AIRD & BERLIS LLP
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February 23, 2016

Our File No.: 114838

BY EMAIL

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

Attention: Ros Dyers

Dear Ms. Dyers and Members of the Toronto East York Community Council:

Re: Community Council Agenda Item No. TE14.4
Designation of the Historic Yonge Street Conservation District under Part V of the Ontario *Heritage Act*

Please be advised that Aird & Berlis LLP represents KingSett Capital Inc., the owner of a number of properties located within the area encompassed by the Historic Yonge Street Conservation District Plan, prepared by the City pursuant to Part V of the Ontario *Heritage Act*.

Our client provided detailed correspondence to the Toronto Preservation Board (TPB), a copy of which is attached, for its consideration prior to the TPB making a recommendation to Community Council. That correspondence identified a number of inconsistencies within the Plan as well as elements that, in our view, represented inappropriate inclusions in the Plan.

We acknowledge that the Plan has been revised so as to remove the term "historic building material". Otherwise, however, the Plan which is before Community Council for recommendation has not been revised to respond to any other concerns which have been raised by our client, or those of other property owners in the area.

Accordingly, and for the reasons set out in the attached correspondence, our client maintains its objection to the adoption of the Plan at this time.

Finally, we note that included in the Staff Report is a recommendation that a number of properties within the area be included on the City's Heritage Register. As a result of the

inclusion on the Register, and pursuant to section 27 of the Ontario *Heritage Act*, the issuance of any demolition permits for those properties will be delayed. Accordingly, those individual properties and, as a result, most of the Yonge Street fabric, are protected. In our view, there is ample opportunity now for the City to undertake a more fulsome review of the comments provided on the Plan and to address those comments in advance of adoption of the Plan. We would urge this action on Community Council members to avoid objections to the Heritage Conservation District Plan as a whole.

We are unable to attend Community Council this morning, but would appreciate if this letter is put before members of the Committee.

Yours truly,

AIRD & BERLIS LLP

Eileen P.K. Costello
EPKC/lm
Encl.
c: Client
Craig Hunter, Hunter Associates

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January 28, 2016

Our File No.: 114838

BY EMAIL

Toronto Preservation Board
City of Toronto
100 Queen Street West
2nd Floor, West Tower, City Hall
Toronto, Ontario
M5H 2N2

Attention: Lourdes Bettencourt

Dear Chair and Members of the Toronto Preservation Board:

Re: Draft Historic Yonge Street Heritage Conservation District Plan

We act on behalf KingSett Capital Inc., the owner of the following properties, all located within the Historic Yonge Street Heritage Conservation District ("HCD"):

- 22 College Street
- 484-488 Yonge Street
- 490 Yonge Street
- 492/494 Yonge Street, 3 Grosvenor Street
- 496 Yonge, 2 Grosvenor
- 506-508 Yonge Street
- 510-512 Yonge Street
- 522-528 Yonge Street, 7 Breadalbane Street
- 543 Yonge Street
- 646-652 Yonge Street, 2-4 Irwin Avenue
- 664 Yonge Street
- 668 Yonge Street

We write in respect of the draft Historic Yonge Street HCD Plan (the "Plan") which we have now reviewed with our client and our client's heritage consultant.

Our client recognizes the historical significance of Yonge Street and understands the role of HCDs in conserving, protecting and enhancing the integrity of heritage resources. After reviewing the Plan, however, our client believes there is a disconnect between the Plan's

objectives and its likely impact on the economic vitality of Yonge Street and, as a consequence, the ongoing preservation of and investment in heritage properties in the area. The content of the Plan raises significant concerns which are set out below.

Mandatory Guidelines

The Plan contains both policies and guidelines. The guidelines are presented in the imperative voice which would indicate that they are mandatory. As will be discussed in further detail below, the compulsory nature of the guidelines produces excessively strict obligations that our client believes will stifle appropriate investment along this portion of Yonge Street.

The Plan states that the *Standards and Guidelines for the Conservation of Historic Places in Canada* provides the basis for its conservation policies and guidelines. We believe this document provides a clear, consistent and fair benchmark for heritage conservation. We would point out however, that unlike the Plan, this document does not impose prescriptive measures for how heritage conservation is to be achieved.

Our client requests that the Plan conform to the values-based framework of the *Standards and Guidelines for the Conservation of Historic Places in Canada* rather than the Plan's specific, inflexible approach.

10 Metre Stepback

The Plan imposes minimum stepbacks of 10 metres from all elevations that are adjacent to a street, including Yonge Street and all streets intersecting with it. This 10 metre stepback applies to both contributing properties and non-contributing properties (Sections 5.8.1 & 6.4.3). In the context of contributing properties there is no minimum height at which the stepback is triggered. Accordingly, a 1-storey addition and a 10-storey addition are treated equally by this provision.

Our client appreciates that the City seeks to maintain the "streetwall" heritage attribute of Yonge Street but notes that the Plan contains no justification for its determination that 10 metres is the stepback required in order to conserve the "main street character" of Yonge Street. In our opinion, the 10 metre stepback is arbitrary and will unduly restrict, and in some cases prevent, development on Yonge Street.

