



March 9, 2016

Via Email and Courier

Mayor and Members of Council
Toronto City Hall,
10th Floor, West Tower
100 Queen Street West
Toronto, ON M5H 2N2

Your Worship and Members of Council:

**Re: Item TE14.4, Toronto and East York Community Council February 23, 2016
Reference No. P:\2016\Cluster B\Plan\TEYCC\TE16021
Historic Yonge Street Heritage Conservation District Plan ("Yonge HCD Plan")**

We are the solicitors for the Building Industry and Land Development Association ("BILD"). On behalf of our client we set out below certain of BILD's concerns with the proposed Historic Yonge Street Heritage Conservation District and the proposed Yonge HCD Plan.

As you may recall, BILD has, for quite some time, expressed a strong interest in land use planning matters related to cultural heritage on a city-wide basis. As a result, BILD participated extensively in the exercise that resulted in the modification and approval by the Ontario Municipal Board of the City's OPA 199, being the culmination of the City's comprehensive review as it relates to cultural heritage. OPA 199 has linkages to Official Plan Amendment 183 as adopted by Council, to which BILD remains an appellant. The hearing of OPA 183 has been structured, in part, to accommodate the position of the City of Toronto that it is anticipating requesting the consolidation of appeals of the Yonge HCD Plan with the OPA 183 hearing. This background explains BILD's direct interest in the Yonge HCD Plan. This background also serves to explain BILD's first major concern, which is that the Yonge HCD Plan does not appropriately implement key elements of OPA 199. In particular, the Yonge HCD Plan neither provides adequate policies related to its review and amendment nor does it appropriately respond to the direction for a linkage to other planning policies.

BILD's second major concern is also informed by its participation in the OPA 199 process, but operates on a much more fundamental level: BILD is concerned that the Yonge HCD Plan is neither structured, nor worded in a manner which would provide for it to operate appropriately in the role it would have, if approved, as a matter of law, notwithstanding a current lack of clarity in that respect. The Yonge HCD Plan, to whatever extent and in whatever form it may ultimately be approved, based on the wording of the *Ontario Heritage Act* (the "Act"), would "prevail" over any municipal by-law. However, the wording of the Act provides for a different test when a new by-law or work is contemplated: no public work may be undertaken or by-law passed, that is "contrary to the objectives" therein. At this point insufficient caselaw exists to determine

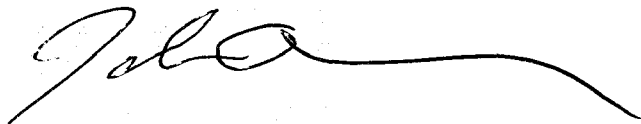
whether this difference in wording is legally significant. BILD submits that the Yonge HCD Plan, having a significant legal effect whatever the specific legal determination on this point ultimately proves to be, should have sufficient clarity that disputes about where it prevails or a by-law is "contrary" are reasonably minimized, which is not currently the case. As just one example, the "objective" that new development must "maintain and enhance the area's role as a destination for civic assembly" is vague and thus leaves room for significant dispute. This issue is particularly important given the legislative context: we note that whether a by-law or work conflicts with the Plan is not determined by Council's approval. In the *Ontario Heritage Act* there is no equivalent to the "deemed conformity" of an approved zoning by-law to the official plan as is found in the *Planning Act*. Therefore, any person could challenge a by-law or work or building permit in court after Council approves the matter in question on the basis, broadly stated, that it conflicts with the Yonge HCD Plan.

A third major concern for BILD is that the Yonge HCD Plan purports to govern matters which extend beyond the conservation of cultural heritage. For example, it requires alterations and additions to contributing properties to be designed to achieve sustainability objectives. As another example, it states that "public laneways should be enhanced with landscaping and lighting treatments with pedestrian-friendly environment". While BILD would acknowledge that both these matters might well arise in the course of a development approval and might therefore, for example, be matters secured in an agreement pursuant to section 37 of the *Planning Act*, BILD would also submit that neither of these topics are properly the subject of consideration as part of the conservation of cultural heritage attributes under the *Ontario Heritage Act*. There are a number of other instances where the Yonge HCD Plan purports to deal with matters outside the bounds of its proper ambit. It is BILD's submission that it is fundamental that any HCD Plan not attempt to extend its reach beyond that contemplated by its enabling legislation.

Accordingly, BILD request that the proposed Historic Yonge Street Heritage Conservation District and the proposed Yonge HCD Plan not be adopted in its current form, and further requests that staff be directed to consult with BILD representatives prior to reporting back to Council with a revised HCD Plan which addresses the matters raised herein.

Please provide us with notice of any consideration or decision respecting this matter by Council, or any Committee thereof, including but not limited to Community Council. Thank you for your consideration.

Yours truly,



John A.R. Dawson

JARD/sc