

Calvin Lantz
Direct: (416) 869-5669
clantz@stikeman.com

June 6, 2018

By E-mail

Planning & Growth Management Committee
10th Floor, West Tower, City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Attention: Ms. Nancy Martins, Secretariat

Dear Sirs and Mesdames:

**Re: PG30.4 – Midtown in Focus: Final Report
Yonge-Eglinton Secondary Plan Update
120 Eglinton Avenue East**

We are counsel to 678400 Ontario Inc., the owner of the property municipally known in the City of Toronto as 120 Eglinton Avenue East.

We have been advised by our client that for many months, our client has been working diligently with City staff on the proposed Yonge-Eglinton Secondary Plan Update, which is presently proceeding before the Committee as Official Plan Amendment No. 405 (the "**Draft Secondary Plan**"). Our client wishes to express its sincere appreciation for staff's efforts in engaging collaboratively with our client over the past several years in envisaging a renewed planning framework for the area. Through this consultation process, the Draft Secondary Plan has evolved over time to its present state—a draft plan that, in our client's view, generally appears to be headed in the right direction.

It is against this backdrop of collaborative consultation that our client wishes to express its serious concerns with certain policies contained in the Draft Secondary Plan, which have been summarized in the enclosed letter from our client's planning consultants, Bousfields Inc. These problematic policies undermine the City's bold and progressive vision for the area, as overly restrictive development standards threaten to stifle development, calling into question the very viability of building projects across the Secondary Plan area.

Our client shares the City's enthusiasm in planning for transit-supportive development in this key urban growth centre, and for this reason, **we urge the Committee to defer consideration of the Draft Secondary Plan for further consultation with impacted landowners and stakeholders.**

As outlined in greater detail in the enclosed letter from Bousfields Inc., our client's concerns include the following:

- The problematic policies in the Draft Secondary Plan run counter to several key objectives expressed in Provincial policy, including growth and intensification in strategic locations, transit-supportive development, and housing affordability. The Draft Secondary Plan is therefore inconsistent with the Provincial Policy Statement, 2014 and fails to conform to the Growth Plan for the Greater Golden Horseshoe, 2017.

- The Draft Secondary Plan contains numerous policies that are overly prescriptive, with arbitrary numerical standards expressed to a level of detail that is inappropriate for an Official Plan document. These overly prescriptive policies include limitations on building height, maximum floor plate areas, minimum bedroom counts and unit sizes, setback and stepback requirements, etc. While such development standards may be addressed through regulatory instruments (e.g., a zoning by-law) or guideline documents, it is wholly inappropriate for these standards to be introduced through a policy document, which is intended to establish the general planning vision for the area. For this reason, the Draft Secondary Plan is inconsistent with the *Planning Act*, which establishes the distinct roles for Official Plans and Zoning By-laws—each of which plays a specific function within the land use planning hierarchy in Ontario.
- The Draft Secondary Plan directs that monetary contributions obtained through Section 37 of the *Planning Act* be in an amount equal to 25% of the incremental market value of the gross floor area. The magnitude of this 25% monetary contribution is far greater than any that has been obtained from approved developments in the area, and there appears to be no reasonable basis to justify such an arbitrary figure. Such an aggressive policy has the potential to stifle development across the entire Secondary Plan area, thereby undermining the Provincial objectives for intensification and transit-supportive development.
- As a matter of process, our client is seriously concerned with City staff's attempt to cast the Draft Secondary Plan as a conformity update through Section 26 of the *Planning Act*. The Yonge-Eglinton Secondary Plan Update was not undertaken as an amendment under Section 26—which is evidenced in part by the fact that until now, there has been no indication in any reports or public meetings that the update is a component of the City's five-year review of its Official Plan. By casting the Draft Secondary Plan as a Section 26 Official Plan Amendment at this late juncture, City staff are attempting to eliminate any possibility for the Draft Secondary Plan to be reviewed by the Local Planning Appeal Tribunal; this constitutes an abuse of process. Staff's flawed interpretation of Section 26 leads to the troubling conclusion that any City-initiated Official Plan Amendment is shielded from appellate review simply by trite reference to Section 26 of the *Planning Act*. The purpose behind Section 26 is to ensure that a municipality's Official Plan is periodically updated on a comprehensive basis to ensure continued consistency and conformity with Provincial policy—its purpose is not to shield from appeal localized Official Plan Amendments that are introduced by the City on a piecemeal basis.

