

Calvin Lantz  
Direct: (416) 869-7085  
clantz@stikeman.com

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By E-mail  
clerk@toronto.ca

City Council  
City Hall  
100 Queen Street West  
Toronto, ON M5H 2N2

Attention: Ms. Marilyn Toft, City Clerk Secretariat

Dear Members of City Council:

**Re: PG29.4 TOcore: Downtown Plan Official Plan Amendment  
409-415 Yonge Street and 9&17 McGill Street, Toronto**

We are counsel to Artis Yonge Street Ltd., owner of the property municipally known as 409-415 Yonge Street and 9 & 17 McGill Street, located on the east side of Yonge Street just north of Gerrard Street, (the "**Property**") and is located within the area of the proposed Downtown Plan Official Plan Amendment No. 406 (the "**TOcore OPA**") currently being considered by City Council.

For the reasons set forth in this letter and the attached Planning Opinion letter, we strongly urge that:

- (i) **Council defer consideration of the TOcore OPA;**
- (ii) **Council direct City Planning staff to conduct further consultation as it relates to, among other things, the Policy Revisions and Map Revisions in Attachments 1 and 2 of the Supplementary Staff Report, exemption and transition issues and site specific issues; and**
- (iii) **That City Planning staff report directly to City Council with any further recommendations, such report to be made available to the public as required by Section 26 of the *Planning Act*.**

#### **Policy Concerns with the TOCore OPA**

Our client and their consulting planner, reviewed the TOcore OPA as well as the Supplementary Staff Report, dated May 14, 2018. A number of concerns with the TOcore OPA have arisen based on this review which are further documented in the attached Planning Opinion letter by Kate Cooper of Bousfields Inc., dated May 22, 2018. In general, policies included in the TOcore OPA that are of concern to our client include:

- Introduction of new land use designations (Mixed Use Areas 1, 2, 3, & 4) which enact use restrictions, built form standards and various other supplemental regulations; and

- Prescriptive performance and built form standards which include but are not limited to; mandatory residential unit mix, type, and size; and building heights and setbacks.

Such restrictions, performance and built form standards are excessively prescriptive and restrict intensification on the Property that is otherwise targeted for growth. The imposition of these standardized regulations also limits opportunities for contextually appropriate development variations, architectural creativity that may achieve the same objectives and provides no flexibility for a wide array of irregularly shaped lots and lot conditions.

For such reasons, the TOcore OPA is inconsistent with the Provincial Policy Statement, 2014 and fails to conform to the Growth Plan for the Greater Golden Horseshoe, 2017.

## **Procedural Concerns with the TOCore OPA**

City staff advise that that the TOcore OPA policies will be used to evaluate current and future development applications in the TOcore OPA area. This statement is vague and creates uncertainty, particularly:

- (i) because the Property is the subject of an active development application and changing the policy regime mid-process is unfair, unreasonable and will require the client to revise their application to demonstrate conformity which represents added expense, delay and the potential loss of development permissions.

We are concerned about the potential prejudices that may result by using the TOcore OPA to evaluate current and future development applications for the Property. The TOcore OPA also does not include any transition policies or protocols to recognize applications/redevelopment proposals that are in process or that should be exempted from the application of the TOcore OPA.

In the event that the Property is not specifically exempted from the TOcore OPA, transition provisions should be incorporated into the TOcore OPA so as to ensure that Property that is the subject of complete application should be reviewed on the basis of the planning framework which was in force at the time they were filed, and that future applications for the Property, such as site plan approval and minor variance, should be exempt from conformity with the TOcore OPA.

## **Statutory Notice Requirements Not Met**

For an Official Plan Amendment under Section 26 of the *Planning Act*, information and material relevant to the amendment must be made publicly available at least 20 days before the Public Meeting. We note that the Supplementary Staff Report, dated May 14, 2018, which itemizes staff and PGMC's recommended amendments to the TOcore OPA, has not been the subject of a Public Meeting and has been released only seven days before the TOcore OPA is to proceed to Council for a decision, contrary to Section 26 of the *Planning Act*. Many of the proposed changes are substantive and our clients have not been given sufficient time to review and consider the impact of such changes.

Because of the excessively prescriptive performance and built form standards included in the TOcore OPA, the TOcore OPA is more regulatory than visionary and the TOcore OPA directly negates intensification in areas otherwise targeted for growth.

