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# AIRD & BERLIS LLP

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Barristers and Solicitors

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August 5, 2014

120819

BY EMAIL

Nancy Martins, Committee Administrator  
Planning and Growth Management Committee  
Toronto City Hall  
100 Queen Street West  
Toronto ON M5H 2N 2  
[pgmc@toronto.ca](mailto:pgmc@toronto.ca);

Dear Ms. Martins:

**Re: Planning and Growth Management Committee Meeting August 7, 2014  
McNicoll Bus Garage Transit Project Assessment Study  
PG35.23**

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Aird & Berlis LLP acts for the Mon Sheong Foundation. We made written and oral submissions to the July 23, 2014 meeting of the Toronto Transit Commission Board with respect to the above noted item. Copies of our written submission to the Board and our follow up letter to Michael Atlas, TTC Board counsel are attached.

Please note that at that TTC Meeting the Board also adopted a Recommendation to:

“Request staff to discuss with the Toronto Board of Health to ensure that there are no community health issues and to bring back the result of the discussion to the TTC.”

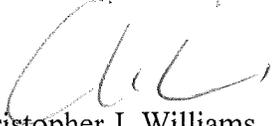
It is our respectful submission that Planning and Growth Management Committee defer this matter until staff have so reported back and the TTC has put its mind to this matter and our client's consultants have had sufficient time to properly review and report on the requested information as more particularly set out in our correspondence to Mr. Atlas attached.

Please list me as a deputant to speak to this matter at the Planning and Growth Management Committee meeting August 7, 2014 .

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Yours truly,

AIRD & BERLIS LLP



Christopher J. Williams

- c. Victor Wong
- c. Michael Atlas

CJW/RD/rd  
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# AIRD & BERLIS LLP

Barristers and Solicitors

Christopher J. Williams  
Direct: 416.865.7745  
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July 31, 2014

Our File No. 120819

BY EMAIL: [michael.atlas@ttc.ca](mailto:michael.atlas@ttc.ca)

Mr. Michael Atlas  
Senior Solicitor  
Toronto Transit Commission  
1900 Yonge Street  
Toronto, ON M4S 1Z2

Dear Mr. Atlas:

**Re: TTC Proposed McNicoll Bus Garage & Maintenance Facility**

As you are aware, we provided written correspondence prior to and made a deputation at the TTC Board Meeting held on Wednesday, July 23, 2014 regarding the above-referenced matter. As you may note from our written submissions to the Board dated July 22, 2014, we and our consultants did not receive the draft Environmental Project Report until the evening of Friday, July 18, 2014, only two business days prior to the TTC Board's consideration of this matter.

Starting on June 9, 2014, we had been writing to the TTC and to yourself requesting copies of the report, any sub-reports, drafts, etc. for review at least three weeks prior to the July 23<sup>rd</sup> meeting in order for our consultants to have at least minimally sufficient time to review the report, the sub-consultant's reports, and to prepare their submissions. In this way, we could have meaningful input into the process as contemplated by the TPAP. We were therefore disappointed (to say the least) to have received the reports at such a late date. It was shocking to then learn that the Traffic Impact Study had been completed on March 20, 2014, Noise Assessment on April 9, 2014, and Air Quality Assessment on May 12, 2014, all well before our June 9<sup>th</sup> request for same. This is inexcusable and is a demonstration of the TTC's abuse of the TPAP. In particular, the often repeated statement that the TTC has engaged in meaningful dialogue with our client (as well as other interested stakeholders) is entirely false given that there have been public meetings since the completion of the above-referenced reports and those reports were not provided.