By this letter, we reiterate our request for the Committee to defer consideration of the Draft Secondary Plan to allow further consultation with impacted landowners and stakeholders.

Please provide us with notice of all upcoming meetings of Council and Committees of Council at which the Draft Secondary Plan will be considered, and we ask to be provided with notice of the Committee's and Council's decision with respect to this item, as well as any other upcoming meeting or decision regarding the Yonge-Eglinton Secondary Plan Update.

Yours truly,



for Calvin Lantz

CL/jsc
Encls.



June 6, 2018

Councillor David Shiner, Chair, and Members
Planning and Growth Management Committee
c/o Nancy Martins
10th Floor, West Tower, City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Dear Sirs/Madam:

Re: *Item PG30.4, June 7, 2018 Agenda*
Midtown in Focus: Yonge-Eglinton Secondary Plan OPA
120 Eglinton Avenue East

We are the planning consultants to 678400 Ontario Inc. with respect to the above-noted matter.

The subject site is located on the north side of Eglinton Avenue East between Yonge Street and Redpath Avenue. It is located within the Yonge-Eglinton “urban growth centre” and is approximately 245 metres from the entrance to the Eglinton subway station and future LRT station (and within approximately 355 metres of the entrance of the future Mount Pleasant LRT station), and is accordingly within a “major transit station area” as defined by the Growth Plan for the Greater Golden Horseshoe, 2017 (the “Growth Plan”).

We have reviewed the proposed Official Plan Amendment No. 405 (OPA 405) released for review on May 18, 2018 and have a number of concerns regarding the proposed Secondary Plan, which are described below.

In particular, it is our opinion that the proposed Secondary Plan’s level of prescriptiveness is undesirable and unnecessary, that the office replacement, Section 37 and parkland policies are onerous and not fair and balanced, and that the proposed Secondary Plan, as currently drafted, is not consistent with the Provincial Policy Statement (2014) and does not conform with the Growth Plan. In this respect, despite the fact that both Provincial policy documents promote intensification and compact built form, particularly in areas well served by public transit, the proposed Secondary Plan does not optimize the use of land and infrastructure.

More specifically, our concerns relate to the following matters, among others:

1. We have a fundamental concern that the proposed Secondary Plan does not properly recognize the importance of intensification around rapid transit stations, including subway and light rail transit. In order to be able to accommodate the growth and intensification targets set out for the City over the next 15-25 years and, even more critically, to be able to increase the housing supply going forward to help address the affordability problems we collectively face, we will need to take advantage of opportunities to intensify in “urban growth centres” and “major transit station areas”, where people can live and work without relying on private automobiles.

In that regard, the secondary plan area includes the Yonge-Eglinton *Centre*, in which the subject site is located, and is one of only 5 “urban growth centres” in the City of Toronto, as well 4 “major transit station areas” located around the Eglinton-Yonge subway/LRT station, the Davisville subway station and the Mount Pleasant and Leaside (formerly Bayview) LRT stations.

In our opinion, the approach in the proposed Secondary Plan would be counter-productive to the achievement of Provincial objectives related to intensification, transit-supportive development and housing affordability. It would restrict, rather than support, intensification potential in the area by either prohibiting high-rise development or imposing arbitrary height limits and other numerical standards that do not currently exist. In our opinion, these height limits should be removed or increased to allow approval of a project that is at an appropriate scale of intensification, and is designed to optimize the use of land and infrastructure, while adequately limiting built form impacts.

In our opinion, the proposed Secondary Plan, as currently drafted, is not consistent with the Provincial Policy Statement (PPS), 2014, and does not conform with the Growth Plan. More specifically, the proposed Secondary Plan does not optimize the use of land and infrastructure.

