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June 11, 2012

Reply To: Konstantine J. Stavrakos
Direct Dial: 416.365.3709
E-mail: kstavrakos@foglers.com
File No.: 123713

VIA EMAIL & REGULAR MAIL

The Honourable Jim Bradley
Minister of the Environment
Ferguson Block, 11th Floor
77 Wellesley Ave.
Toronto, ON M7A 2T5

Attention: Minister Bradley

Dear Minister Bradley:

Re: John Street Corridor Improvements (the “John Street Project”) Municipal Class Environmental Assessment Study (the “EA”) Request for Part II Order Pursuant to s. 16 of the Environmental Assessment Act (“EAA”)

We are writing on behalf of Don Wesley, co-captain of the Ward 20 advocacy group of Cycle Toronto (formerly the Toronto Cyclists Union) (“Ward 20 Cyclists”) in respect of the John Street Project EA. Mr. Wesley has the support of Ward 20 Cyclists in taking all steps necessary to address the Ward 20 Cyclists concerns with the EA.

John Street is an important north-south cycling route that contains the only signalized intersection on Queen Street West between University and Spadina Avenue. This route connects both the north and south sides of Queen Street West in a manner that allows cyclists to cross the streetcar tracks at a 90 degree angle. Crossing at a safe angle over streetcar tracks is of central importance to cyclists. The importance of this route is likely to increase in the future, given initiatives that the City of Toronto (the “City”) is taking to increase bike traffic through the area and new residential developments in the downtown core.

In a recent letter from the City to counsel for the Cycle Toronto in respect of the Front Street and Union Station Municipal Class Environmental Assessment Study (attached), the City has recognized that wider lanes provide a safer and more comfortable cycling environment. However, the EA proposes to narrow existing vehicular lanes along John Street without provision for bike traffic; thereby, effectively eliminating John Street as a cycling route and instead turning the route into a “ride at your own risk” corridor in which cyclist safety will be endangered due to competition for space with automobiles.

We have conducted a review of the EA and find that it does not comply with the Municipal Class Environmental Assessment¹ (“MCEA”) requirements to assess environmental impacts, and in particular the impacts on cyclists and their safety. Pursuant to s.13(3) of the *Environmental Assessment Act*² (“EAA”), this means that the John Street Project may not proceed unless you approve this project pursuant to s. 9 of the EAA. The MCEA further provides that failure to comply with its requirements may result in a Part II order under s.16 of the EAA.

In addition, the *de facto* elimination of the John Street cycling route and the failure to address the safety of cyclists is inconsistent with the 2005 Provincial Policy Statement³ (“PPS”) and does not conform with the Growth Plan for the Greater Golden Horseshoe⁴ (the “Growth Plan”). Pursuant to ss.3(5) and 3(6) of the *Planning Act*⁵ this means that the office of the Minister of the Environment is prohibited by statute from making any decision that would permit the Project as it is currently proposed to proceed.

Therefore, the EAA, MCEA and *Planning Act* permit only two Ministerial courses of action at this time:

- (1) An order under s. 9 of the EAA, that as the EA contravenes the requirements of the MCEA and s.3(5) and 3(6) of the *Planning Act*, the Project may not proceed until such time as the requirements of the MCEA and s.3(5) and 3(6) *Planning Act* are met;
- (2) An order under s. 16(1) of the EAA, that the City comply with Part II of the EAA before proceeding with the Project.

While the legal deficiencies in the EA may be addressed through either order, Mr. Wesley and the Ward 20 Cyclists prefer the first course of action. In the alternative, they request a Part II order. Our legal analysis with respect to the deficiencies in the EA and the legally available courses of action for the office of the Minister of the Environment are provided below.

We note, that we have written to the City requesting a meeting respecting these concerns on June 7, 2012 (attached). We have received a response from Stephen Schijns, Manager, Infrastructure Planning, Transportation Division, indicating that he is willing to meet (attached). Should the meeting resolve these issues we will advise your office.

¹ Municipal Engineers Association. *Municipal Class Environmental Assessment*. Order-in-Council No. 1923/2000. Mississauga, 2007. Print. [“MCEA”]

² *Environmental Assessment Act*, RSO 1990, c E18.

³ Ministry of Municipal Affairs and Housing. *2005 Provincial Policy Statement*. Order-in-Council No. 140/2005. Toronto: Queen’s Printer for Ontario, 2005. Print.