The City's powers to approve the TOcore OPA are powerful and extraordinary and the only safeguard against abuse of those powers is proper and meaningful consultation. Providing the public sufficient time and notice to review and comment on the City's final proposed changes to the TOcore OPA, and for those comments to be considered by Council in their decision-making is a fundamental component of meaningful consultation —for which one week is simply inadequate.



## Conclusion

For the reasons expressed in this letter as well as those included in the attached Planning Opinion letter, we ask that consideration of the TOcore OPA be deferred by Council to allow the public sufficient time to consider and respond to the supplemental staff recommendations, as well as for staff to address the concerns raised by our client, which engage matters of Provincial policy and procedural fairness.

Please provide us with notice of all upcoming meetings of Council and Committees of Council at which the TOcore OPA will be considered, and we ask to be provided with notice of Council's decision and the Ministry of Municipal Affairs' decision with respect to this item.

Yours truly,



Calvin Lantz  
Partner

*Certified Specialist in Municipal Law  
(Land Use Planning and Development)*

CL/nla

Attachment: Planning Opinion letter, prepared by Kate Cooper of Bousfields Inc., dated May 22, 2018

cc. *Artis Yonge Street Ltd.  
Bousfields Inc.*

May 22, 2018

Marilyn Toft  
12th floor, West Tower, City Hall  
100 Queen Street West  
Toronto, ON M5H 2N2

Dear Mayor John Tory and Members of Council:

**Re: *Proposed Official Plan Amendment – Downtown Plan  
Artis Yonge Street Ltd.  
409 – 415 Yonge Street and 9 and 17 McGill Street***

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We are the planning consultants for Artis Yonge Street Ltd. ("Artis"), the owners of the site at 409 – 415 Yonge Street and 9 and 17 McGill Street, located on the east side of Yonge Street just north of Gerrard Street ("the subject site"). The subject site is currently occupied by a 19-storey office building with retail/commercial uses at-grade. The McGill Parkette is located to the immediate east of the building, also located on the subject site, with frontage on McGill Street/Sheard Street.

#### Subject Site and Associated Complete Application

On behalf of our client, we filed an application for a Zoning By-law Amendment on December 22, 2017 (Application No. 17 278848 STE 27 OZ) in order to permit a mixed-use development on the subject site through the addition of a 42-storey residential building on top of the existing 19-storey office building, while maintaining the McGill Parkette in its current form.

#### Subject Site and the Downtown Plan

The subject site is within the boundaries of proposed Official Plan Amendment No. 406, the Downtown Plan ("the 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 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 Plan does not optimize the use of land and infrastructure, particularly as it applies to the subject site. As a result, we are respectfully requesting the following:

1. That Council defer the Committee's recommendations to seek approval of the amended Plan from the Minister of Municipal Affairs of Ontario under Section 26 of the *Planning Act*:
  - a. To allow for further consultation amongst key stakeholders and additional time to review the Plan and provide meaningful feedback; and
  - b. To allow for the major transit station area assessment to be undertaken as part of a future municipal comprehensive review for development around subway stations.
2. That Council consider the following modifications to the proposed Downtown Plan, which are further outlined in the text of this letter:
  - a. Additional language in Section 1.0 with respect to a grandfather clause for applications submitted prior to approval of the Plan.
  - b. Modifications to the language in Policy 6.25 of the Mixed Use Areas 2 – Intermediate destination to read:

*"Development within Mixed Use Areas 2 will include building typologies that respond to their site context including low-rise and midrise buildings. Tall buildings that appropriately demonstrate a transitional scale between Mixed Use Areas 1 and areas designated for a lower scale of intensity are also permitted in accordance with Policy 6.26 of this Plan".*
  - c. Modifications to the language in Policy 6.26 of the Mixed Use Areas 2 – Intermediate destination to read:

*"When considering the existing and planned context as described in Section 6.26 above, all adjacent contexts in terms of prevailing heights, massing, scale, density and building type should be contemplated".*



- d. Additional language in Section 9 (Built Form) to address existing buildings that reads:

*“Consideration of the policies in the Plan will be given to existing buildings that are retained through redevelopment, either on their own or as part of a comprehensive development, including building additions”.*