From a strategic perspective, planning for nodal intensification around key subway and LRT stations provides significant potential for integrating land use and transportation planning objectives. There are limited opportunities to optimize intensification on sites in proximity to rapid transit stations to meet the objectives of the PPS and the Growth Plan. Good planning requires taking advantage of rapid transit infrastructure on sites in the immediate proximity of subway stations, in order to maximize the number of potential transit users within walking distance of rapid transit.

Among other policies, Policy 1.7.1 of the PPS states that long-term prosperity should be supported by optimizing the use of land, resources, infrastructure and public service facilities, maintaining and enhancing the vitality and viability of downtowns and mainstreets, and encouraging a sense of place by promoting well-designed built form and cultural planning.

Policy 2.2.1(3)(c) of the Growth Plan directs municipalities to undertake integrated planning to manage forecasted growth to the horizon of this Plan, which will, among other things, provide direction for an urban form that will optimize infrastructure, particularly along transit and transportation corridors, to support the achievement of complete communities through a more compact built form. In this regard, to “optimize” means to make something “as fully perfect, functional, or effective as possible” (Merriam-Webster).

In our opinion, the failure to take this consideration into account or to give it proper weight does not conform with the direction in the Growth Plan to maximize “the number of potential transit users that are within walking distance of the station”. Instead, the proposed OPA appears to consider only the minimum density requirements set out in the Growth Plan.

2. It is our opinion that the proposed imposition of numerical height limits (and other such numerical standards, such as setbacks, floor plate sizes, base building heights, etc.) is generally inappropriate and undesirable in a policy document and is more appropriately included in a regulatory document (the zoning by-law) or a guideline document. Fundamentally, the imposition of numerical standards in an Official Plan has the potential to stifle creativity, to unnecessarily trigger the requirement for site-specific official plan amendments, and to create unnecessary technical debates (e.g. whether mechanical penthouses are included in tower and base building height limits; how wrapped mechanical penthouses are treated; how height is measured on a sloping site; whether mezzanine floors are counted as storeys, etc.).
3. Proposed Policy 5.3.36(c) would require a 3.0 metre stepback above the sixth storey, followed by a 3.0 metre stepback from the face of the base building, inclusive of balconies, for the tower portion, as per Policy 5.3.39. Typically, the 3-metre tower stepback above base building is to the tower face, excluding balconies. In addition, Policy 5.3.37 encourages additional stepbacks and/or terracing of building mass in the Eglinton Green Line Character Area, in which the subject site is located. As noted above, it is our opinion that such detailed numerical standards are inappropriate and undesirable in a policy document.

Furthermore, it appears that some standards such as the proposed 3-metre setback above the sixth storey were taken directly from the Mid-Rise Building Guidelines, which apply generically to *Avenues* throughout the City. It does not appear that the City conducted any area-specific analysis to evaluate whether that generic standard, for example, was appropriate in this context, having regard to both the area's access to rapid transit infrastructure and the taller mid-rise buildings that exist in the area (e.g. the 11-storey building existing on the subject site, which has no setbacks).

In addition, it does not appear that there was any area-specific analysis to evaluate whether a setback above the sixth storey is appropriate given the required 12 metre setback at grade (and above) to create the Eglinton Green Line (Policy 3.2.2(b)) and the 27 metre right-of-way of Eglinton Avenue East. These would result in a wide street space of at least 39 metres, considering both both public right-of-way and private setback, but not including setbacks on the south side of the street. Given this context, the imposition of an additional setback above the sixth storey is not necessary or appropriate.

In our opinion, the proposed 8-storey base building height limit, in conjunction with the required setbacks, would result in new development that would fit less harmoniously with the existing and planned context and would not optimize the use of land and transit infrastructure.

4. We have concerns regarding the provisions regarding tower floor plate size in Policy 5.3.41, which limit floor plates to 750 square metres gross construction area, with minor increases up to about 5 percent permitted if necessary to address structural requirements.