⁴ Ministry of Infrastructure. *Growth Plan for the Greater Golden Horseshoe*. Order-in-Council No. 1221/2006. N.p. 2006. Print. [“Growth Plan”]

⁵ *Planning Act*, RSO 1990, c P13.

1.0 NON-COMPLIANCE WITH MCEA REQUIREMENTS

The MCEA requires an assessment of the effects on the natural, social and economic environments of both alternative solutions and alternative design concepts.⁶

The John Street Project, as currently proposed, will impact an important north-south cycling route by narrowing existing lanes, and thereby requiring cyclists to compete for space along John Street with automotive traffic. It is significant to note that the cycling traffic through John Street was initially considerably underestimated and only partially corrected once these underestimates were brought to the City's attention.⁷

Furthermore, this cycling route is of growing importance, both due to residential development in the downtown core and due to City proposals for separated bicycle lanes within the Richmond-Adelaide corridor between Bathurst Street and Sherbourne Street, which will be subject to environmental assessment under the MCEA.⁸ If implemented, these separated lanes have the potential to increase north-south cyclist traffic along John Street.

Despite the clear potential for impacts, and the MCEA requirement to assess these impacts, the EA does not contain an assessment of the impacts of the proposed lane narrowing on cyclists and in particular an assessment of the increased risk of road collisions. Therefore, MCEA requirements have not been met.

We understand that the City has suggested that the cyclists should use other routes. This does not address the failure to assess impacts. For instance, an alternate route has been suggested for cyclists who currently travel south along Beverly Street to Stephanie Street, then west along Stephanie Street to John Street where they can cross Queen Street West at a signaled intersection and proceed south.

The suggested route involves taking Soho Street south and crossing Queen Street West to Peter Street to proceed further south. As there is a "jog" between Soho Street and Peter Street, in order to legally enter Peter Street, a cyclist must enter the center lane on Queen Street West to make a left hand turn, then cross streetcar tracks along a dangerous angle in the midst of oncoming automobile traffic.

No action has been taken by the City to straighten the Soho Street to Peter Street crossing to make it safe to cross, nor have the impacts of diverting cyclist traffic to other routes been assessed.

⁶ MCEA, *supra*, note 1 at A-27-A-29.

⁷ See Meslin, Dave. "Tally Ho! Exposing the City's Mindless Math." *Mez Dispenser*. N.p. 15 June 2011. Web. 5 June 2012. Porter, Catherine. "Porter: Will John St. be the next Jarvis for cyclists?" *Toronto Star*. 21 June 2011. Web. 5 June 2011. Schijns, Stephen. "Cycling Figures on John Street." City of Toronto Memorandum from Infrastructure Planning. City of Toronto. 30 June 2011. Print.

⁸ See City of Toronto. *Agenda Item PW5.1: Bikeway Network—2011 Update*. City Council Decision. 12–14 July 2011. Web. 5 June 2012. City of Toronto. *Agenda Item PW9.9: Feasibility of a Pilot Project for Separated Bicycle Lanes on Richmond Street and/or Adelaide Street*. City Council Decision. 29–30 November 2011 and 1 December 2011. Web. 5 June 2012.

Thus, the EA as presently constituted does not meet the requirements of the MCEA. Section 13 (3) of the EAA prohibits the City from proceeding with an EA that does not comply with the MCEA unless the Minister approves the EA:

13. (3) No person shall proceed with an undertaking with respect to which an approved class environmental assessment applies,

(a) unless the person does so in accordance with the class environmental assessment; or

(b) unless the Minister gives his or her approval to proceed under section 9 or the Tribunal gives its approval under section 9.1.⁹

Similarly, the MCEA states:

Failure to follow the process outlined in this document, however, is a breach of the EA approval under which this Class EA was authorized and therefore places the proponent in contravention of the EA...Non-compliance or failure to apply the approved process in the intended manner may result in:

- MOE revisiting the EA approval of a specific project, and/or
- the Minister issuing a Part II Order thereby requiring the proponent to carry out individual environmental assessments for those projects which previously had been the subject to the Class EA process.¹⁰

As the EA does not comply with MCEA requirements, and no approval has been obtained under s.9 of the EAA, the EAA prevents the City from proceeding with the John Street Project at this time.

