



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

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*

July 24, 2018

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. 405 ("OPA 405")

We are the solicitors for N.H.D. Developments Limited ("Sorbara"), a developer which operates within the area to which OPA 405 would, if adopted, be applicable (the "Midtown"). On behalf of Sorbara we set out hereunder, in summary fashion, examples of its concerns with OPA 405. At this juncture Sorbara's request is that Council send this matter back to planning staff to permit discussions with a view towards resolving the issues set out below.

Fundamentally, it is our client's submission that the collective impact of the numerous new restrictions proposed by OPA 405 is to significantly discourage intensification within the area. Given the area's attributes, including but not limited to higher order public transit, we submit that the result is that OPA 405 does not conform to the Growth Plan for the Greater Golden Horseshoe ("Growth Plan") and is inconsistent with the Provincial Policy Statement ("PPS").

As a general overall comment, we submit that the analysis underlying the approach taken in OPA 405, which effectively allocates density within the Midtown, does not adequately respond to the direction in Growth Plan and PPS to "optimize" the use of land and infrastructure. Thus the fundamental underpinning of the built form regime, and the consequential building heights, have incorporated an arbitrariness not contemplated by provincial directives.

This issue is exacerbated by proposed built form policies which are by turn excessively prescriptive and excessively vague.

There are numerous examples of performance standards which we submit are inappropriately prescriptive for a secondary plan, such as various height standards (not only overall building height, but base building height and floor-to-ceiling height), open space, setbacks, stepbacks, floorplates and building separation. Requiring an official plan amendment for changes to such prescriptive standards discourages appropriate contextual response and architectural innovation.

An example of a vague policy are the directions respecting the “skyline”. Sorbara submits that OPA 405’s direction to “create a legible and distinct skyline that reinforces Midtown’s Area Structure and permitted building types “is capable of such a wide range of interpretations that it provides little assistance to any reader of the Plan.

Our client is also concerned with the approach in OPA 405 to various “requirements” for contributions/dedications/benefits.

Our client submits that a secondary plan should not be a vessel to “tee-up” takings or require contributions to the City, such as pedestrian surface easements or POPs, which are not firmly grounded in statutory jurisdiction, in the absence of the justification necessary to invoke the use of Section 37 of the *Planning Act*. Furthermore, in the case of parkland dedication, although statutory jurisdiction exists for an on-site dedication or cash-in-lieu thereof, our client submits that the apparent attempt to enable Council to require an off-site dedication exceeds that jurisdiction. Also in respect of parkland dedication, we note that OPA 405 would enable a new alternative standard. However, the new alternative standard is not identified nor constrained, being effectively reserved for a later determination by Council, and by virtue of the significant uncertainty engendered thereby the City is discouraging residential intensification, contrary to the Growth Plan and PPS.

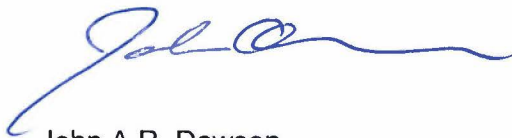
Sorbara also has concerns with aspects of OPA 405 related to use. One issue is with the requirement respecting minimum amounts of non-residential uses, especially when combined with prescriptive height limits on base buildings. Non-residential uses have different building requirements than residential, and from a practical perspective this means that non-residential uses must be confined to the podium. Thus the application of this policy could preclude otherwise desirable intensification. We submit therefore that the policy should be modified, introduce more flexibility and give Council more discretion, both building by building and Midtown-wide. Another “use” issue relates to prescriptive unit mix requirements. Projects should have the flexibility to respond to household formation and the availability of area services, both hard and soft, with a unit mix for which they can supplement services on-site.

Our client also has implementation and procedural concerns respecting OPA 405. An example of an implementation issue is the proposal to base contributions pursuant to Section 37 of the *Planning Act* on a percentage of the market value of the identified density increase, which we submit is not appropriate from either a legal or a planning perspective, being severed from any planning consideration. An example of a procedural concern is the City’s attempt to process OPA 405 under Section 26 of the *Planning Act*, which we submit is legally inappropriate.

Our client remains willing to engage with City officials on the consensual resolution of its issues, should the City be prepared to do so. In any event, please provide us with the notice of Council’s disposition in this matter, or any subsequent disposition by Council, any Committee thereof, or Community Council.

Thank you for your attention in this matter.

Yours truly,

A handwritten signature in blue ink, appearing to read "John A.R. Dawson", with a long, sweeping horizontal line extending to the right.

John A.R. Dawson