station areas”, development will be supported, where appropriate, by:

- planning for a diverse mix of uses to support existing and planned transit service levels;
- providing alternative development standards, such as reduced parking standards; and
- prohibiting land uses and built form that would adversely affect the achievement of transit supportive densities.

Toronto Official Plan

The Land Use Plan (Map 18) designates the subject site as *Mixed Use Areas*. The *Mixed Use Areas* designation permits a broad range of commercial, residential and institutional uses in single use or mixed-use buildings, as well as parks and open spaces and utilities. The Plan envisions that development in *Mixed Use Areas* will create a balance of high quality commercial, residential, institutional and open space uses that reduces automobile dependency and meets the needs of the local community and will provide for new jobs and homes for Toronto's growing population on underutilized lands in the *Centres* and elsewhere.

The proposed mix of uses will implement the overall planning objectives of the *Mixed Use Areas* designation. In this regard, the proposed mix of uses implements the development criteria set out in Policy 4.5(2) of the Official Plan by creating a balance of high quality residential, retail, institutional, and recreational uses in a manner that reduces automobile dependency and meets the needs of the local community and providing for new homes for Toronto's growing population on lands that are currently underutilized (given the surrounding built form context and proximity to transit infrastructure).

The church-related community and office uses will provide much-needed space for outreach and administration to support the Parish's programs which presently operate out of portions of the existing buildings. The provision of this space will help to reinforce the Parish's long-standing presence in the neighbourhood. Additionally, the inclusion of larger two- and three-bedroom dwelling units, the proposed public parkette, as well as the daycare facility will contribute to the creation of an environment that is supportive of households with children in the *Downtown*.

The objective of the Official Plan in intensifying *Mixed Use Areas* is that of reurbanization. It is anticipated that residents will be able to live, work, shop and

play in the same area, giving people an opportunity to depend less on their cars and creating districts along transit routes that are animated, attractive and safe during the day and at night. The proposed church-related community and office uses, daycare, at-grade retail uses and a new public parkette will help to contribute to the mix of uses of the Downtown, as well as the ongoing evolution and vibrancy of the Grange Park neighbourhood.

In our opinion, it would not be appropriate to limit increases in density on the subject site to non-residential uses as suggested in the Downtown Plan. In this regard, the subject site is designated *Mixed Use Areas*, which permits a broad range of range of commercial and residential uses, in contrast to the *Institutional Areas* designation which applies to much of the proposed Health Sciences District.

Zoning By-law

The subject site is zoned under 438-86, as amended as Mixed Commercial Residential (MCR) T 2.5 C 2.0 R 2.0. The MCR zoning permits a wide range of residential and non-residential uses to a maximum total Floor Space Index of 2.5 times the lot area. Maximum permitted height is 14 metres. The new City-wide Zoning By-law No. 569-2013, as amended, was enacted by City Council on May 9, 2013. It is subject to numerous appeals and therefore is not yet in force. In this bylaw, the subject site is zoned CR 2.5 (c2.0; r2.0) which for the subject site, essentially carries forward the zoning permissions under Zoning By-law 438-86, as amended.

Within the currently applicable context as set out above, the zoning applying to the subject site is inconsistent with the PPS and fails to conform with the Growth Plan. The permitted height (14.0 metres, or 4 storeys) and the permitted densities (2.5 FSI overall and 2.0 FSI for residential uses) are not transit-supportive and, in fact, are not reflective of historically-developed heights and densities in the surrounding area. As a result of the foregoing, virtually all recent redevelopment that has occurred within the vicinity of the subject site has required amendments to the existing zoning.

In particular, the zoning applying to the subject site has not been updated to be consistent with the policies of the Provincial Policy Statement's direction to "optimize" the use of land and public investment in infrastructure and public service facilities. In our opinion the existing zoning does not make use of land and infrastructure in a way that is as efficient or as effective as possible.

Similarly, the Growth Plan also seeks to “optimize” the use of infrastructure (particularly transit) and the existing land supply. With respect to “major transit station areas”, municipalities are required to delineate the boundaries of major transit station areas in a transit-supportive manner that “maximizes” the number of potential transit users, while planning will be prioritized for major transit station areas on priority transit corridors including “zoning in a manner that implements the policies of this Plan”.

Given the recent vintage of the Growth Plan, a zoning review has not yet been undertaken by the City to implement amendments to the permitted heights and densities that would be necessary in order to conform to and not conflict with the overall policy directions. Major Transit Area assessments have not been conducted as part of the development of this Downtown Plan.

Downtown Tall Building Supplementary Design Guidelines (the “Tall Building Guidelines”)

The subject site fronts onto St. Patrick Street which is denoted as a “Secondary High Street” on Map 1 to the Tall Building Guidelines. Dundas Street West, on the east side of St. Patrick Street, is identified as a “High Street” that is suitable for a tall building in a tower-and-base form with a height between 62 metres and 107 metres (i.e., 20 to 35 storeys). Height limits have not been established for Secondary High Streets as the height range will generally be one-third lower than the High Streets they run parallel to.