2.0 INCONSISTENCY WITH THE PPS AND NON-CONFORMITY WITH THE GROWTH PLAN

Subsections 3(5) and 3(6) of the *Planning Act* prohibit the City from making any decisions or making any submissions that affect planning matters that are not consistent with the PPS or do not conform with the Growth Plan. Similarly, these provisions also prohibit Ministers and Ministries from making any decisions or making any submissions that affect planning matters that are not consistent with the PPS or do not conform with the Growth Plan.

The relevant sections of the *Planning Act* state as follows:

3 (5) A decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Municipal Board, in respect of the exercise of any authority that affects a planning matter,

⁹ EAA, *supra*, note 2, s.13(3).

¹⁰ MCEA, *supra*, note 1, at A-5–A-6.

(a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date of the decision; and

(b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be. 2006, c. 23, s. 5.

3 (6) Comments, submissions or advice affecting a planning matter that are provided by the council of a municipality, a local board, a planning board, a minister or ministry, board, commission or agency of the government,

(a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date the comments, submissions or advice are provided; and

(b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be.¹¹

Thus the office of the Minister of the Environment may only approve the EA under s.9 if consistency with the PPS and conformity with the Growth Plan are demonstrated. The MCEA incorporates these requirements as follows:

B.3.3.3 Policy and Guidelines

Throughout the planning and design process, and subsequently throughout the construction phase, the proponent is to comply with the policies and guidelines outlined by municipalities, or the provincial or federal governments in documents such as:

- Provincial policies, including:
 - Provincial Policy Statement (PPS)
 - The Planning Act
 - Places to Grow Act...¹²

Both the PPS and the Growth Plan contain a number of policies that protect the safety of cyclists and support the development of a multi-modal transportation system, including cyclists. Relevant PPS policies include:

1.5.1 Healthy, active communities should be promoted by:

a) planning public streets, spaces and facilities to be safe, meet the needs of pedestrians, and facilitate pedestrian and non-motorized movement, including but not limited to, walking and cycling;

...

1.6.5 Transportation Systems

¹¹ *Planning Act, supra*, note 5, s.3(5) and 3(6).

¹² MCEA, *supra*, note 1, at B-16.



1.6.5.1 Transportation systems should be provided which are safe, energy efficient, facilitate the movement of people and goods, and are appropriate to address projected needs.

...

1.7 Long-Term Economic Prosperity

1.7.1 Long-term economic prosperity should be supported by:

...

d) providing for an efficient, cost-effective, reliable multi-modal transportation system that is integrated with adjacent systems and those of other jurisdictions, and is appropriate to address projected needs;¹³

The Growth Plan provides more detailed policy requirements supporting cycling and cyclist safety. Relevant Growth Plan policies include:

3.2.2 Transportation—General

1. The transportation system within the GGH will be planned and managed to -

- a) provide connectivity among transportation modes for moving people and for moving goods
- b) offer a balance of transportation choices that reduces reliance upon any single mode and promotes transit, cycling and walking
- c) be sustainable, by encouraging the most financially and environmentally appropriate mode for trip-making
- d) offer multi-modal access to jobs, housing, schools, cultural and recreational opportunities, and goods and services
- e) provide for the safety of system users.

...

3. In planning for the development, optimization, and/or expansion of new or existing transportation corridors, the Ministers of Infrastructure and Transportation, other Ministers of the Crown, other public agencies and municipalities will—

- a) ensure that corridors are identified and protected to meet current and projected needs for various travel modes
- b) support opportunities for multi-modal use where feasible, in particular prioritizing transit and goods movement needs over those of single occupant automobiles

...

¹³ PPS, supra, note 3, at 10, 11, 13.

- d) consider separation of modes within corridors, where appropriate

....

3.2.3 Moving People

...

3. Municipalities will ensure that pedestrian and bicycle networks are integrated into transportation planning to -

- a) provide safe, comfortable travel for pedestrians and bicyclists within existing communities and new development
- b) provide linkages between intensification areas, adjacent neighbourhoods, and transit stations, including dedicated lane space for bicyclists on the major street network where feasible.¹⁴

These policies were not addressed in the EA. Furthermore, it is clear that the elimination of an important cycling route and/or turning the route into a “ride at your own risk” corridor in which cyclist safety is endangered by requiring cyclists to compete for space with automobiles in narrow traffic lanes is inconsistent with the PPS and conflicts with the Growth Plan.