First, in our opinion, as above, such detailed numerical standards are inappropriate and undesirable in a policy document. Instead, they are more appropriately included in guideline documents such as the Tall Building Design Guidelines, which limits floor plates to 750 square metres but also provides the flexibility required when analyzing developments on a site-by-site basis.

Second, the maximum floor plate size, even with the potential for a 5 percent increase (to a maximum of 787.5 square metres), does not take into account the existing and approved built form context. In this regard, there are multiple examples of tower floor plates that have been built or recently approved in the Yonge-Eglinton area in excess of 787.5 square metres:

<u>Address</u>	<u>Tower Floor Plate (m² of GCA)</u>
----------------	---

70 Roehampton Avenue	1,238
101 Erskine Avenue	948
25 Broadway Avenue	935
197 Redpath Avenue	918
2131 Yonge Street/32 Hillside	890
58-68 Orchard View/439-445 Duplex	850
150 Redpath	809
155 Redpath	809
30 Roehampton	801
161-175 Eglinton Avenue East	798
2360-2378 Yonge Street	795
55 Eglinton Avenue East	788

On a related matter, Policy 5.3.40 would require tall buildings exceeding 40 storeys in height to provide further setbacks, while Policy 5.3.45(a) would require that the portions of tall buildings over 40 storeys provide for 30 metre tower separation distances as opposed to the more typical 25 metre separation. It is our opinion that these additional setbacks and required separation distances between towers are not necessary and, again, would serve to inappropriately limit floor plate sizes and reduce achievable density within a “strategic growth area”.

5. We have significant concerns with Policy 3.3.18, which would permit the City to adopt by by-law under Section 42 of the *Planning Act* an alternative requirement for parkland dedication at rates commensurate with the intensity of development. The proposed policy would allow the City to pass such a by-law, with the ability to base the alternative rates on, but not limited to, densities, building types, heights and/or the number of units associated with development, and could also include separate rates for land and cash in-lieu of parkland - - all without a public process that includes proper notice and rights of appeal.

If such policies are to be included in the Official Plan, a comprehensive City-wide study should be required to analyze the impacts and allow the opportunity for broad-based consultation. In this regard, it appears that, contrary to the approach set out in the city-wide (2006) Official Plan, the Yonge-Eglinton Secondary Plan is proposing to defer the important decisions regarding parkland rates to the Section 42 by-law, which has no legal requirement for public notice and consultation nor is it subject to appeal.

As set out in Provincial guidance documents that were prepared to explain the maximum alternative parkland dedication requirement (i.e. 1 ha/300 dwelling

units for land and 1 ha/500 dwelling units for cash-in-lieu), the Official Plan must contain policies which justify the rate chosen by the City and those policies are subject to testing through the appeal process. To leave the justification to the Section 42 By-law ignores entirely the direction to have the full planning justification tested through the Official Plan policies.

Furthermore, we are concerned that, while Policy 3.3.8 provides that, where a development site abuts the Park Street Loop or Davisville Community Street and on-site parkland dedication is required, the parkland is to be located in association with the Loop and Community Street, it is unclear whether the same is true for the Eglinton Green Line.

Furthermore, the applicable policies do not address whether full parkland dedication credit would be given if parking garages or other facilities are located below grade (e.g. as permitted by Policy 3.2.5(c) in the case of the Park Street Loop). As the proposed Secondary Plan calls for a number of different types of public and semi-private spaces, including mid-block connections, Policy 3.3.8 should be revised and new policies should be introduced to clarify that these spaces may be considered part of the parkland dedication, if it is required.

6. We have significant concerns with Policy 7.1, which would require development to provide 15% two-bedroom units with a minimum unit size of 87 square metres, 10% three-bedroom units with a minimum unit size of 100 square metres, and an additional 15% 2- or 3-bedroom units with no minimum size. Similar to our comments above, such detailed numerical standards are inappropriate in a policy document. Furthermore, if such policies are to be introduced in the Official Plan, that should be done on a City-wide basis with the requisite comprehensive study and opportunity for broad-based consultation. There is no apparent rationale for imposing such requirements in Yonge-Eglinton when they do not currently apply elsewhere in the City.