In our opinion, the subject site is an appropriate location for intensification. From a built form perspective, the subject site is contextually appropriate for a tall building, given its location within the Downtown, proximity to the Financial District and other tall buildings, as well as its proximity to higher order public transit. In this respect, it is our opinion that the proposed development satisfies the criteria established in Policy 3.1.3(2) of the Official Plan for the location of a tall building, subject to achieving appropriate built form relationships.

The proposed Downtown Plan limits the form of development on the subject site to low- or mid-rise heights which is contrary to the guidance provided in the Tall Building Supplementary Guidelines that identifies St. Patrick Street as a Secondary High Street and therefore an appropriate location for a tall building.

Proposed Downtown Plan Policies

Grandfather Clause

It is also our understanding that the Downtown Plan policies will be used to evaluate current and future development applications in the Downtown Plan area. As mentioned previously, the subject site is currently the subject of an existing and active development application. We are concerned about the potential prejudices that could be imposed by this approach.

Given draft Official Plan Amendment No. 406 (OPA 406) does not propose any transition policies for existing development proposals, it is our opinion that, in addition to transition policies in OPA 406, a grandfather clause should be included in the Plan to sufficiently address current proposals.

Health Sciences District

Section 6.0 of the proposed Downtown Plan (Land Use and Economy) includes policies for a newly established Health Sciences District as delineated on Map 41-2 (as modified). Policy 6.15 (as modified) states that:

“6.15. Development within the *Health Sciences District* will:

- 6.15.1 replace existing institutional and non-residential gross floor area;
and
- 6.15.2 only contain institutional and/or non-residential gross floor area for an increase in density above the existing as-of-right permissions contained within the in-force Zoning By-law”

Under these proposed policies the subject site would have its residential uses limited to 2.0 times the area of the lot under a zoning provision which is more than 30 years old. The subject site is not contiguous with any health sciences facilities and is surrounded by a mix of land uses that includes commercial, retail and institutional uses.

The proposed development contains a unique mix of uses that will reinforce the long-standing presence of St. Patrick’s Catholic Church in the neighbourhood and contributes to the vitality and ongoing revitalization of the area as one of Toronto’s important arts and cultural districts. The mixed-use development includes

residential and community-related uses such as new outreach and administrative space for the St. Patrick's Catholic Church, a new daycare facility, street-related retail uses, and an on-site public parkette.

There does not appear to have been any site-specific assessment of the suitability of the lands within the proposed *Health Sciences District* to accommodate the intended uses. In other words, does the land ownership, lot pattern, lot dimensions, and presence of heritage resources lend itself to the creation of a Health Sciences District? Hospitals, treatment centres, academic, education and research uses tend to be accommodated in larger commercial floorplate buildings which in our opinion, would not be feasible on the subject site or within lots to the north.

In conclusion, it is our opinion that Map 41-2 be amended to exclude the properties fronting on the north side of Dundas Street West from the McCaul Street to University Avenue from the *Health Sciences District*.

Proposed Mixed Use Areas Designation

On Maps 41-3 and 41-3-C of the Downtown Plan, the subject site is proposed to be designated as *Mixed Use Areas 3 – Main Street*. Policy 6.28 states that “development in *Mixed Use Areas 3* will be in the form of low-rise and mid-rise buildings”. This designation would not permit the proposed 38-storey tower on the subject site as the policy restricts the form of development to low- and mid-rise buildings.

In our opinion, the proposed designation of the subject site is not consistent with the PPS and it does not conform to the Growth Plan. The subject site would be considered to be part of a “strategic growth area” pursuant to the Growth Plan (i.e. a focus for accommodating intensification and higher-density mixed uses in a more compact built form). The subject site is located within the Downtown Toronto “urban growth centre” and within a “major transit station area” (i.e. within 170 metres of the St. Patrick subway station). Furthermore, the subject site has been identified as having frontage on a secondary high street in the Tall Building Guidelines.

The proposal to restrict the form of development to only low or mid -rise is not consistent with optimizing development in proximity to a subway station nor is it consistent with the recommendation on the location of tall buildings in the

Downtown and is premature in advance of an assessment of the major transit station area surrounding St. Patrick Station.

In our opinion, Maps 41-3, 41-3-B and 41-3-C should be amended to re-designate the subject site from *Mixed Use Areas 3 – Main Street* to *Mixed Use Areas 2 – Intermediate*. This would allow for a broader range of building forms including the proposed tower.

All of which is respectfully submitted,

Bousfields Inc.



Louis Tinker, MCIP, RPP
Partner