

Clause embodied in Report No. 1 of the Toronto East York Community Council, as adopted by the Council of the City of Toronto at its meeting held on February 13, 14 and 15, 2002.

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**Heritage Easement Agreement -
550 Gerrard Street East (The Don Jail)
(Toronto-Danforth, Ward 30)**

(City Council on February 13, 14 and 15, 2002, adopted this Clause, without amendment.)

The Toronto East York Community Council recommends the adoption of the following report (January 14, 2002) from the Commissioner of Economic Development, Culture and Tourism:

Purpose:

To request authority to enter into a heritage easement agreement under Section 37 of the Ontario Heritage Act to protect the heritage building known as the Don Jail located at 550 Gerrard Street East.

Financial Implications and Impact Statement:

There are no financial implications resulting from the adoption of this report.

Recommendations:

It is recommended that:

- (1) Council endorse the Don Jail Heritage Conservation Principles (Attachment No. 3) and the Schematic Drawings (Attachment No. 4), which shall guide the City and the Owner in making decisions regarding the maintenance and alteration of the heritage character of the Don Jail at 550 Gerrard Street East;
- (2) authority be granted for the execution of a heritage easement agreement under section 37 of the *Ontario Heritage Act* with the Owner of 550 Gerrard Street East, using substantially the form of easement agreement prepared in February 1987 by the City Solicitor and on file with the City Clerk, subject to such amendments as may be deemed necessary by the City Solicitor in consultation with the Manager, Heritage Preservation Services and subject to the following specific amendments:
 - (a) Council approval will not be required for the Permitted Alterations set out in Attachment No. 5 or for work to restore the building in the event of damage or destruction, provided that the Commissioner Economic Development, Culture and

Tourism is of the opinion that the alterations or restorative work are consistent with the Heritage Conservation Principles and that the Owner has submitted plans, specifications, studies, detailed drawings and any other materials reasonably required by the Commissioner;

- (b) the City and the Owner are to act reasonably with respect to all rights and powers granted to them under the Heritage Easement Agreement and in particular, with respect to the application and interpretation of the Heritage Conservation Principles; and
 - (c) the City, including its employees, shall, in making or exercising any power, right, approval or decision under the agreement, take into account, among other considerations, the historic and architectural significance of the Property, the operational needs of the Owner, the financial resources available to the Owner and the Heritage Conservation Principles.
- (3) the appropriate City Officials be authorized and directed to take the necessary actions to give effect thereto.

Background:

The property at 550 Gerrard Street East is located on the north side of Gerrard Street East, north of the Don Jail Roadway and west of Broadview Avenue, as shown on Attachment No. 1. North and west of the property is the Riverdale Hospital. South-west of the property is Riverdale Park and the St. Matthew's Lawn Bowling Club. For the purposes of the Heritage Easement Agreement, the property does not include any land south and east of the Don Jail Roadway.

The property contains the heritage structure known as the Don Jail, which is shown in recent and archival photographs in Attachment No. 2. The City of Toronto constructed the Jail between 1859 to 1864 as the fourth jail for the City. The architectural firm, William Thomas and Sons, designed the Jail. The building is an excellent example of Renaissance Revival styling, highlighted by the craftsmanship of its stone detailing. The Jail is a City landmark and, for its time, a progressive facility for the treatment of prisoners. The heritage structure excludes the Toronto Jail, constructed in 1958, and the laundry annex attached to the west wing. The Don Jail is currently vacant while the Toronto Jail is still in operation.

The property at 550 Gerrard Street East was included on the City of Toronto Inventory of Heritage Properties on June 20, 1973. In 2000, the Ontario Realty Corporation (ORC), an agency of the Ontario Government, offered the property for sale following which City Council stated its intention to designate the property under the *Ontario Heritage Act* (Clause No.17 of Report No. 6 of the Toronto Community Council, adopted by Council on April 11, 12 and 13, 2000). At that time, Council also requested that the ORC require the new property owner to enter into a heritage easement agreement with the City as a condition of the sale. This Agreement would provide for the permanent protection of this heritage structure. The property was designated by By-law 410-2000 on July 6, 2000. Council, in designating the property, expressly recognized that selective alterations might be required to adapt the Don Jail to modern use.

In July 2001, the ORC announced negotiations with the Riverdale Hospital for the sale of the Don Jail. The Ontario Ministry of Citizenship, Culture and Recreation and the Ontario Heritage Foundation expressed a Provincial interest in sale of this heritage property. As part of the negotiations, the ORC advised that the Ministry of Corrections will continue to operate the Toronto Jail until its closure in approximately two years and that the Heritage Easement Agreement could be held by the City. The Hospital has entered into a conditional offer with ORC to purchase the property. The offer includes a requirement that the purchaser enter into a heritage easement agreement. The Hospital has made it a condition of the purchase offer that it be satisfied with the terms of the easement agreement.

The Toronto Preservation Board endorsed the above staff recommendations at its meeting held on January 24, 2002.

