

**Stikeman Elliott**

Stikeman Elliott LLP  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, ON Canada M5L 1B9

Main: 416 869 5500  
Fax: 416 947 0866  
www.stikeman.com

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

May 18, 2018  
File No.: 130514.1008

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  
126-142 John Street & 259-267 Richmond Street and Various Others in  
Downtown**

We are counsel to RioCan REIT ("RioCan"), owner of the property municipally known as 126-142 John Street & 259-267 Richmond Street West, located on the south side of Richmond Street West, between Widmer Street and John 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.

RioCan is also the owner of other properties, including 649-651 Queen Street West and 85 Bloor Street West, and maintains various interests in land throughout the Downtown area of the City of Toronto (the "Properties"). RioCan also acquires additional interests in land in the City from time to time. As a result, RioCan has concerns with the TOcore OPA on macro level, on a site specific basis and retains the right to identify additional properties of concern within the area subject to the TOcore OPA.

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**

RioCan 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, specific to the Property, which are further documented in the attached Planning Opinion letter by Peter F. Smith and Tyler Grinyer of Bousfields Inc., dated May 17, 2018. In general, policies included in the TOCore OPA that are of concern to RioCan 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 and Properties in an area 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.

## **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 RioCan has 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 RioCan, 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 by Peter F. Smith and Tyler Grinyer of Bousfields Inc., dated May 17, 2018

cc. *RioCan REIT  
Bousfields Inc.*





Project No. 17310

May 17, 2018

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

Dear Mr. Mayor and Members of City Council:

**Re: *Item PG29.4 May 22, 2018 Council Meeting***  
***TOcore: Downtown Plan Official Plan Amendment***  
***126-142 John Street & 259-267 Richmond Street West, City of Toronto***

---

We are the planning consultants for RioCan REIT with respect to its property at 126-142 John Street & 259-267 Richmond Street West, located on the south side of Richmond Street West, between Widmer Street and John Street ("the subject site").

On behalf of our client, we have reviewed the draft Downtown Plan Official Plan Amendment ("the Downtown Plan"), which was considered and amended by Planning and Growth Management Committee on May 1, 2018, as well as the Supplementary Staff Report dated May 14, 2018. We, along with our client, have a number of concerns with the Downtown Plan, which are described below.

It is our opinion that the Downtown 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.

#### **Consistency and Conformity**

In our opinion, the proposed policies within the Downtown Plan are not consistent with the PPS and do not conform 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 provides a number of policies that promote intensification, redevelopment and compact built form, with emphasis in areas well served by public transit. 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. Growth Plan policies prioritize the integration of land use and infrastructure planning and the importance of “optimizing” the use of the land supply and infrastructure.

In this regard, the Downtown Plan does not take into account Provincial policy directions to optimize the use of land and infrastructure, particularly along transit and transportation corridors, and in particular within the Downtown Toronto urban growth centre and in “major transit station areas”. In this regard, “optimization” means making something “as fully perfect, functional, or effective as possible”.

Specifically, we have significant concerns with proposed Policy 6.8 applying to the King-Spadina and King-Parliament Secondary Plan Areas, which would require the greater of: the replacement of all existing non-residential gross floor area, including full replacement of cultural spaces; or a minimum of 25% of the total gross floor area as non-residential uses, including full replacement of cultural spaces. The policy, as currently drafted, provides no flexibility to take into account site size, site-specific conditions, or the impacts that non-residential uses may have on built form.

In particular, the requirement for replacement of the gross floor area of existing non-residential gross floor area has the potential to restrict intensification (or “optimization”) of sites such as this, which currently have a significant amount of non-residential floor area. In the event that it were not possible to lease sufficient commercial space to replace the existing floor space, the development of such a site would effectively be “frozen” in its current form. Similarly, the requirement for at least 25% of the floor space to be used for non-residential purposes would effectively diminish the potential for residential intensification depending on the strength of the commercial leasing market e.g. while 60,000 square metres of residential intensification would be achievable if it were possible to lease 20,000 square metres of commercial space, the amount of residential intensification would be limited to 30,000 square metres if only 10,000 square metre of commercial space were able to be leased. In our opinion, such a result would be contrary to the direction to optimize the use of land and infrastructure.

### **Other Concerns**

Furthermore, the “full replacement of cultural spaces” in the case of the subject site may be interpreted to require the replacement of the existing movie theatre as part of any redevelopment. The movie theatre is not owned or operated by RioCan and there is accordingly no ability to guarantee that a movie theatre would return to the site following redevelopment. In the absence of an ability to secure the return of a movie theatre, any redevelopment potential for the site could effectively be frozen.



We also have concerns with proposed Policy 11.1, which would require, for developments containing more than 80 residential units, 15% of the units to be two-bedroom units and 10% to be three-bedroom units, and would specify minimum unit sizes of 87 square metres for the two-bedroom units and 100 square metres for the three-bedroom units; and an additional 15% of the units to be a combination 2- and 3-bedroom units. In our opinion, such detailed numerical standards are inappropriate in a policy document. We believe that advancing these prescriptive measures without an in-depth review of market demand/supply and income/affordability results in significant risks with respect to housing affordability and could potentially stifle the development of new housing in the Downtown.

Finally, we have concerns with Policy 9.15, which restricts the maximum floorplate size to 750 square metres. Although the policy would allow for consideration of increases in the floorplate size, we are concerned that the policy may be interpreted in an overly restrictive manner with respect to demonstrating "to the City's satisfaction" that shadow, wind, sky view and transition impacts can be mitigated.

#### **Deferral Request**

The foregoing is not a comprehensive list of all the concerns that would arise from the application of the Downtown Plan to the subject site. Based on the concerns which arise from the policies outlined above which significantly affect the future development of the subject site, we request that the approval of the Downtown Plan be deferred by Council, at least as it applies to the subject site, so that all of the concerns can be discussed with Planning staff, and the results be reported to Council.

We appreciate your consideration of the foregoing submission. Should you require any additional information, please do not hesitate to contact one of the undersigned.

Yours very truly,

**Bousfields Inc.**



Peter F. Smith, B.E.S., MCIP, RPP



Tyler Grinyer, MCIP, RPP

cc: *Andrew Duncan, RioCan REIT*  
*Matthew Ortved, RioCan REIT*  
*Calvin Lantz, Stikeman Elliott LLP*