We had and continue to request that your consultants, URS and Novus Environmental, meet and share the technical information that they are relying upon in the background reports to enable a proper independent professional peer review by our client's consultants. We would be pleased to meet or discuss with you arrangements necessary to effect a meaningful sharing of information so that our client will have the opportunity to provide meaningful input into the process. In this regard, we request that the TTC withdraw its Project from the consideration of PGMC and City Council scheduled for

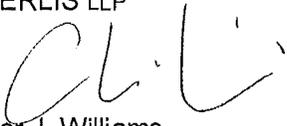
July 31, 2014  
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August, provide us with the requested information and resubmit for consideration by TTC Board with our client's technical reviews at a subsequent meeting of the TTC Board.

Please contact me at your earliest convenience regarding the same.

Yours truly,

AIRD & BERLIS LLP



Christopher J. Williams  
CJW/jad

c. Victor Wong, Mon Sheong

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# AIRD & BERLIS LLP

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Barristers and Solicitors

Christopher J. Williams  
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Direct: 416.865.7745  
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July 22, 2014

120819

BY EMAIL

Councillor Maria Augimeri, Chair  
Toronto Transit Commission  
1900 Yonge Street  
Toronto Ontario  
M4S 1Z2

Attention: Dawn McDonald, Corporate Services Secretariat, TTC

Dear Ms. McDonald:

**Re: WITHOUT PREJUDICE**

**Toronto Transit Commission Meeting  
July 23, 2014  
Item 8(a) McNicoll Bus Garage, Repair and Maintenance Facility**

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Aird & Berlis LLP acts for the Mon Sheong Foundation ("our client") which is the owner of property located at 2020 & 2030 McNicoll Avenue immediately adjacent to the proposed TTC McNicoll Bus Garage, Repair and Maintenance Facility.

### **Executive Summary Conclusion**

The TTC proposal is for a Class 3 Industrial Use and it is being put forward without sufficient regard to its land use planning context or its impact on adjacent sensitive land uses. Based upon the information we have been provided to date, it is our position that the Transit Project Assessment Process ("TPAP") should be terminated or that the undertaking for the proposed McNicoll Bus Garage Repair and Maintenance Facility should be subject to a full Municipal Environmental Assessment process. We make this recommendation based on the massive scale of the project, the plethora of sensitive uses immediately proximate, the uncertainty of the proposed Milliken Secondary Plan review put forward as a result of the City's Municipal Comprehensive Review and the ongoing Environmental Assessment for GO Transit in this area. We are also of the opinion that the repeated delays and withholding of critical technical information from the public to enable them to make an informed submission with respect to environmental impacts on their properties is not in compliance with the Provincial Policy Statement 2014, and it is not consistent with the requirements of the TPAP, bordering on bad faith.

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In this respect, we have noted that in the DRAFT EPR there are several references to the stakeholder role played by our client in the public consultation process. However, there should be no misunderstanding on the part of the Board that on reading this narrative that our clients have accepted the position of the authors as set out in their draft report as adequately or properly responding to our client's concerns, questions and objections raised during this process.

### **Background**

Our client's property at 2020 McNicoll is developed with a 246 unit specialized residential care facility with limited commercial and office uses. Their property located at 2030 McNicoll is developed with a 160 bed long term care facility for seniors. These are approved uses under the City of Toronto Official Plan and under current and proposed zoning by-laws.<sup>1</sup>

We made written submissions to the Commission on June 9, 2014 and, June 27, 2014 and an exchange of correspondence with TTC counsel on July 4, 2014 and July 11, 2014 specifically requesting the cooperation of the TTC to enable our client's consultants to carry out a peer review of the technical reports prepared in connection with this undertaking which will proceed under Ontario Regulation 231/08. We believe it truly to be in the interest of the Commission and our client to enable this process of review to take place and in the absence of such cooperation we submit that this omission reduces the ability of the Commission to claim the accelerated process under a TPAP. It is our position that there is a need for the process to be terminated or replaced with the scrutiny of a full Municipal Environmental Assessment.