Therefore, ss.3(5) and 3(6) of the *Planning Act* (a) prohibits the City from pursuing the John Street Project as presently constituted; and (b) prohibits the office of the Minister of the Environment from making any decision that would permit the Project to proceed.

CONCLUSIONS

The problem and opportunity that the EA seeks to address is the development of a cultural corridor along John Street. Mr. Wesley and the Ward 20 Cyclists support this goal; however, they believe that a cultural corridor need not come at the cost of the safety of cyclists or the elimination of a current cycling route. Rather, Mr. Wesley and the Ward 20 cyclists believe that there are ways of achieving the goals of the City with respect to John Street while accommodating cyclists and protecting their safety as required by ss. 3(5) and 3(6) of the *Planning Act*.

Mr. Wesley and the Ward 20 Cyclists therefore respectfully request that the Johns Street Project not be allowed to proceed until such time as the foregoing issues are fully addressed either by way of a revised EA of an Individual EA.

We would be pleased to meet with the City and the Ministry to find mutually beneficial ways of addressing these issues in a manner that serves the goal of the betterment of the people of the whole or any part of Ontario and complies with the law.

¹⁴ Growth Plan, *supra*, note 4, at 24–25.



Fogler,
Rubinoff
LLP

Letter to the Minister of Environment
RE: John Street Project EA
June 11, 2012

Page 8 of 8

Yours truly,

FOGLER, RUBINOFF LLP

Konstantine J. Stavrakos
KJS/np

cc. *Councillor Adam Vaughan Ward 20, by e-mail only*
Public Works and Infrastructure Committee, City of Toronto, by e-mail only
Councillor Minnan Wong, Chair PWIC, by e-mail only
Jason Diceman, Senior Public Consultation Coordinator, City of Toronto
Stephen Schijns, Manager, Infrastructure Planning, City of Toronto

Pittari, Natalie

From: Stephen Schijns [schijns@toronto.ca]
Sent: Friday, June 08, 2012 4:26 PM
To: Pittari, Natalie
Cc: Stavrakos, Konstantine J.; 'Councillor_minnan-wong@toronto.ca' Councillor Minnan-Wong; 'Councillor_vaughan@toronto.ca' Councillor Vaughan; Daniel Egan; John Mende; 'JohnSt@toronto.ca' JohnSt; Nazzareno A. Capano; 'pwic@toronto.ca' Public Works and Infrastructure Committee
Subject: Re: John Street Corridor Improvements (the "John Street Project") Municipal Class Environmental Assessment Study (the "EA")
Attachments: 120607 FR ltr CoT.pdf

Dear Sir:

Thank for your interest in the John Street Corridor Improvements Environmental Assessment Study. We understand and appreciate your client's concerns, as they have been expressed consistently over the course of the study by cycling advocates. As the proponent, our view is that the City has taken these concerns seriously and has adequately and appropriately addressed them in the study and its recommendations.

In response to your request to meet, per your letter of June 7, 2012 regarding the study, we would be pleased to meet with you and your client to explain how the study and its final document was carried out in accordance with the Municipal Class EA procedures and requirements, and how the study process, conclusions, and recommendations are based on City policies, are consistent with the Planning Act, and are in conformity with the Growth Plan. With these concerns addressed, we would expect you and your client would have a better understanding from which to consider whether or not to submit a Part II Order request to the Minister of the Environment on this particular project.

Please advise of your availability and we will coordinate the appropriate City representatives on that basis.

Regards,

Stephen Schijns, P.Eng.
Manager, Infrastructure Planning
Transportation Division
City of Toronto
22nd Floor, East Tower
City Hall
100 Queen Street West
Toronto, ON M5H 2N2

phone 416 392 8340
cell 647 216 1785
fax 416 392 4808
e-mail schijns@toronto.ca

>>> "Pittari, Natalie" <npittari@foglers.com> 6/7/2012 9:09 am >>>
Dear Mr. Diceman,

Please find attached correspondence from Mr. Konstantine Stavrakos in regards to the above

6/11/2012

referenced file.

Should you have any questions or concerns please do not hesitate to contact our office.

