

TE29.19.1

Sean L. Gosnell  
T 416.367.6120  
F 416.367.6749  
sgosnell@blg.com

Borden Ladner Gervais LLP  
Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada M5H 4E3  
T 416.367.6000  
F 416.367.6749  
blg.com

**BLG**  
Borden Ladner Gervais

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**Delivered by Email (teycc@toronto.ca)**

Toronto and East York Community Council  
Toronto City Hall, 2nd Floor, West Tower  
100 Queen Street West  
Toronto, ON M5H 2N2

Attention: Ellen Devlin, Committee Administrator

Dear Ms. Devlin:

**Re: Letter of Objection - TEYCC Agenda Item TE29.19  
767-773 Yonge Street – Zoning Amendment Application  
Request for Direction Report (Ward 27)  
City File No. 16 118667 STE 27 OZ**

We are the solicitors for Bell Canada (“**Bell**”), the owners of the property municipally known as 15 Asquith Avenue in the City of Toronto (the “**Bell Property**”). The Bell Property is located immediately to the east and adjacent to the properties municipally known as 767-773 Yonge Street that are the subject of the above noted Zoning Amendment Application (the “**Menkes Application**”/ “**Menkes Property**”) by Menkes Residences Ltd. (“**Menkes**”).

### **Operations on Bell Property and Involvement in OMB Hearing**

The Bell Property is developed with a six (6) storey brick building that has been occupied by Bell since the 1920’s. This building currently serves as Bell’s third largest data and network communications centre in Toronto. The continued operation of this facility, without interruption, is critical to allowing Bell to maintain its communications and networking services to Toronto’s Downtown and beyond. The Menkes Application, as currently proposed, will undermine Bell’s ability to continue to provide such services without incurring significant financial and operational costs and is not in the public interest.

Bell has been granted party status at the Ontario Municipal Board proceedings for Menkes’ appeal of the Menkes Application (PL170084). A recent prehearing conference was held on January 10, 2018 and a further prehearing has been scheduled for February 15, 2017 to finalize the issues for the hearing. Bell has raised a number of issues in the OMB proceedings that have not been adequately examined or addressed by the applicant or the City in its Request for Direction Report dated January 9, 2018, including issues related to air quality/emissions, tower setbacks and access.

We write to advise the Toronto and East York Community Council of Bell's objection to the Menkes Application as currently proposed. It is our respectful opinion that it is premature for Community Council to adopt City Planning Division's recommendations in the Request for Direction Report in support of the settlement proposal, as our client's issues have not been properly examined and/or addressed at this time.

### **Issues Raised by Bell Not Addressed in Request for Direction Report**

The key issues raised by Bell that have not been adequately addressed in Menkes' settlement proposal and the Request for Direction Report are provided below:

#### 1) Air Quality / Emissions Issue Not Addressed

Due to its critical function in Bell's infrastructure network, the facility on the Bell Property is supported by three (3) standby generators to protect its power supply in the event of utility failure. These generators are tested regularly (at least once a month) at maximum capacity to ensure proper working function. During this testing period, contaminants recognized by the *Environmental Protection Act*, such as nitrogen oxides, are released into the atmosphere.

The settlement proposal includes balconies and operable windows on the east façade oriented towards the Bell Property. This will introduce new sensitive receptors that are closer to the generators than any existing sensitive receptors. The result is a significant increase to point of impingement (POI) concentrations that have not been properly assessed or accounted for by the applicant and exceed Ministry of the Environment and Climate Change (MOECC) limits.

The Request for Direction Report does not recognize the important function of the Bell facility on the City's communications infrastructure. The report is also silent on the issue of air quality and emissions, which is not surprising given that the applicant did not submit an air quality study or emissions modeling report. City Planning staff should require the applicant to address these concerns before recommending that City Council support the settlement proposal at the Ontario Municipal Board.