In particular we requested that:

1. Our consultants obtain access to and/or copies of studies or reports subject to a Confidentiality Agreement as may be required to enable them to carry out a peer review prior to tabling the Draft EPR with the Commission which has now occurred;
2. Our consultants be provided with a period of at least three weeks to review the information; and
3. Our consultants be provided prior work which weighed various options and alternatives circa 2008.

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<sup>1</sup> Official Plan Chapter Seven, Site Specific Policy 104; former General Zoning By-law 24982 of the City of Scarborough as amended by By-law 981-2004; excluded from proposed City of Toronto Zoning By-law 569-2013.

**July 22, 2014**

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Instead our client's consultants obtained access to the posted Draft EPR at the end of the business day on the Friday July 18<sup>th</sup> two business days prior to today's meeting. This is not a sufficient or fair review period for any peer review to be carried out, the result of which in effect blocks any meaningful input to the Commission's recommendations by our client and its team of consultants prior to this consideration by the TTC Board.

This is disturbing and inexplicable considering that the Traffic Impact Study was completed March 20, 2014, the Noise Assessment was completed April 9, 2014 and the Air Quality Assessment completed May 12, 2014 well before our June 9<sup>th</sup> request which was refused. It appears to us that the TTC is abusing the expedited TPAP and for this reason alone it should be terminated.

### **Land Use**

Our client's property is designated Employment Area within an Employment District in the City of Toronto Official Plan, Chapter Seven, Site and Area Specific Policy 104 of the Official Plan indicates that business and trade schools, libraries, fraternal organization, long term care facilities, recreational uses and places of worship are permitted.

Zoning By-law 24982 of the former City Scarborough continues to apply to the property which is zoned M1-414-913-991-1054-202-454 which zoning specifically permits the current range of sensitive uses on the property.

At the time of the approval of the current zoning of the property in 2004, City Planning staff quite knowingly and enthusiastically supported the Mon Sheong Facility application.

“ Policy 3.4.5 of the Scarborough Official Plan allows for community facilities in the General Employment designation. The Community Facilities designation applies to a wide range of facilities which provide a service to the community and which make up an integral part of a neighbourhood or community. Policy 3.2.2 of the Scarborough Official Plan permits uses such as parks schools, educational facilities, arenas and community centres, libraries, places of worship and associated facilities servicing large geographic areas, day nurseries and nursery schools, hospitals, specialized residential care facilities, clinics, nursing homes, fraternal organizations and public services. . .

The proposed development will provide a continuum of residential accommodation for seniors supplemented with a level of care offered through in-house medical services and on-site medical staff dedicated to serve the residents of the buildings. Staff are of the opinion that the uses propose by the applicant constitute a specialized care facility and conform with the policies of the Scarborough Official Plan. The proposed use meets the intent of the new Toronto Official Plan . . .

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The resulting shared facilities between the long term care building and retirement lodge represents a unique and comprehensive way of providing a continuum of care for seniors.<sup>2</sup>

Proposed Official Plan Amendment 231 of the City of Toronto maintains the current Site and Area Specific Policy 104 in Chapter Seven of the Official Plan.

In addition as a result of the City's recent MCR, proposed OPA 231 also introduces a new Site Specific Policy 395 for lands north of our client's property to carry out a framework plan. The Framework Plan will satisfy the requirements of a Secondary Plan for a portion of the Milliken Planning Area. Among other matters, it is to specifically address a land use buffer to appropriately separate residential and sensitive non-residential uses from nearby Employment Areas. It will be our submission to Council and if necessary to the Ontario Municipal Board, that the boundaries of the site specific study area are insufficient and should include our client's lands to address its sensitive land use.

The Provincial Policy Statement 2014 defines "Sensitive Land Uses" to mean buildings, amenity areas, or outdoor spaces where routine or normal activities occurring at reasonably expected times would experience one or more adverse effects from contaminant discharges generated by a nearby major facility. Sensitive Land uses may be part of a natural or a built environment. Examples may include but are not limited to residences, day care centres, and educational health facilities. Major Facilities under the PPS 2014 are those which may require separation from sensitive land uses including but not limited to . . . transportation infrastructure (such as this project) and corridors. . .