- e. Additional language in Policy 11.1 (Housing) to address the requirement for additional 2- and 3-bedroom units that reads:

*“Should Policies 11.1.1 and 11.1.2 for development containing more than 80 residential units be met, Policy 11.1.3 shall be applicable only should market demand demonstrate the need for additional 2- and 3-bedroom units over and above the requirement in Policies 11.1.1 and 11.1.2. This shall be demonstrated to the satisfaction of the City”.*

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

#### Site and Area Context

The subject site is municipally known as 409 - 415 Yonge Street and 9 and 17 McGill Street, and is located on the east side of Yonge Street, less than 50 metres north of Gerrard Street. It is approximately 2,200 square metres in size and is currently occupied by a 19-storey building containing office and retail/commercial uses. To the east of the building is the McGill Parkette, which is privately owned but currently leased to the City. The site is designated *Mixed Use Areas* and is subject to Official Plan Site and Area Specific Policy (“SASP”) 151, which is applicable for the area bound by Carlton Street, Gerrard Street East, Yonge Street and Jarvis Street.

It is important to understand the subject site and its context when considering the proposed Downtown Plan. In our opinion, the subject site is located in a very unique area of the City. It is located along Yonge Street, which is one the City's most predominant corridors, as well as just west of the McGill-Granby neighbourhood, a historic residential neighbourhood located within Toronto's intensifying downtown core.

The immediate area provides for a true mixed-use community in the heart of the Downtown. Along Yonge Street to the north, is a 19-storey rental apartment

building and a portion of McGill Granby Park, which connects to Joseph Sheard Parkette. A 2-storey brick building containing commercial uses is located to the north of the park. Further north are residential and mixed-use buildings of 18, 33 and 43 storeys, with proposals for two, 73-storey mixed use towers at the northeast corner of College and Carlton Streets.

To the east of the subject site, is the McGill-Granby neighbourhood, which is bound by Yonge Street to the west, Carlton Street to the north, Jarvis Street to the east and Gerrard Street to the south. The neighbourhood's interior is characterized by low-rise, Victorian-style single and semi-detached homes, whereas the perimeter is occupied by larger, residential and mixed-use buildings. On the east side of Church Street are 33 and 29-storey buildings is under construction.

To the immediate west is the 'Aura', a 78-storey mixed use building that is part of the larger College Park development. Further west are mixed-use buildings with varying heights (19, 30, 45 and 51 storeys) anchored by College Park Shops at the southwest corner of Yonge and College Streets. Central to the block is College Park, which is currently undergoing renovations and revitalization.

Southwest of the site, is a designated 2-storey heritage building (Elephant and Castle pub) and the Delta Chelsea Hotel which is currently subject of an application for the comprehensive redevelopment of the block, which includes a 3-tower mixed use development containing residential, hotel, office and retail uses. The proposed towers range from 49 to 88 storeys. West of the hotel is a 43-storey mixed use building located at the southeast corner of Bay Street and Gerrard Street. Further west are a number of built and approved tall buildings ranging in height from 14 to 55 storeys.

Immediately south of the subject site are 2- and 3-storey mixed use buildings and a the 4-storey Covenant House building. A number of these buildings have been designated under the Ontario Heritage Act. East of the Covenant House are 12- and 34-storey rental apartment buildings.

At the southeast corner of Yonge Street and Gerrard Street is a proposed 98-storey mixed use building containing office, retail and residential uses. South along the east side of Yonge Street is the 9-storey Ryerson Student Learning Centre (341 Yonge Street). The Ryerson University campus is generally bounded by Gerrard Street to the north, Dundas Street to the south, Yonge Street to the west and Jarvis Street to the east. Within this campus area, building heights range from 5 to 15 storeys, with the exception of a 27-storey building which is currently under



construction at 270-288 Church Street. The building will contain academic, administrative, and retail as well as student resident units.

#### Grandfather Clause

It is also our understanding that the Plan policies will be used to evaluate current and future development applications in the Downtown Plan area. As mentioned previously in this correspondence, the subject site is currently 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.