Thank you,

Natalie Pittari, Assistant to Albert M. Engel & Konstantine J. Stavrakos

Fogler, Rubinoff LLP

Barristers and Solicitors

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June 7, 2012

Reply To: Konstantine J. Stavrakos
Direct Dial: 416.365.3709
E-mail: kstavrakos@foglers.com

VIA EMAIL & FACSIMILE

City of Toronto
Public Consultation Unit
Metro Hall, 19th Floor
55 John Street
Toronto, ON M5V 3C6

Attention: Jason Diceman

Dear Mr. Diceman :

Re: John Street Corridor Improvements (the “John Street Project”) Municipal Class Environmental Assessment Study (the “EA”)

We are the solicitors for Don Wesley, co-captain of the Ward 20 ward advocacy group of Cycle Toronto (formerly the Toronto Cyclists Union) (“Ward 20 Cyclists”). Mr. Wesley has the support of Ward 20 Cyclists in taking all steps necessary to address his (and many other cyclists’) concerns with the John Street Project Environmental Assessment (“EA”).

John Street is an important north-south cycling route that contains the only signalized intersection on Queen Street West between University and Spadina Avenue. This route connects both the north and south side of Queen Street West in a manner that allows cyclists to cross the street car tracks at a 90 degree angle.

Crossing at a safe angle over streetcar tracks is of central importance to cyclists. The importance of this route is likely to increase in the future, given initiatives that the City of Toronto (the “City”) is taking to increase bike traffic through the area and new residential developments in the downtown core.

However, the EA proposes to narrow existing vehicular lanes along John Street without provision for bike traffic, thereby effectively eliminating John Street as a cycling route and instead turning the route into a “ride at your own risk” corridor in which cyclist safety will be endangered due to competition for space with automobiles.

We have conducted a review of the EA and find that it contains two significant legal deficiencies. First, the EA does not comply with the Municipal Class Environmental Assessment¹ (“MCEA”) requirements to assess environmental impacts, and in particular the impacts on cyclists and

¹ Municipal Engineers Association. *Municipal Class Environmental Assessment*. Order-in-Council No. 1923/2000. Mississauga, 2007. Print. [“MCEA”]

their safety. Pursuant to the *Environmental Assessment Act*² (“EAA”), this means that the John Street Project may not proceed unless the Minister of the Environment (the “Minister”) approves the project.

Second, the *de facto* elimination of the John Street cycling route and the failure to address the safety of cyclists is inconsistent with the 2005 Provincial Policy Statement³ (“PPS”) and does not conform with the Growth Plan for the Greater Golden Horseshoe⁴ (the “Growth Plan”). Pursuant to s.3(5) and 3(6) of the *Planning Act*,⁵ this means that the Minister is prohibited from approving the EA. Each of these deficiencies will be addressed in detail below.

The problem and opportunity that the EA seeks to address is the development of a cultural corridor along John Street. Mr. Wesley and the Ward 20 Cyclists support this goal; however, they believe that a cultural corridor need not come at the cost of the safety of cyclists or the elimination of a current cycling route. Rather, Mr. Wesley and the Ward 20 cyclists believe that there are ways of achieving the goals of the City with respect to John Street while accommodating cyclists and protecting their safety.

Mr. Wesley and the Ward 20 Cyclists therefore respectively request a meeting with the City to mediate these issues and develop a mutually agreeable and beneficial resolution. Given the time constraints, my client will be requesting that a Part II Order be made in respect of the John Street Project, subject to the City’s willingness to mediate the issues raised herein.

1.0 NON-COMPLIANCE WITH MCEA REQUIREMENTS

The MCEA requires an assessment of the effects on the natural, social and economic environments of both alternative solutions and alternative design concepts.⁶

The John Street Project, as currently proposed, will impact an important north-south cycling route by narrowing existing lanes, and thereby requiring cyclists to compete for space along John Street with automotive traffic. It is significant to note that the cycling traffic through John Street was initially considerably underestimated and only partially corrected once these underestimates were brought to the City’s attention.⁷

Furthermore, this cycling route is of growing importance, both due to residential development in the downtown core and due to City proposals for separated bicycle lanes within the Richmond-

² *Environmental Assessment Act*, RSO 1990, c E18.

³ Ministry of Municipal Affairs and Housing. *2005 Provincial Policy Statement*. Order-in-Council No. 140/2005. Toronto: Queen’s Printer for Ontario, 2005. Print.

⁴ Ministry of Infrastructure. *Growth Plan for the Greater Golden Horseshoe*. Order-in-Council No. 1221/2006. N.p. 2006. Print. [“Growth Plan”]

⁵ *Planning Act*, RSO 1990, c P13.