Land Use Compatibility Policy 1.2.6.1 of the PPS states that Major facilities and sensitive land uses should be planned to ensure they are appropriately designed, buffered and/or separated from each other to prevent or to mitigate adverse effects from odour, noise and other contaminants, minimize risk to public health and safety and to ensure the long-term viability of major facilities.

#### **TPAP**

Our client has been involved with the public consultation process of the TTC and the City as part of this current undertaking intended to proceed as a Transit Project Assessment.

Our client's consultants have advised that the Draft EPR is not sufficient in its current form and the information provided is not sufficient for an informed peer review to be completed without further cooperation from the Commission and its staff to provide further information and to answer further questions.

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<sup>2</sup> Staff Report dated August 31, 2004 – Application Number TF 03 195543 ESC 39 OZ

## Noise

Our client's consultant is Valcoustics Canada Ltd who have carried out a preliminary review of the Draft EPR dated July 2014 , prepared by URS and, in particular the Novus Environmental Noise Report dated April 9, 2014 Appendix C thereto. Our consultants have advised that as presented, it is not possible to prepare a meaningful peer review without further information. It is not practicable for the consultants to verify the details of the noise analysis or numerical results without access to the computerized acoustical model.

The noise study does not define the extent of the noise issue, quantify the extent or the mitigation needed and/or clearly investigate/discuss the means of mitigation. In particular, with respect to Option 1 for noise mitigation of the buses travelling on the exit route we are advised it should be rejected outright.

Our client's consultants have also noted that for many specifics, the noise study is not based on an actual design but is based on data from comparable TTC facilities with various assumptions as to worse case scenarios. At some point in time, the MOE will require a detailed Acoustic Assessment Report (AAR) based on the actual design and equipment as part of the Ministry's Environmental Compliance Approval (ECA).

Our consultants have a number of unanswered technical questions and concerns about the noise/study report. TTC staff and their consultants should be instructed by the Commission to cooperate and provide our consultants with any updated acoustical models so that they can be properly checked and peer reviewed. On an ongoing basis, as detailed designs are made available, updates to the noise and relevant reports should also be made available to our consultants in a timely manner allowing sufficient time for their proper review and comment.

Unless the actual impacts on the Mon Sheong property are properly addressed, the undertaking will not comply with Section 1.1.1.(a) and 1.1.1(c) and 1.2.6.1 of the Provincial Policy Statement 2014.

We are advised there is no coordination between the Noise Report and the Traffic Impact Study.

The greatest overall deficiency is that the noise impact on easterly and northerly facades of the Mon Sheong facades is not defined or addressed with respect to the buses travelling on future Redlea Avenue. The bus traffic will be fully exposed to Mon Sheong and as close as possible to the Mon Sheong facilities.

## Air Quality

Our client's consultant is ORTECH Consulting Inc. who have reviewed the Draft EPR and the Air Quality Report prepared by NOVUS Environmental dated May 12, 2014 Appendix

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B thereto. The most important issue they advise is that the report does not comment on the applicability of the regulatory Air Quality standards and guidelines for sensitive receptors such as the seniors residence and long term health care facilities. This should be fully done since it is known that the health of seniors is more sensitive than that of other persons to air pollutants.

We are advised that the air quality assessment does not account for the bus emissions outside of the garage. The emissions from buses leaving the garage will have a pronounced effect on the Mon Sheong facilities and will affect the conclusions of the Air Quality Report.

Further the design team assumptions as to the vehicle bus operation schedules were not described and these assumptions could significantly affect the report's conclusions.

Section 5.0 states that maximum impacts were predicted at the Mon Sheong seniors residence, however, it appears that all off-property sensitive receptors and property line locations as required by the MOE are not addressed.

