

September 5, 2017

VIA EMAIL

Our File #133057

Toronto and East York Community Council
City Clerk's Office,
2nd Floor, West Tower
100 Queen Street West
Toronto, ON M5H 2N2

Attention: Ellen Devlin, Committee Administrator

Dear Community Council Members:

**Re: TEYCC Agenda Item 26.14
Objection to Designation of the King-Spadina Heritage Conservation District
under Part V of the Ontario Heritage Act generally and as it relates to 39-47
Camden Street, 8-18 Camden Street, 422-424 Wellington Street West and 590,
592, 594, 596, 598 and 602 Richmond Street West**

Aird & Berlis LLP represents Lamb Development Corp. and its related companies, which own Wellington House Inc., Camden House Inc., and numerous properties located within and adjacent to the King-Spadina Heritage Conservation District (the "HCD") study area, including but not limited to 39-47 Camden Street, 8-18 Camden Street, 422-424 Wellington Street West and 590, 592, 594, 596, 598 and 602 Richmond Street West.

Our client has been engaged in the King-Spadina HCD process and wrote to Heritage Preservation Services setting out many of its concerns with the draft HCD Plan on January 3, 2017. A copy of this correspondence is attached hereto.

In addition to the concerns set out in our general letter, Lamb Development Corp. particularly objects to the draft HCD Plan's treatment of "contributing" properties. The information contained in the statements of contribution relating to its properties that have been identified as "contributing" in Appendix C of the draft HCD Plan is insufficient to substantiate such categorization.

Furthermore, the boundaries of the proposed HCD have been enlarged to include the north side of Richmond Street West since the first draft of the HCD Plan was released in October 2016. The Staff Report accompanying the revised version of the draft HCD Plan that is before Community Council provides no rationale for the expansion of the HCD's boundary. As a result of this enlargement, our client's properties at 590, 592, 594, 596, 598 and 602 Richmond Street West are now within the District's boundary.

Finally, we note that the HCD is within an area which is currently designated as *Regeneration Areas* in the City's Official Plan. The designation has provided for a very broad mix of uses, including residential uses, and has always been intended to receive a large portion of future urban

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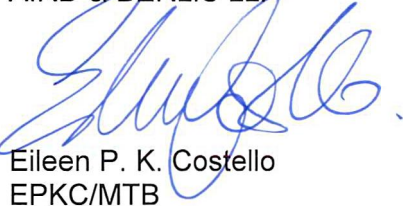
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growth. Accordingly, our client asks that any emerging planning framework continue to recognize the important role this area plays within the designated Growth Centre for the City in the context of the Growth Plan and the Provincial Policy Statement.

By this letter, we ask Community Council to oppose the staff recommendation to adopt the draft HCD Plan in its current form.

Sincerely,

AIRD & BERLIS LLP



Eileen P. K. Costello
EPKC/MTB

Encl.

c: Client

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AIRD & BERLIS LLP

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January 3, 2017

VIA EMAIL tansonc@toronto.ca

Our File #133057

Tamara Anson-Cartwright
Program Manager
Heritage Preservation Services
City of Toronto
City Hall, 17th Floor, East Tower
100 Queen Street West
Toronto, Ontario
M5H 2N2

Dear Ms. Anson-Cartwright:

**Re: Draft King-Spadina HCD Study Plan
Released for Public Review and Comment on October 25, 2016**

Aird & Berlis LLP represents Lamb Development Corp. and its related companies, which own Wellington House Inc., Camden House Inc., and numerous properties located within and adjacent to the King-Spadina Heritage Conservation District (the "HCD") study area.

Our client has now had the opportunity to review the draft King-Spadina HCD Plan (the "draft Plan") which was circulated by the City of Toronto (the "City") Heritage Preservation Services ("HPS") on October 25, 2016.

We note that the HCD is within an area which is currently designated as *Regeneration Areas* in the City's Official Plan. The designation has provided for a very broad mix of uses, including residential uses, and has always been intended to receive a large portion of future urban growth. The policies in the in-force Secondary Plan encouraged the reuse of buildings to stimulate reinvestment into the areas and also new development within the area.