We strongly believe that advancing these prescriptive measures without an in-depth review of market demand/supply and income/affordability presents significant risks and could potentially frustrate affordability objectives that the City is trying to achieve. To the extent that unit size restrictions, in combination with increased development costs potentially arising from the proposed Section 37 and parkland policies, creates disincentives for intensification and redevelopment, the supply of new housing could also be adversely affected.

The setting of minimum unit sizes will have unintended consequences by reducing the affordability of market condominium or rental units, as

demonstrated in the table below. For these purposes, we have assumed a typical rental rate of \$3.50 per square foot and a 30% housing cost to income ratio.

	2 Bed Market	2 Bed Policy	3 Bed Market	3 Bed Policy
Size	72.5 sq.m. (780 sf)	87 sq.m. (936.5 sf)	83.5 sq.m. (900 sf)	100 sq.m. (1,076 sf)
Rents (\$3.50 psf)	\$2,730/month	\$3,278/month	\$3,150/month	\$3,766/month
Min Income (@30%)	\$109,200	\$131,120	\$126,000	\$150,640

7. We have significant concerns with Policy 9.4.5, which provides that the amount of a monetary Section 37 contribution will be equal to 25% of the incremental market value of the gross floor area.

In our opinion, the proposed policy is inappropriate in a number of respects. First, as with the unit size/mix policies, any such policy should be considered on a City-wide basis. Second, a formulaic approach to monetary contributions is not supported by the City's Section 37 implementation guidelines. Third, while the City's practice has been to use a percentage of the incremental increase in land value as a guideline for calculating a Section 37 contribution, that percentage has historically much less than 25%, particularly in Yonge-Eglinton. The resulting increase in the required Section 37 contributions will be significant under the proposed formula.

8. Finally, in our opinion, the proposed OPA cannot reasonably be considered to be part of a municipal comprehensive review and/or a provincial plan conformity exercise and, therefore, is not properly subject to Section 26 of the *Planning Act*.

Section 26(3)(a) requires Council to consult with the approval authority (in this case, the Ministry) and with prescribed public bodies with respect to any revisions to the official plan that may be necessary. There is no evidence that the Ministry was consulted with respect to the revisions required as part of the exercise, and even if so, the public has no information on that consultation or its results.

In addition, Section 26(3)(b) requires Council to hold a special public meeting that is open to the public to discuss the revisions to the official plan that may be required. There is no evidence that such a meeting was held. While the

special meeting of Council scheduled for June 7, 2018 (i.e. this Planning and Growth Management Committee meeting) purports to be the special public meeting required by Section 26(3)(b), we are of the view that it cannot properly be considered the required statutory meeting as it will not serve as an opportunity for members of the public to provide input on the “revisions that may be required” to bring the Official Plan into conformity with Provincial policies and plans (a meeting that in any event should occur near the beginning of the process).


Furthermore, it is our opinion that the proposed OPA cannot be considered a provincial conformity exercise, as it is not consistent with the PPS and does not conform with the Growth Plan, both of which contain a number of policies that promote intensification and compact built form, particularly in areas well served by public transit.

Finally, it is our opinion that the proposed OPA cannot be considered the result of a “municipal comprehensive review” because it does not provide density calculations within the Major Transit Station Areas and none of the documents presented to the public during and in support of the review process appear to provide any density calculations in terms of job and persons per hectare, as required by the Growth Plan.

For the foregoing reasons, we would request that OPA 405 not be adopted in its current form or, failing that, that the adoption of OPA 405 Plan be deferred, at least insofar as it applies to the subject site, with a direction that City Planning staff address the comments noted herein.

We appreciate your consideration of the foregoing submission. Should you require any additional information, please do not hesitate to me, or Mike Dror, Senior Planner, of our office.

Yours very truly,

Bousfields Inc.

Peter F. Smith, BES, MCIP, RPP

cc: Calvin Lantz, Stikeman Elliot