#### 2) Tower Setback Issue Not Addressed

The settlement proposal fails to comply with the City's recommended tower setbacks in its Tall Building Design Guidelines (2013) ("**Guidelines**") and Downtown Tall Buildings Vision and Supplementary Design Guidelines (2012).

In particular, the Guidelines require a setback of 12.5 metres or greater from the side and rear property lines or centre line of an abutting lane and a minimum tower separation distance of 25 metres. The 15 metre tower separation distance referred to in the Request for Direction Report was based on a 2004 standard in the Bloor-Yorkville/North Midtown Urban Design Guidelines, applies to the Yonge/Bloor height peak (the Menkes Property is outside the height peak), and is still not met in this case.

The Menkes Application proposes minimum tower setbacks that are well below the City's recommended standards:

- East tower setback – 2.8 metres from the centre line of the private lane (not 3.0 metres, as mentioned on page 6 of the Request for Direction Report, which is a reduction of the east setback from the prior proposal);
- North tower setback – 0.0 metres from Asquith Avenue; and
- South tower setback – 1.0 metres from 765 Yonge Street.

In addition to the concerns set out in the Guidelines regarding adverse impacts to sky views, privacy, daylighting and pedestrian-level wind, the reduced east tower setback will compound the air quality and emissions issue raised above. The reduced setback will also unilaterally force Bell to accommodate the 9.7 metre separation distance shortfall on its site to meet the Guidelines, which constrains the future development potential on the Bell property. Approval of the Menkes Application without proper consideration of the Bell Property represents a “first-to-the-post” development scenario that is discouraged in the Guidelines, as it places inappropriate restrictions on adjacent tall building sites from developing for tall buildings themselves.

### 3) Private Laneway Issue Not Addressed

A private laneway exists on the south side of Asquith Avenue. The private laneway is subject to multiple mutual access easements between Bell, Menkes and other adjacent landowners. The mutual easements prohibit, among other things, vehicle parking in the laneway and requires that the laneway be unobstructed at all times.

The Menkes Application proposes to use the laneway as the only means of vehicular access to the development's loading and service area, as well as to vehicle elevators for underground parking and car sharing services. Bell has concerns with the proposed use of the laneway due to its potential to interfere with and restrict Bell's current use and access to the laneway, contrary to the obligations of the parties under the easement agreements. Although staff appear to recognize that the laneway is subject to multiple easements (see page 8 of the Request for Direction Report), there is no evidence that staff properly considered the extent of the proposed use of the laneway and whether such use is consistent with the legal rights, obligations and restrictions under the easements.

The issue of access to loading/service areas and resident parking through the private laneway is integral to the proper consideration of the Menkes Application. This issue must be satisfactorily addressed with the parties to the private easement arrangements before City Council directs its legal staff to support the settlement proposal.

### **Conclusions and Requested Action**

My client remains committed to working with the applicant and the City to satisfactorily address the issues noted above. However, it is our respectful opinion that it is premature for the Toronto and East York Community Council to adopt the recommendations contained in the Request for Direction Report dated January 9, 2018. There still remains significant issues that have not been

properly examined or addressed that will negatively impact Bell's ability to continue its operations in the future on the Bell Property and restrict comprehensive planning of this area.

Accordingly, we request that the Toronto and East York Community Council **refuse** City Planning Staff's recommendation at this time and put forth a revised motion recommending that:

City Council direct the City Solicitor and other appropriate staff to attend at the Ontario Municipal Board in opposition to the settlement proposal until such time as the outstanding issues concerning air quality/emissions, tower setbacks and the private laneway are addressed to the satisfaction of the City Solicitor and the Chief Planner and Executive Director, City Planning, in consultation with Bell Canada.

We reserve our rights to make additional comments in the future as the process advances.

Yours very truly,

**BORDEN LADNER GERVAIS LLP**

A handwritten signature in black ink, appearing to read "Sean L. Gosnell". The signature is written in a cursive style with a large initial "S".

Sean L. Gosnell  
SG/cm

/Encl.

Cc: Client