We understand that the City is moving forward with a new secondary plan and implementing by-laws for the King-Spadina area and that the City intends for these *Planning Act* instruments work in concert with any heritage conservation district plan adopted under the *Ontario Heritage Act*. Our client supports this integrated approach to the planning framework for the area, but cautions that any resulting tools being developed to restrict or control development must be properly found within the instruments adopted under the *Planning Act* and not in the draft HCD Plan. Additionally, our client expects that any emerging planning framework will continue to recognize the important role this area plays within the designated Growth Centre for the City in the context of the Growth Plan and the Provincial Policy Statement.

We provide the following comments with respect to the draft HCD Plan.

(1) Boundary/Area/Sub-Areas

Rather than delineating a cohesive area with consistent cultural heritage value, the basis of the proposed HCD boundary appears to merely track the boundary of the in-force Secondary Plan Area, with some modifications. It has not been demonstrated that this large area has a consistent cultural heritage value which can be read as a whole.

The proposed HCD boundary results in an area which lacks cohesion in terms of built form and heritage attributes and lacks historic integrity. The fact that eight sub-districts are required in order to provide any certainty with respect to the application of the policies is an acknowledgment of the draft HCD Plan's inappropriately expansive boundary.

On behalf of our client we request that the draft HCD Plan be sent back for further consultation with the community in relation to the extent of the proposed boundary. In particular, we ask that the City consider replacing the draft HCD Plan with more refined, physically concentrated districts that have coherent and integral cultural heritage value and discernable heritage attributes.

(2) Contributing verses Non-Contributing

The HCD Plan only distinguishes between contributing and non-contributing properties and fails to differentiate the levels of contribution of each property to the HCD. The significance of the cultural heritage attributes within the District cannot be judged as is required under the Provincial Policy Statement if everything within the District that is "contributing" is of equal value. With no guidance from the "statements of contribution" (which merely provide information about a building's architectural style and number of storeys and include no details about the specific building's cultural heritage value) it becomes difficult, if not impossible, to contemplate using the draft Plan to evaluate development applications on a specific property.

(3) Comments on Draft Plan

Section 1 – Objectives

Overall, it appears that the Statement of Objectives makes almost no recognition (except for one objective) of the nature and manner in which development will occur within the HCD, which we note is an area designated and zoned for growth in the in-force Secondary Plan. For example, Objective #5 speaks to conserving the "predominant scale and built form pattern" in each character sub-area; this will inherently limit redevelopment as the predominant scale of built form character in many sub-character areas is in the range of less than 12 storeys. It also suggests, as an operating principle, that maintenance of heritage attributes is inconsistent with intensification and redevelopment.

The Objectives include the term "conserve" repetitively. We note that the definition of conserve, which includes "preservation, rehabilitation, restoration, or a combination of these conservation treatments" does not contemplate the adaptive reuse or development of the lands. Objective #13 is the only objective which speaks to adaptive reuse of contributing properties and only to facilitate "commercial, cultural and community based activities". This completely ignores the history of development in the area, consistent with the in-force policies which promote mixed use development, including residential development. It appears this objective is aimed at controlling

residential development; such an intent is inconsistent with the purpose and intent of a heritage conservation district.

Accordingly, our client requests that the Objectives in Section 1 of the draft HCD Plan be sent back for further consultation in order to ensure that they recognize the important role that this area plays in the City's broader economy and future growth.

Section 4.2 – Statement of Cultural Heritage Value

The Statement of Cultural Heritage Value provides an overview of the development of the area, commencing with its association with Fort York. This review effectively stops in the 1990s. Accordingly, the evolution of the area from residential to industrial, to entertainment to commercial and high-density residential is not fully captured in the Statement of Cultural Heritage Value's description of the area or the time frame in which it is positioned. The Statement of Cultural Heritage Value ignores entirely the extent of mixed use and residential development which has occurred in the area since the 1990s and the significant changes to the character of the area as a result of this type and form of development, notably the approximately 25,000 current residents and the expected increase of up to 50,000 residents in the near future.