#### Proposed Designation

The Plan redesignates the subject site from *Mixed Use Areas* to *Mixed Use Areas 2 – Intermediate*, which permits low-rise, mid-rise and some tall buildings (Policy 6.25) (our emphasis). Although the policy appears to, through the use of the word 'some', include flexibility in its application, we are concerned that it might be narrowly interpreted and not sufficiently flexible to permit a tall building on the subject site. This, in our opinion, would not allow the use of the property to be optimized in a manner that is consistent with the PPS and in conformity with the Growth Plan.

One of the key policy directions expressed in the PPS is to build strong communities by promoting efficient development and land use patterns. To that end, the PPS contains a number of policies that promote intensification, redevelopment and compact built form, particularly in areas well served by public transit. In particular, 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.



With respect to housing, Policy 1.4.3 requires provision to be made for an appropriate range of housing types and densities to meet projected requirements of current and future residents by, among other matters, facilitating all forms of residential intensification and redevelopment and promoting densities for new housing which efficiently use land, resources, infrastructure and public service facilities and support the use of active transportation and public transit. 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 Growth Plan policies have been strengthened as they apply to the integration of land use and infrastructure planning, and the importance of “optimizing” the use of the land supply and infrastructure. In this respect, the Growth Plan has been revised by adding more detail about the objectives of a “complete community” and requiring minimum density targets for major transit station areas along priority transit corridors and existing subways.

The Growth Plan includes a number of additional policies applying to “major transit station areas”. In particular, Policy 2.2.4(2) requires the City of Toronto to delineate the boundaries of “major transit station areas” on priority transit corridors or subway lines “in a transit supportive manner that maximizes the size of the area and the number of potential transit users that are within walking distance of the station”. Policy 2.2.4(3)(a) goes on to require that “major transit station areas” served by subway to be planned for a minimum density target of 200 residents and jobs combined per hectare. 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.

The subject site is located within an approximate 173 metre walking distance of the College TTC Subway station, which provides access to the Yonge-University-Spadina line and connects to various other transit systems throughout Toronto and the Greater Toronto Area. It is also an approximate 370 metre walking distance

from the Yonge and Dundas intersection, which has connections to the Dundas TTC Subway station and the 505 Dundas Streetcar. As such, the site is within a “major transit station area” as identified in the Growth Plan and should therefore be in an area where growth should be prioritized.

The in-force *Mixed Use Areas* designation of the Official Plan provides that height and density is anticipated, particularly within the *Downtown*, subject to achieving appropriate massing and transition.

Although SASP 151 requires the conservation and stability of the McGill Granby Area, development of new housing is encouraged in *Mixed Use Areas*. It does not specify height or density, but rather emphasizes the importance of new building design minimizing overlook, overshadow, or the blocking of views from existing or committed house-form buildings.

The site is also within a development context that has supported a more dense built form than currently exists on the site. The immediately surrounding built form context includes the 78-storey building at 388 Yonge Street (Aura), the 33- and 43-storey buildings at 21-25 Carlton Street (the Met), the 29-storey building under construction at 365-375 Church Street, the 33-storey building under construction at 355 Church Street (Alter), the 45- and 51-storey buildings at 761-763 Bay Street (Residences of College Park), the 50- and 63-storey buildings under construction at southwest corner of Yonge Street and Grenville Street, two 31-storey and a 32-storey building at 736, 750 and 770 Bay Street, the 43-storey building under construction at 43 Gerrard Street West and the 34-storey building at 38 Elm Street (Minto Plaza). Further, heights including 88 and 98 storeys are currently proposed south of Gerrard on the west and east sides of Yonge Street, respectively.

Based on the foregoing, it is our opinion that limiting tall buildings in the *Mixed Use Areas 2* designation is not consistent with the provincial policy nor does it conform with the Growth Plan.

For these reasons, we recommend that the Downtown Plan be modified to provide more flexibility with respect to the notion that only ‘some’ tall buildings will be permitted in the *Mixed Use Areas 2* designation.

It is our opinion that Policy 6.25 should be reworded as follows:

*“Development within Mixed Use Areas 2 will include building typologies that respond to their site context including low-rise and midrise buildings. Tall buildings that appropriately demonstrate a transitional scale between Mixed*



*Use Areas 1 and areas designated for a lower scale of intensity are also permitted in accordance with Policy 6.26 of this Plan”.*

Further, Policy 6.26 provides that the scale and massing of buildings will respect and reinforce the existing and planned context of the neighbourhood, including the prevailing heights, massing, scale, density and building type. On a site such as the subject site, the existing and planned context varies – from the low-rise McGill-Granby neighbourhood to existing and proposed high-rise mixed use buildings in the Yonge Street corridor.