Comments:

1.0 Development Context

In negotiations, Riverdale Hospital representatives advised that their plans for the Jail were preliminary and that the Hospital would only purchase the property and provide a Heritage Easement Agreement (HEA) acceptable to the Hospital. Therefore the HEA would have to permit adaptive reuse of the Jail without the need to further amend the HEA. The HEA for the Jail would define the broad scope of permitted alterations, even though the Hospital cannot detail the alterations at this time. This is a challenge as, normally, alterations are not approved unless an owner has submitted architectural plans specifying the proposed alterations.

2.0 Heritage Easement Agreement Content

In response to unique circumstances associated with this heritage structure, the sale of the property by the ORC and the Hospital's requirements, City staff recommends that, for this property only, the City's standard Heritage Easement Agreement be modified in the following ways. The City Solicitor has been consulted on these modifications to the standard agreement.

2.1 Include - Heritage Conservation Principles

At the Hospital's request, a set of Heritage Conservation Principles have been developed to define an appropriate standard of care for this heritage property and to guide the parties in making decisions regarding the maintenance and alteration of the heritage character of the Don Jail. The Principles are to be included as a schedule to the HEA and are derived from a Preservation Feasibility Study conducted in 1993 for the Management Board Secretariat of the Ontario Government. The Principles (Attachment No. 3), with which the Hospital agrees, accomplish the following:

- (a) acknowledge that the building will be adapted for reuse by the Hospital;
- (b) ensure that appropriate care is taken with respect to heritage features of the Don Jail to be retained by describing the principles for restoration, preservation, stabilization, rehabilitation, interpretation and new additions; and

- (c) specify principles and guidelines for interventions and maintenance.

The Heritage Conservation Principles set out a basis upon which to make decisions when heritage fabric is impacted by proposed alterations. In many cases, the Principles set out a process for investigation and review in arriving at those decisions.

Under the proposed HEA, the City would be required to take the Principles into account in making or exercising any power, right, approval or decision under the HEA. In light of the additional requirement to act reasonably, the City's decisions under the HEA might be vulnerable to challenge if they are not reasonably consistent with the Principles (see 2.4 below).

The Principles are also relevant to the Owner's ability to undertake certain specified alterations without seeking Council approval (see 2.3 below).

2.2 Include - Schematic Drawings

Although the Hospital is not in a position to provide detailed plans of the proposed alterations to the Jail at this time, it has provided schematic drawings (Attachment No. 4) illustrating some of the Heritage Conservation Principles. The drawings are proposed to form part of the HEA largely through the Heritage Conservation Principles. These schematic drawings, which are acceptable to City staff, illustrate the following:

- (a) a protected view corridor from Gerrard Street East, centred on the Jail (Figure 3.1.3.1);
- (b) maintenance of the existing axis within the building and the potential to extend the north-south axis to accommodate a new link between the Jail and the Hospital (Figure 3.3.3.2);
- (c) new circulation patterns around the rotunda in recognition that existing rotunda balconies, which are to be retained, do not meet current building code standards (Figure 3.3.3.3);
- (d) potential reconstruction of roof ventilators (Figure 3.4.3.6); and
- (e) adaptation of jail cells through selective removal of interior walls and cells and retention of the upper portion of the arched cell openings (Figure 3.9.3.3).

2.3 Include - Permitted Alterations and Restorative Work

It is proposed that the Hospital be able to undertake certain alterations without having to obtain the approval of Council that is otherwise required under a Heritage Easement Agreement. To this end, a list of Permitted Alterations (Attachment No. 5) has been developed for inclusion as a schedule to the HEA. Any alteration that is on the list could be undertaken without Council approval provided:

- (a) the alterations are consistent to the Heritage Conservation Principles, in the opinion of the Commissioner Economic Development, Culture and Tourism; and

- (b) the Owner provides detailed plans, specifications, studies, drawings and any other materials reasonably required by the Commissioner.

Work to restore the building if it was damaged or destroyed would be similarly exempt from Council approval if it complied with the above conditions.

2.4 Include – Acting Reasonably; Owner’s Operational Needs and Financial Resources

It will be challenging for the Riverdale Hospital to adapt the Jail to its use as the Hospital has specific needs, limited scope for financing its plans and an approval process that includes the Ontario Ministry of Health. As a potential purchaser of the Jail, the Hospital wants assurance that the City will be reasonable and cognizant of the Hospital’s needs and finances in its adaptive reuse of this heritage structure.

Therefore, in these unique circumstances, the Hospital has requested, and City staff concurs with, the inclusion of a schedule of general principles to the HEA. The proposed schedule stipulates that both the City and the Hospital will act reasonably with respect to all rights and powers granted to them under the HEA, and in particular with respect to the application and interpretation of the Heritage Conservation Principles. The schedule also provides that, in making or exercising any power, right, approval or decision under the HEA, the City and its employees must take into account, among other considerations, the historic and architectural significance of the property, the operational needs of the Owner, the financial resources of the Owner, and the Heritage Conservation Principles.