Given that this Statement of Cultural Heritage Value is the lens through which the objectives, policies and guidelines of the draft Plan must be read, the failure to actually account for a key and critical part of the District's history, in our respectful submission, is a fundamental failing of the Plan. Consequently, we request that the draft HCD Plan be amended to include recognition of development in the area since the introduction of the Regeneration Areas designation, including the significant increase of residential development, and that appropriate amendments be made to other sections of the draft Plan to reflect this change.

Section 4.3 – Heritage Attributes

The general nature of the "attributes" listed in this section illustrate the challenges in having a heritage conservation district as large and varied as this one. We submit that the overly broad area of application has resulted in such broad and generic statements as to render the policies meaningless.

As an example, the statement the "height of contributing properties, generally between 2-12 storeys" is a statement of fact, derived solely from the existing height and the classification. While this is true, it is also true the height varies according to specific character areas and should not be used as a means of blanket control across the entire HCD. The fact that the range of 10 storeys is offered, a significant variation in actual building height given the large floor to ceiling clearances in many warehouse buildings, indicates the area as a whole lacks the integrity which one would expect within a heritage conservation district. In contrast, the Draper Heritage Conservation District has a clear and consistent built form which includes both a typology, height, massing and setbacks. There is no such consistent built form in the King-Spadina HCD area.

The reference to the Heritage Attributes of the public realm is also unclear and overly broad. The public realm with respect to the overall proposed district provides observations in the form of statements which do not provide a clear indication as to how these statements relate to the cultural heritage value of the area.

Section 5.5 – Character Sub-Areas

We offer the following comments with respect to some of the policies in relation to the heritage sub-areas:

- Bathurst Street: the west side of Bathurst Street has very few contributing buildings which vary greatly in terms of their built form, year of construction and other known elements. Many of these individual properties are already designated or listed. It is therefore unclear why this sub-character area has been created on the edge of the draft Plan area.
- St. Andrew: no rationale has been provided for the extension of the area to include the south side only of Richmond Street West. We note that, with the exception of the Public Utility complex, there are only two properties listed as “contributing” in the draft Plan and yet the entire area has been included in the draft Plan area. Furthermore, the attributes listed for the area do not reflect the elements found on those contributing properties.
- King Street West - Spadina Avenue to John Street: the description of the built form ignores recent approvals on the south side of King Street. The draft Plan reference to commercial row properties being generally 2-3 storeys, without accommodating these substantive changes, is misleading and incorrect.
- King Street West – Bathurst Street to Spadina Avenue: the description of the area makes no mention of the significant residential and mixed use development, including significant adaptive reuse of existing buildings, that, in our submission, is now characteristic of the area.
- Spadina Avenue: it is unclear if the reference to the “10-12 storeys tall” landmark buildings at the corner of Spadina Avenue and Adelaide Street West which define the character sub-area are intended to act as a height cap for that area. In our submission, a 10-12 storey height cap along Spadina Avenue conflicts with the approved Official Plan designation for the area and the street, the substantial access to existing and planned public transit and the right of way width of Spadina Avenue at 36m.

Section 6 – Policies and Guidelines for Contributing Properties

The introduction to this policy states that the policies are “required components of the designating by-law and are not discretionary”. In our view, this is completely at odds with the intent of a heritage conservation district plan; conformity is required to the objectives of an HCD Plan, not the policies and guidelines contained within that Plan.

Additionally, throughout Section 6, reference is made to the fact that alterations to a contributing property can only be permitted once the cultural heritage value of the entire District, as opposed to the property, have been analyzed and that any alterations are judged against the impact of the entirety of the District. We submit that this is inappropriate and overly broad, particularly in the context of the varied nature of built character throughout the proposed Plan area.

Section 6.4 – Demolition

Only when the “integrity” the contributing property is “lost” can demolition be contemplated under the draft Plan. This suggests that there can be nothing left of the heritage attributes of a building or structure in order for it to be capable of being demolished. Accordingly, under the draft Plan, it would appear that no contributing property can be demolished. However, there are several instances where the City has authorized the demolition of heritage resources in the context of the consideration of a development project. As drafted, the HCD Plan does not contemplate this kind of reasoned and informed review.

