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BY EMAIL

February 25, 2019

Toronto Preservation Board

100 Queen Street West

City Hall

Toronto ON M5H 2N2

Attention: Members of the Toronto Preservation Board

**RE: Toronto Preservation Board Meeting – February 27, 2019
Item No. 2019.PB3.5
440 Unwin Avenue, Toronto**

We are solicitors for Studios of America Corporation and Studios of America Limited Partnership (the “Owners”), the owners of the lands municipally known as 440 Unwin Avenue, Toronto (the “Site”). The Site has been listed on the City’s Heritage Register since 2003 but is not designated under Part IV of the Ontario Heritage Act (“OHA”). We have been provided with a Staff Report dated February 7, 2019, recommending that City Council state its intention to designate the Site under Part IV of the OHA. The Owners object to such designation for the reasons set out below.

The Proposed Heritage Attributes are Inappropriate

The Heritage Attributes proposed to be identified through a Part IV designation are listed on pages 14 and 15 of the February 7, 2019 Staff Report. The list includes proposed heritage attributes under four headings:

1. EXTERIOR
2. INTERIOR
3. ANCILLARY BUILDINGS AND STRUCTURES
4. SETTING

The City undertook a heritage review of the Site prior to including the Site on the Heritage Register in 2003. The result of that review was to list only the building’s exterior and smokestack as heritage attributes. These attributes would fit entirely within the “EXTERIOR” category of the attributes proposed in the February 7 Staff Report.



More recently, prior to the transfer of the Site to the Owners, Ontario Power Generation Inc. (“OPG”) retained ERA Architects Inc. (“ERA”), a firm with expertise in cultural heritage evaluation, to complete a further cultural heritage evaluation for the Site. A summary of the research undertaken by ERA was issued in September 2015, with a Recommendations report being issued on January 18, 2016. We are advised by our client that the City requested and received a copy of this material from OPG. The ERA report found that the Site does not meet the criteria for having “provincial significance” (under Ontario Regulation 10/06) however, it does meet six of the nine evaluation criteria for heritage designation (under Ontario Regulation 9/06). The ERA report sets out the “Character-defining Elements” of the Site, as follows:

- The property’s siting within the Port Lands, on a strip of land between the Ship Channel and the Outer Harbour
- The structure’s immense scale and high degree of visibility
- The legibility of the building’s form, composed of several rectilinear masses
- The prominent 700-foot chimney, constructed of slipform concrete
- The original material palette, typical of mid-century industrial buildings, including brick, concrete, glass block, and limestone trim
- Interior elements, including structure and artifacts, that reflect the building’s original use

These recommendations focus on the exterior of the building with the exception of the last point, which includes for the first time the interior elements of the building. Nevertheless, the recommendations of the ERA report would all be incorporated as part of the “EXTERIOR” and “INTERIOR” headings within the February 7 Staff Report.

The City has not to our knowledge undertaken an independent study of the heritage attributes of the Site which contradict the findings of the ERA report. The February 7, 2019 Staff Report from the Senior Manager, Heritage Preservation Services was prepared in response to the direction given by Council at its meeting of January 30 and 31, 2019 which would suggest that the entire review process took no more than a week.

Accordingly the Owners are questioning the basis for the expansion of the items proposed as heritage attributes in the Staff Report and are particularly concerned with the Staff Report’s recommendation that the heritage attributes include the items listed under the headings of “ANCILLARY BUILDINGS AND STRUCTURES” and “SETTING”, none of which were considered for protection by the City in 2003, or identified by ERA. The description of the Heritage Attributes in the Staff Report appear to describe every physical feature of the Site rather than identifying appropriate Heritage Attributes.



A Designation Cannot be Imposed in Good Faith at this time

As noted in the Staff Report, City Council adopted a motion at its meeting of January 30 and 31, 2019, directing staff to initiate negotiations with the Owners for the acquisition of the Site at market value. City Council also directed the Deputy City Manager, Corporate Services to report to the Executive Committee at its meeting of April 9, 2019 regarding the status of such negotiations, and approval of business terms if applicable.

The Owners have been contacted by the City about a possible purchase, in accordance with the Council motion. Designating the Site as a heritage property would have an impact on these discussions and on the market value of the Site. The City, therefore, cannot in good faith designate the Site while these discussions are ongoing. Any consideration of a heritage designation should be deferred, at least until after the April 9, 2019 date for staff to provide an update to the Executive Committee.

No Prejudice to the City in Deferral

There would be no prejudice to the City, or to the consideration of a heritage designation of the Site, in deferring this matter. First, the existing status of the Site on the City's Heritage Register requires that the Owners provide 60 days notice prior to demolition, which would allow for consideration by the City if such notice were given. Secondly, there is a heritage easement on the Site which prohibits demolition, removal or alteration of Character-defining Elements without the consent of the City of Toronto. This easement was registered at the same time as the Site was transferred to the Owners. The Character-defining Elements for the purposes of the restrictive covenant are those listed in the ERA report.

For the reasons set out above, the Owners request the following:

1. That the City not pursue a Part IV designation for the Site at this time.
2. Should the City wish to pursue a Part IV designation, that the consideration of designation be deferred until after discussions are concluded between the Owners and the City as to whether the City may acquire the Site.
3. Should the City proceed now with a designation process, that the heritage attributes of the Site be revised to be consistent with the recommendations of the 2016 ERA Evaluation Report and/or the Heritage Register listing in 2003.

Yours truly,

LOOPSTRA NIXON LLP

Per: Quinto M. Annibale