It is our opinion that the following language should be included after Policy 6.26:

*“When considering the existing and planned context as described in Section 6.26 above, all adjacent contexts in terms of prevailing heights, massing, scale, density and building type should be contemplated”.*

#### Built Form - Improving the Public Realm

The subject site is currently occupied by a 19-storey office building with retail/commercial uses at-grade. An application for a Zoning By-law Amendment was submitted in December 2017 to permit a mixed-use development on the subject site through the addition of a residential building on top of the existing office building. There are a number of proposed policies that are applicable to base buildings and policies that do not consider existing conditions, specifically, Policies 9.3 through 9.11 which address the public realm.

The PPS, in Policy 1.1.3.3, provides that planning authorities shall identify 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 (our emphasis). Further, the Growth Plan, in Section 2.1, provides the importunate to optimize the use of the existing urban land supply as well as the existing building and housing stock to avoid further over-designating land for future urban development (our emphasis).

The exclusion of a policy that addresses existing building as part of potential redevelopments is not, in our opinion, consistent with the PPS or in conformity with the Growth Plan. It is our opinion that the Plan should appropriately recognize existing buildings that are proposed to be retained as part of a redevelopment proposal.

In this respect, it is our opinion that the following additional language be inserted after Policy 9.11, as a new Policy 9.12, to address existing buildings:

*“Consideration of the policies of the Plan will be given to existing buildings that are retained through redevelopment, either on their own or as part of a comprehensive development, including building additions”.*

The policies in Section 9 following the proposed new Policy 9.12 would be renumbered accordingly.

### Housing

Policy 11.1 of the Plan includes requirements for bedroom mix that will apply to development containing more than 80 residential units. Specifically, the proposed bedroom mix is as follows:

- 11.1.1 a minimum of 15 per cent of the total number of units as 2-bedroom units of 87 square metres of gross floor area or more;
- 11.1.2 a minimum of 10 per cent of the total number of units as 3-bedroom units of 100 square metres of gross floor area or more;
- 11.1.3 an additional 15 per cent of the total number of units will be a combination of 2-bedroom and 3-bedroom units.

It is our opinion that the requirement to provide additional 2- and 3-bedroom units should be determined through an appropriate study, or studies, which take into account demand based on the market. In this respect, it is our opinion that the following additional language be inserted after Policy 11.1.3, as a new Policy 11.1.4, to address the market demand of 2- and 3-bedroom units:

*“Should Policies 11.1.1 and 11.1.2 for development containing more than 80 residential units be met, Policy 11.1.3 shall be applicable only should market demand demonstrate the need for additional 2- and 3-bedroom units over and above the requirement in Policies 11.1.1 and 11.1.2. This shall be demonstrated to the satisfaction of the City”.*

### Other Comments

In addition to the items outlined above, we have a concern with respect to the way in which the Official Plan Amendment No. 406 and the Downtown Plan are being



brought forward for approval. We disagree that the Official Plan Amendment is a conformity exercise to the Growth Plan under Section 26 of the *Planning Act* and have significant concerns with Staff's position, as identified in the staff report, dated August 18, 2017, that the Draft OPA only achieves "partial conformity" with the Growth Plan and that additional work is necessary to achieve "full conformity". Further, the staff report also indicates an approach for "phased conformity". It is our opinion that this is inappropriate and that the City should undertake a full and complete municipal comprehensive review that considers all mandatory aspects of the Growth Plan.

We are continuing to review the available documentation and can provide supplementary correspondence as required. However, based on the foregoing, it is our opinion that the proposed Official Plan Amendment No. 406 and proposed Downtown Plan should be deferred and not adopted in their current form. If you have any questions, please do not hesitate to contact the undersigned or Claire Ricker of our office at (416) 947-9744.

Yours truly,  
**Bousfields Inc.**



Kate Cooper, MCIP RPP

cc. Scott Craig/Armin Martens, Artis Young Street Ltd.  
Calvin Lantz, Stikeman Elliot LLP