Additionally, in Section 6.5, reference is made to the fact that the removal of a building cannot be permitted unless the building or structure is unrelated to “its statement of contribution”, presumably of the property. The “statement of contribution” prepared by the City for each contributing building are of no assistance in assessing the removal of a building from a contributing property because the “statement of contribution” is in fact only a 2-3 line description of the contributing building’s built form, an indication of its typology, and bullet points with respect to the building’s alleged contribution.

Section 6.9 – Alterations

The draft Plan states that alteration of contributing properties shall be “complementary with and subordinate to” the District’s cultural heritage value. It is unclear to us why the alteration of a contributing property must be subordinate to the District’s cultural heritage value and heritage attributes, as opposed to alteration being required to respond to and enhance the heritage value of the contributing property itself. It is also unclear how the requirement of “subordinate” functions in respect of alterations involving an increase in height of more than 12 storeys, since any increase above 12 storeys would be contrary to the 2-12 storey stated heritage attributes of the District. We submit that this policy is inappropriate in an area that has been designated for growth in the City’s Official Plan consistent with the Growth Plan in the Provincial Policy Statement

Section 6.10 – Massing

The introduction of certain mandatory step-backs in this section, notably the step-backs as set out in Section 6.10.9 to 6.10.12 of the draft Plan, have no basis as heritage attributes within the proposed District. The proposal to impose a blanket application of mandatory step-backs within the HCD area provides no discretion to consider the height, composition or material of any addition. Furthermore, the mandatory nature of the policies and the lack of any reference to the actual heritage attributes of the contributing property in applying these minimum step-backs does not respond to the actual heritage attributes of a property – or even sub-character area – but, we submit, is rather an attempt to limit the properties which can be the subject of development.

Section 7 – New Development of Non-Contributing Properties

The inappropriate application of setbacks is further exacerbated when we read that new development and additions to **non-contributing properties** shall also address minimum setbacks: a minimum of 10 metres from all elevations facing John, Duncan and Spadina Avenue; and new development and additions to non-contributing properties must be stepped back a minimum of 5 metres from all elevations facing the street. It is unclear why the three streets specifically mentioned would require the same mandatory step-back requirement. No rationale is afforded in the Plan. We note that the right of way width of Spadina Avenue, at 36m, is nearly

double that of John and Duncan Streets. Additionally, the built form and heights vary greatly as between these three streets as to the nature and number of contributing properties. Once again, a mandatory step-back is required without rationale and without consideration for the unique built form and public realm characteristics in the area. These step-backs have no basis of a heritage attribute within the HCD.

Furthermore, we note that Section 7.2 extends the City's Official Plan requirement that alterations to properties adjacent to properties listed on the City's Heritage Register must ensure that the integrity of the adjacent heritage property's cultural heritage value and heritage attributes are preserved. Under the draft Plan, properties adjacent to the HCD area are now also required to ensure that any alteration or new development preserves the HCD's cultural heritage value and heritage attributes. We submit that this is an inappropriate extension of the draft Plan's policies and we question whether all property owners outside of, but adjacent to, the HCD area have been properly consulted and notified of the significant impact the new restrictions proposed in the draft Plan will have on their properties.

On behalf of our client, we request that the draft HCD Plan be amended to remove the mandatory step-back provisions included in both Sections 6 and 7 as these provisions do not reflect any heritage attributes identified in the Plan area, apply without consideration for the actual built form on the property or the proposed development and are more properly included in land use planning instruments such as by-laws or design guidelines.

As presented, the draft Plan will have significant impacts on an area which has been celebrated as a successful, vibrant and mixed use area of the City which has accommodated significant growth while conserving and enhancing its heritage resources. Indeed, it is the very juxtaposition of new growth with conserved and adaptively re-used heritage resources that has made this area unique.

We urge you to consider our client's comments and requests, and accordingly make substantial modifications to the draft Plan, including its boundary and inappropriate inclusion of certain character sub-areas, its statement of cultural value and its policies.

Sincerely,

AIRD & BERLIS LLP



Eileen P. K. Costello
EPKC/KMK/MTB

cc: Client
City Clerk
Councillor Joe Cressy