The MOVES vehicle emissions data base may not be appropriate or conservative considering the age of the TTC Fleet. The older buses will have increased emissions which could affect the conclusions.

Finally it may be more appropriate to use the Air Quality data for the last five years with the meteorological data of the same period rather than the data of 2006 to 2010.

Our Air Quality consultant has many unanswered questions of the TTC consultant.

### **Traffic Impact Study**

Our client's consultant is Trans-Plan Inc. who have reviewed the Draft EPR and the Traffic Impact Study dated March 20, 2014 prepared by URS Canada Appendix A thereto.

We are advised the study does not properly acknowledge the Mon Sheong Long Term Care Facility and at one point appears to refer to our client's property as a retail plaza in connection with a Right In Right Out driveway .<sup>3</sup>

We are advised that the assignment of a large portion of the site traffic to the intersection of Kennedy Road and McNicoll should more carefully consider the location of the Mon Sheong facilities when determining the routing of the buses to and from the Bus Garage Facility.

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<sup>3</sup> Page 5 and Figure 4.1

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We are advised that given the spacing between Kennedy Road and the proposed Redlea extension there are concerns with traffic congestion and vehicle queuing at the intersections.

We are advised there is a history of traffic infiltration through the Mon Sheong site in an effort to avoid westbound right turns and southbound left turns at the Kennedy Road and McNicoll intersection. Given the existing and future traffic concerns at the intersection, the Traffic Impact Study should acknowledge and address the problem of traffic infiltration through the Mon Sheong grounds.

The study fails to review existing and future pedestrian connections for the sites and make recommendations for the provision of continuous sidewalks in the vicinity of the Mon Sheong site.

A comparison of the road network volumes for the peak and off-peaks hours before and after the addition of the TTC site traffic has not been provided to support the claim that the impact will be minimal. The assessment should also consider the presence of the existing school(s) afternoon peak hours for this area. Traffic volumes on the boundary roadways and/or intersections for the Bus Garage hours of operation throughout the day should be provided to demonstrate the differences in peak hour and off-peak hour volumes.

The TIS should include the Mon Sheong Facility driveway on Kennedy Road in the analysis.

The TIS should show the capacity analysis results with exclusive right turn lanes at Kennedy road and McNicoll Ave intersection and include this for future conditions.

The Traffic Impact report should address the concerns at Kennedy Road and McNicoll intersection and discuss potential improvements.

The trip generation rates do not appear consistent with a parking supply of 350 spaces, 100 bus maintenance staff and 400 operators . The trip generation rates should differentiate between passenger vehicles, standard buses and articulated buses.

Our Transportation consultant has many unanswered questions of the TTC consultant.

### **Conclusions**

Our client continues to seek the cooperation of the TTC Commission to carry out its technical peer review(s). Such alignment of resources is consistent with the intent and requirements of the Ontario Regulation 231/08 and good land use planning.

The Transit Project Assessment Process has established benchmarks to assure the Minister and the public that the undertaking has weighed all of the implications of the project.

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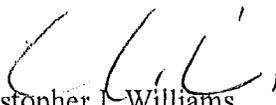
Our client remains seriously concerned based on the advice they have received that these benchmarks have not been achieved and it seeks the proper technical assurances in accordance with the expectations of the legislation. At this time, if not terminated we believe the appropriate process to be used for this undertaking is a full Municipal Environmental Assessment.

We repeat our request that the TTC Commission direct and authorize URS and NOVUS Environmental to meet and share the technical information they are relying upon in the background reports to enable a proper independent professional peer review by our client's consultants. All of which we add are being provided at our client's expense.

We are quite prepared to and look forward to an opportunity to speak to TTC counsel with respect to the arrangements necessary to effect such a sharing of information and peer review process.

Yours truly,

AIRD & BERLIS LLP

  
Christopher J. Williams

- c. Victor Wong, Mon Sheong
- c. Michael Atlas, TTC Counsel

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