⁶ MCEA, *supra*, note 1 at A-27–A-29.

⁷ See Meslin, Dave. “Tally Hol Exposing the City’s Mindless Math.” *Mez Dispenser*. N.p. 15 June 2011. Web. 5 June 2012. Porter, Catherine. “Porter: Will John St. be the next Jarvis for cyclists?” *Toronto Star*. 21 June 2011. Web. 5 June 2011. Schijns, Stephen. “Cycling Figures on John Street.” City of Toronto Memorandum from Infrastructure Planning. City of Toronto. 30 June 2011. Print.

Adelaide corridor between Bathurst Street and Sherbourne Street, which will be subject to environmental assessment under the Municipal Class Environmental Assessment (“MCEA”).⁸ If implemented, these separated lanes have the potential to increase north-south cyclist traffic along John Street.

Despite the clear potential for impacts, and the MCEA requirement to assess these impacts, the EA does not contain a quantitative assessment of the impacts of the proposed lane narrowing on cyclists and in particular an assessment of the increased risk of road collisions. Therefore, MCEA requirements have not been met.

We understand that the City has suggested that the cyclists should use other routes. This does not address the failure to assess impacts. For instance, an alternate route has been suggested for cyclists who currently travel south along Beverly Street to Stephanie Street, then west along Stephanie Street to John Street where they can cross Queen Street West at a signaled intersection and proceed south.

The suggested route involves taking Soho Street south and crossing Queen Street West to Peter Street to proceed further south. As there is a “jog” between Soho Street and Peter Street, in order to legally enter Peter Street, a cyclist must enter the center lane on Queen Street West to make a left hand turn, then cross streetcar tracks along a dangerous angle in the midst of oncoming automobile traffic.

No action has been taken by the City to straighten the Soho Street to Peter Street crossing to make it safe to cross, nor have the impacts of diverting cyclist traffic to other routes been assessed.

Thus, the EA as presently constituted does not meet the requirements of the MCEA. Section 13 (3) of the EAA prohibits the City from proceeding with an EA that does not comply with the MCEA unless the Minister approves the EA:

13. (3) No person shall proceed with an undertaking with respect to which an approved class environmental assessment applies,

(a) unless the person does so in accordance with the class environmental assessment; or

(b) unless the Minister gives his or her approval to proceed under section 9 or the Tribunal gives its approval under section 9.1.⁹

Similarly, the MCEA states:

⁸ See City of Toronto. *Agenda Item PW5.1: Bikeway Network—2011 Update*. City Council Decision. 12–14 July 2011. Web. 5 June 2012. City of Toronto. *Agenda Item PW9.9: Feasibility of a Pilot Project for Separated Bicycle Lanes on Richmond Street and/or Adelaide Street*. City Council Decision. 29–30 November 2011 and 1 December 2011. Web. 5 June 2012.

⁹ EAA, *supra*, note 2, s.13(3).

Failure to follow the process outlined in this document, however, is a breach of the EA approval under which this Class EA was authorized and therefore places the proponent in contravention of the EA...Non-compliance or failure to apply the approved process in the intended manner may result in:

- MOE revisiting the EA approval of a specific project, and/or
- the Minister issuing a Part II Order thereby requiring the proponent to carry out individual environmental assessments for those projects which previously had been the subject to the Class EA process.¹⁰

As the EA does not comply with MCEA requirements, and no approval has been obtained from the Minister, the EAA prevents the City from proceeding with the John Street Project at this time.

2.0 INCONSISTENCY WITH THE PPS AND NON-CONFORMITY WITH THE GROWTH PLAN

Subsections 3(5) and 3(6) of the *Planning Act* prohibit the City from making any decisions or making any submissions that affect planning matters that are not consistent with the PPS or do not conform with the Growth Plan. Similarly, these provisions also prohibit the Minister from making any decisions or making any submissions that affect planning matters that are not consistent with the PPS or do not conform with the Growth Plan.

The relevant sections of the *Planning Act* state as follows:

3 (5) A decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Municipal Board, in respect of the exercise of any authority that affects a planning matter,

(a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date of the decision; and

(b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be. 2006, c. 23, s. 5.

3 (6) Comments, submissions or advice affecting a planning matter that are provided by the council of a municipality, a local board, a planning board, a minister or ministry, board, commission or agency of the government,

(a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date the comments, submissions or advice are provided; and

(b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be.¹¹

¹⁰ MCEA, *supra*, note 1, at A-5-A-6.

