



McCarthy Tétrault LLP
PO Box 48, Suite 5300
Toronto-Dominion Bank Tower
Toronto ON M5K 1E6
Canada
Tel: 416-362-1812
Fax: 416-868-0673

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Re Bill 1109

John A.R. Dawson
Counsel
Direct Line: (416) 601-8300
Direct Fax: (416) 868-0673
Email: jdawson@mccarthy.ca

Assistant: Chiu, Stephanie Ying Hui
Direct Line: (416) 601-7863

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Via Email and Rush Courier

Mayor John Tory and Members of City Council
City of Toronto
Toronto City Hall
100 Queen Street West, 2nd Floor
Toronto ON M5H 2N2

Attention: Ulli Watkiss, City Clerk

Dear Sirs/Mesdames:

**Re: Proposed Official Plan Amendment No. 406 "Downtown Plan"
Item PG29.4**

We write on behalf of H&R REIT and associated companies (55 Yonge Portfolio Inc.; 26 Wellington Portfolio Inc.; 145 Wellington Portfolio Inc.; 320 Front Portfolio Inc.; 69 Yonge Portfolio Inc.; Corus 25 Dockside Inc.) (hereinafter "H&R"). H&R directly or indirectly owns a number of properties which will be subject to the Downtown Plan, if enacted, but is also looking to expand its investments in Downtown Toronto.

H&R would like to take this opportunity to set out a number of its concerns with the proposed Downtown Plan.

We would ask you, at the outset, to consider the perspective which H&R brings to the table. As a corporate entity, H&R's general objective could be articulated as the long term ownership and enhancement of its properties. Its business in Toronto to date has involved primarily non-residential uses, generally retail or office. It is now actively investigating opportunities for adding additional residential uses to its existing business in Downtown, based on the same business model (i.e. residential uses would be rental which is consistent with the goal of H&R retaining long-term ownership). Therefore the perspective that H&R brings is that of seeking long-term residency in the cities, and the neighbourhoods thereof, in which it does business.

It is from this perspective that H&R submits, notwithstanding the work done to date by city officials that, it continues to have a number of significant concerns with the Downtown Plan as is currently under contemplation and it requests that Council remit the Downtown Plan back to planning staff with a direction to report back with proposals to address the issues identified below.

At the outset, H&R submits that the proposed strict limitation on residential development by virtue of the policies for a proposed "Financial District" is not appropriate. Every site has its own characteristics, and other policies of the Downtown Plan would impose built form and other

restrictions and requirements which, coupled with the existing site context, render additional non-residential development unfeasible. In H&R's experience residential development in proximity to non-residential development renders the non-residential development more, not less, attractive. There is thus no policy agenda served by limiting new residential development. To the contrary, there will be cases where additional residential density will render additional non-residential feasible. Moreover, from a technical planning perspective, limiting residential development would serve to limit opportunities for use of the active transportation mode, contrary to the Provincial Policy Statement ("PPS ") and Growth Plan for the Greater Golden Horseshoe ("Growth Plan").

H&R is also concerned with the proposed policies respecting the provision of required parkland dedication off-site. The Official Plan already includes policies which enable such, so it appears that the intent of the proposed policies is to enable the City to require an off-site dedication. We respectfully submit that this is neither appropriate nor permitted by law. Ultimately, it introduces the risk that a third party could totally frustrate development, presumably at a very late stage in the process, thus discouraging development in the Downtown, contrary to both the PPS and the Growth Plan. As another matter respecting parks, we submit that if Council is considering varying the alternative standard for parkland dedication, such should form part of the Downtown Plan so that the full range of considerations attending intensification can be considered comprehensively. Finally, as an implementation matter, we submit that setbacks from parks, whether for Fire Code or whatever other purpose, should not automatically be mandatory. Doing so simply limits flexibility unnecessarily; for example, whether the City provides a landowner with a Limiting Distance Agreement to permit a lesser setback is entirely at the City's discretion.

Another significant concern is that the Downtown Plan purports to "require" a significant number of contributions (including but not limited to maintaining certain types of existing uses), without reference to section 37 of the Planning Act, and justification as would be required thereunder, to provide the platform therefor. We submit that at least aspects of the regime are contrary to law: as one example, as the policies are currently written the City would be using its powers under the Planning Act to provide itself with assets or benefits in its proprietary capacity that have insufficient justification in a requested increase in height or density. Another example of an issue in this respect is the expropriation, in functional terms at least, of building setbacks to the use of the public. The amount of the setback is not even known: various policies speak to (undefined) optimal tree growing conditions, adherence to City standards and a 6 metre "requirement" from a curb (which the City can, of course, change). Similar issues to all the foregoing attend the proposed new "requirement" for a non-profit daycare when it can be accommodated.

H&R also has concerns with the directions related to built form in the proposed Downtown Plan. As one example in this respect we submit that the proposed policies respecting built form transition inappropriately repudiate the fundamental direction set out in the Official Plan, which is that transition is to serve a purpose desired by the Plan, and is not a goal of itself. The Downtown Plan can be seen to set transition as a goal of itself: it indicates that the larger the difference in scale the greater the need for transition. The appropriate purposive approach would be to say that the greater the undue negative impact, described in functional terms related to the specific properties in question, the greater the need for transition. It may be that the transition to a two storey retail building with no windows on the facing wall should be different than the transition to a two storey single family home with principal room windows

facing. Other examples of H&R concerns are those with the "skyline policies" (which are too vague to be useable) or the tower floor plate size restrictions, since the *prima facie* restriction to 750 square metres serves to discourage development for non-residential purposes.

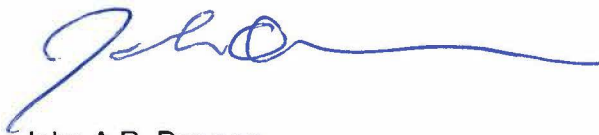
H&R also has concerns with other policies related directly or indirectly to built form, such as those related to shadows and POPS. However, the detail of all such concerns would be better addressed in further consultation. That said, at this juncture, we would respectfully suggest that one of the starting points for modifications to the Downtown Plan to make it more encouraging for those who are looking to invest in Downtown Toronto would be to remove the mandatory language and replace it with directory language: "should" instead of "will". We submit that Council will be better served by having the flexibility to review development proposals comprehensively, in terms of overall attributes, as opposed to checking off boxes on a list, and the community thus also better served.

Finally, on an overall basis, the cumulative effect of the "requirements" for the provision of contributions/benefits/dedications is that the Downtown Plan in the form now proposed discourages intensification in a manner that is inconsistent with the PPS and does not conform the Growth Plan. Furthermore, we submit that the adoption of the Downtown Plan is not appropriately processed pursuant to Section 26 of the *Planning Act*.

The Downtown Plan is a large enterprise, and is anticipated to have long standing implications. However, at this time it still has numerous shortcomings. H&R submits that it is worth taking the time now to create a robust instrument that will hold up over time. As the Downtown Plan is currently constituted, H&R would be compelled to object and/or seek modifications.

Thank you for your attention. Please provide us with notice of Council's disposition of this matter or any future disposition by Council, any Committee thereof or Community Council in this regard.

Yours truly,



John A.R. Dawson