Policies for both contributing and non-contributing properties recognize that stepbacks greater than 10 metres may be determined where the minimum stepback does not conserve the cultural heritage value and attributes of adjacent properties (Sections 5.8.1 & 6.4.3). The Plan however, does not similarly contemplate that a lesser stepback may be appropriate in certain circumstances. In our opinion, this demonstrates the City's improper reliance on the Plan as a supplementary tool to control development, rather than a tool to preserve the heritage character of an area identified as an area of growth in the City's Official Plan and the Growth Plan.

Furthermore, the Plan's application of the 10 metre stepback not only from Yonge Street but from side streets as well, will have the effect of rendering many of the properties within the HCD undevelopable. This freeze on development will in turn hurt the reinvestment in and maintenance of heritage properties in the area.

In our opinion, the mandatory and inflexible application of the 10 metre stepback requirement is overly strict. This requirement is likely to produce situations in which developments that would otherwise conserve the cultural heritage value and attributes of adjacent properties but are unable to meet the 10 metre stepback, will not be permitted. In these situations, because of the Plan, the City will have no ability or flexibility to make exceptions to accommodate much needed new development in the City's downtown core.

Our client requests that a mandatory 10 metre stepback be reconsidered and replaced with a flexible guideline that is reasonable and workable in the context of an Urban Growth Centre.

75 Degree Angular Plane

The Plan imposes a 75 degree angular plane for new development, additions or alterations to both contributing and non-contributing properties (Sections 5.8.2 & 6.4.4). The Plan provides no evidence to demonstrate why its heritage objectives require the imposition of a 75 degree angular plane. Additionally, it provides no evidence to demonstrate why the angular plane is necessary for non-contributing properties.

It should be noted that the recently approved developments at 501-521 Yonge St., 6-8 Alexander St. and 23 Maitland St., 2-8 Gloucester St., 637 Yonge St. and 454-464 Yonge St., do not meet the Plan's 75 degree angular plane requirement.

The imposition of a 75 degree angular plane would render certain of our client's projects unachievable on Yonge Street. As above, our client requests that the 75 degree angular plane requirement be removed and replaced with a more flexible guideline which recognizes that higher density developments can be compatible with the Plan's heritage objectives and should be evaluated on a site by site basis.

Conflict with Provincial Objectives

The Plan acknowledges that the HCD is part of the built-up area and is an Urban Growth Centre as identified by the *Growth Plan For the Greater Golden Horseshoe*. Despite this recognition, the Plan does not discuss how the HCD's heritage objectives may be reconciled with the Province's density targets. In our client's view, the above components of the Plan will have the effect not only of sterilizing development along Yonge Street, in conflict with the province's plan to promote density in this part of the City, but will also mitigate against investment in heritage properties.

No Monitoring Provision

Section 9.2.5 discusses the periodic review of the Plan, however, it does not include any provisions for monitoring. For example, the Plan does not provide any guidance in terms of what baseline data should be collected, potential indicators for an evaluation, etc. The Plan also provides no clear definition of success against which to measure the Plan's objectives could be measured against. In our client's opinion, and that of its heritage consultants, the Plan should be modified to include provisions for monitoring and measuring its objectives.

Contributing and Non-Contributing

The Plan does not appear to contain any provisions for how development proposals for a site that includes both contributing and non-contributing properties should be evaluated for consistency with the Plan.

Definitions

Our client is concerned with the Plan's definition of "Historic Building Material" which the Plan considers to be "all material used to construct a structure, building, or landscape on a contributing property including those not visible from the public realm" (p. 68). In our opinion, this definition exceeds the authority set out in the *Ontario Heritage Act* which does not permit the designation of interior spaces.

Furthermore, the term "street" is defined in the plan as "... traffic lanes and sidewalks along a public right-of-way, as well as public laneways" (p. 69). This definition is more expansive than the definition of street provided in Zoning By-law 569-2013, which defines "street" as "...a public right-of-way for general traffic circulation." The conflict between the definitions is not recognized in section 9.3.1 of the Plan - Zoning, By-law, and Policy Changes, where contradictions to objectives and policies are reviewed. The Plan's definition would lead to a situation in which the Plan would prevail over the Zoning-By-law and would make the stepback and angular plane provisions of the Plan apply to elevations from a public lane rather than a street, as defined in Zoning By-law 569-2013. In our opinion, the definition of "street" should be revised to adopt the definition set out in the Zoning By-law.

Conclusion

Our client has been actively monitoring the Plan's development and has consistently advised against the kind of overly prescriptive approach that is now evident in the Plan's guidelines.

It is clear that the Plan in its current form will have significant implications not only for our client's extensive holdings in the HCD but also for the viability of this important

stretch of Yonge Street. We request that the Preservation Board recommend that the Plan be revised to reflect our client's above noted requests.

We look forward to addressing the Toronto Preservation Board on February 10, 2016 respecting this matter. Please be advised that due to a hearing conflict, my Partner, Kim Kovar from our office, will be in attendance at the meeting to speak on behalf of our client.

Yours truly,

AIRD & BERLIS LLP

Eileen Costello
EC/LD/lm/cg/dc

c: Client
Michael McClelland, ERA Architects Inc.
Craig Hunter, Hunter Associates

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