Under the City’s standard easement agreement, the City has the right to make many decisions at its sole discretion; in other words, it is not required to act reasonably. By including the above clauses in the HEA, the City would need to be able to demonstrate, if challenged, that its decisions are justified on rational grounds and that it has given appropriate consideration to the Owner’s interests and the Heritage Conservation Principles. In view of the circumstances unique to this site, City staff supports the inclusion of these clauses for this specific HEA.

3.0 Other Issues

3.1 Property south of Don Jail Roadway

Lands south of Don Jail Roadway are part of the property sale by the ORC but are not proposed to be included in this HEA. Two buildings are located on such lands (558 Gerrard Street East): the Governor’s House and the Gate Keeper’s House. Both are important surviving components associated with the Don Jail. These structures are designated by By-law No. 411-2000 under the *Ontario Heritage Act*. No plans for 558 Gerrard Street East have been presented at this time by the Hospital.

3.2 Archaeology

The ORC conducted an archaeological survey of the property. City staff have not been advised if there are archaeologically sensitive areas on the property and have requested a copy of this report from the ORC.

3.3 Permitted Demolitions

Permitted demolitions include the laundry annex, attached to the west wing of the Don Jail, and the Toronto Jail, attached to the east wing. Both the laundry annex and the Toronto Jail were excluded from the reasons for designation. When the Ministry of Corrections closes the Toronto Jail, then it may be demolished. The Heritage Conservation Principles encourage the Hospital to retain original Don Jail building fabric, wherever possible, when those additions are demolished.

3.4 Jail Cells

The existing jail cells cannot be adapted to modern use in their current form. The cells are narrow and have varying, but small, door openings. The Hospital proposes to remove some interior cell walls for office use; to remove several cells on each floor for circulation within each wing and to preserve the rhythm of the upper portion of the cell openings on the interior elevations while constructing larger door openings as illustrated schematically in Attachment No. 4. Several cells will be retained for interpretative purposes.

3.5 Window Bars

The windows and associated iron bars were constructed such that window maintenance is extremely difficult. Further, the iron bars are causing deterioration of the stone windowsills through rust jacking. City staff has agreed to the removal of all exterior iron bars except for the centre pavilion. The bars of the centre pavilion are character defining features and should only be removed after their retention within a hospital context has been fully explored.

3.6 Link to the North

The Hospital has proposed to construct a link from the centre of the north elevation of the Jail (see Attachment No. 4, Figure 3.3.3.2) to the existing and new Hospital development north of the Jail. The link will include an enclosed walkway. The Heritage Conservation Principles address this addition.

Conclusions:

The Riverdale Hospital is interested in purchasing the Don Jail, a significant heritage structure, and proposes to adapt the Jail to hospital use. The Ontario Realty Corporation, the current Owner, is selling the Jail conditional upon the new Owner entering into a Heritage Easement Agreement (HEA) with the City. The Hospital will agree to enter into a HEA if it is permitted to adapt the Jail to its use. However, detailed plans cannot be provided by the Hospital at this time. Therefore, a HEA has been negotiated that permits adaptive reuse of the Jail, while protecting important heritage features. It is appropriate at this time that City Council grant authority to enter into a Heritage Easement Agreement, with modifications to the standard form that address the unique circumstances associated with this property and its use for hospital purposes.

Contact:

Rita Davies, Managing Director of Culture

Tel: 416-397-5323; Fax: 416-395-0278; E-mail: rdavies@city.toronto.on.ca

(Copies of attachments, referred to in the foregoing report, were distributed to Members of Council with the January 29, 2002 agenda of the Toronto East York Community Council, and are on file in the office of the City Clerk.)

The Toronto East York Community Council reports, for the information of Council, having also had before it during consideration of the foregoing matter, the following communications, and a copy is on file in the office of the City Clerk:

- Clause 17 of Report No. 6, of the Toronto Community Council, titled “Intention to Designate Under Part IV of the Ontario Heritage Act – 550 Gerrard Street East (Don Jail) (Don River)”, which was adopted by City Council at its meeting held on April 11, 12 and 13, 2000;
- Clause 18 of Report No. 6, of the Toronto Community Council, titled “Intention to Designate Under Part IV of the Ontario Heritage Act – 558 Gerrard Street East (Governor’s House, Don Jail) (Don River)”, which was adopted by City Council at its meeting held on April 11, 12 and 13, 2000; and
- Clause 54 of Report No. 11, of the Toronto Community Council, titled “Designation of 550 Gerrard Street East (Don Jail) (Don River)”, which was adopted by City Council at its meeting held on July 4, 5 and 6, 2001.

The following persons appeared before the Toronto East York Community Council in connection with the foregoing matter:

- George Rust-D’Eye, Weir Foulds LLP, on behalf of the Riverdale Hospital; and
- Susan Black, Perkins Eastman Black Architects Inc.