¹¹ *Planning Act*, *supra*, note 5, s.3(5) and 3(6).

Thus the Minister may only approve the EA under s.9 if consistency with the PPS and conformity with the Growth Plan are demonstrated. The MCEA incorporates these requirements as follows:

B.3.3.3 Policy and Guidelines

Throughout the planning and design process, and subsequently throughout the construction phase, the proponent is to comply with the policies and guidelines outlined by municipalities, or the provincial or federal governments in documents such as:

- Provincial policies, including:
 - Provincial Policy Statement (PPS)
 - The Planning Act
 - Places to Grow Act...¹²

Both the PPS and the Growth Plan contain a number of policies that protect the safety of cyclists and support the development of a multi-modal transportation system, including cyclists. Relevant PPS policies include:

1.5.1 Healthy, active communities should be promoted by:

a) planning public streets, spaces and facilities to be safe, meet the needs of pedestrians, and facilitate pedestrian and non-motorized movement, including but not limited to, walking and cycling;

...

1.6.5 Transportation Systems

1.6.5.1 Transportation systems should be provided which are safe, energy efficient, facilitate the movement of people and goods, and are appropriate to address projected needs.

...

1.7 Long-Term Economic Prosperity

1.7.1 Long-term economic prosperity should be supported by:

...

d) providing for an efficient, cost-effective, reliable multi-modal transportation system that is integrated with adjacent systems and those of other jurisdictions, and is appropriate to address projected needs;¹³

¹² MCEA, supra, note 1, at B-16.

¹³ PPS, supra, note 3, at 10, 11, 13.

The Growth Plan provides more detailed policy requirements supporting cycling and cyclist safety. Relevant Growth Plan policies include:

3.2.2 Transportation—General

1. The transportation system within the GGH will be planned and managed to -
 - a) provide connectivity among transportation modes for moving people and for moving goods
 - b) offer a balance of transportation choices that reduces reliance upon any single mode and promotes transit, cycling and walking
 - c) be sustainable, by encouraging the most financially and environmentally appropriate mode for trip-making
 - d) offer multi-modal access to jobs, housing, schools, cultural and recreational opportunities, and goods and services
 - e) provide for the safety of system users.

...

3. In planning for the development, optimization, and/or expansion of new or existing transportation corridors, the Ministers of Infrastructure and Transportation, other Ministers of the Crown, other public agencies and municipalities will—

- a) ensure that corridors are identified and protected to meet current and projected needs for various travel modes
- b) support opportunities for multi-modal use where feasible, in particular prioritizing transit and goods movement needs over those of single occupant automobiles

...

- d) consider separation of modes within corridors, where appropriate

....

3.2.3 Moving People

...

3. Municipalities will ensure that pedestrian and bicycle networks are integrated into transportation planning to -

- a) provide safe, comfortable travel for pedestrians and bicyclists within existing communities and new development

- b) provide linkages between intensification areas, adjacent neighbourhoods, and transit stations, including dedicated lane space for bicyclists on the major street network where feasible.¹⁴

These policies were not addressed in the EA. Furthermore, it is clear that the elimination of an important cycling route and/or turning the route into a “ride at your own risk” corridor in which cyclist safety is endangered by requiring cyclists to compete for space with automobiles in narrow traffic lanes is inconsistent with the PPS and conflicts with the Growth Plan.

Therefore, ss.3(5) and 3(6) of the *Planning Act* (a) prohibit the City from pursuing the John Street Project as presently constituted; and (b) prohibit the Minister from approving the John Street Project under s.9 of the EAA.

CONCLUSIONS

Mr. Wesley and the Ward 20 Cyclists believe that the forgoing issues can be addressed in a manner that advances the goals of the John Street Project. As mentioned above, we would be pleased to meet with Council and City staff to address these issues in order to come to a resolution that is beneficial to the residents of the City.

Yours truly,

FOGLER, RUBINOFF LLP



Konstantine J. Stavrakos
KJS

cc. *Councillor Adam Vaughan Ward 20, by e-mail only*
Public Works and Infrastructure Committee, City of Toronto, by e-mail only
Councillor Minnan Wong, Chair PWIC, by e-mail only

¹⁴ Growth Plan, *supra*, note 4, at 24–25.