



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

**10 St Mary Street - Zoning Amendment Application –
Demolition of Designated Heritage Property
Request for Directions**

Date:	May 31, 2016
To:	City Council
From:	City Solicitor
Wards:	Ward 27 – Toronto Centre-Rosedale
Reason for Confidential Information:	This report is about litigation or potential litigation that affects the City or one of its agencies, boards, and commissions and this report contains advice or communications that are subject to solicitor-client privilege.
Reference Number:	14 208729 STE 27 OZ

SUMMARY

The Ontario Municipal Board (the “OMB”) has set a four day hearing from November 1 to 4, 2016, for the appeal of a zoning amendment for the site at 10 St. Mary St. At its meeting on November 3 and 4, 2015, City Council adopted the Recommendations of the Director, Community Planning, Toronto and East York District to oppose the zoning appeal at the OMB. The City Solicitor now requires further direction from City Council regarding the zoning appeal, which should be considered together with the applicant’s request to demolish the 8-storey designated office building located on the site.

RECOMMENDATIONS

The City Solicitor recommends that:

1. Council adopt the recommendation contained in the Confidential Attachment 2 to this report.
2. Council authorized the public release of the adopted recommendation in Attachment 2 with the remainder of Attachment 2 and Appendix "A" to remain confidential at the discretion of the City Solicitor.

Financial Impact

Adopting this report will have no financial impact beyond what has already been approved in the current year's budget.

DECISION HISTORY

On October 8-11, 2013 City Council adopted Official Plan Amendment No. 183 – North Downtown Yonge Site and Area Specific Policy and Draft North Downtown Yonge Urban Design Guidelines, which identified the property at 10 St. Mary Street as having potential heritage value.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.TE25.27>

<http://www.toronto.ca/legdocs/mmis/2013/te/bgrd/backgroundfile-59537.pdf>

On November 19, 2013 the TEYCC adopted Item TE28.89 – Request for Report on the Potential Designation of 10 St. Mary Street. The request was made in order to evaluate the impact of a demolition permit application which had been received by Toronto Buildings.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.TE28.89>

On May 6, 2014 City Council stated its Intention to Designate the property at 10 St. Mary Street.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.TE31.16>

On February 11, 2015 City Council enacted By-law No. 277-2015 designating the Yonge Street Heritage Conservation District Study Area. The designation restricted demolitions and exterior alterations within the study area boundaries for a period of one year.

<http://www.toronto.ca/legdocs/bylaws/2015/law0277.pdf>

On May 6, 7 & 8, 2015, the property at 10 St. Mary Street was designated by City Council under By-Law No. 353-2015. The designating by-law was brought forward after the appeal period for the designation expired without appeal.

<http://www.toronto.ca/legdocs/bylaws/2015/law0353.pdf>

Following an application to demolish the designated property, on May 28, 2015 the Toronto Preservation Board adopted staff recommendations in a report dated May 27, 2015 to refuse the issuance of a demolition permit for the property at 10 St. Mary Street in accordance with Section 34 of the Ontario Heritage Act.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.PB5.14>

The May 27, 2015 staff report and letter from the Toronto Preservation Board dated May 29, 2015 were subsequently withdrawn from the June 16, 2015 agenda of the Toronto and East York Community Council since demolitions were already prohibited by the Historic Yonge Street Heritage Conservation District Study Area By-law.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.TE7.21>

On November 3 & 4, 2015 City Council adopted Item TE11.6 – Request for Directions Report – 10 St. Mary Street – Zoning Amendment Application, opposing the proposed

development appeal at the OMB.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.TE11.6>

ISSUE BACKGROUND

As noted above, the City Solicitor requires further direction from Council on the applicant's rezoning appeal, which should be considered together with the applicant's request to demolish the 8-storey designated office building located on the site.

Policy Framework - Heritage Property Demolition Standards and Guidelines for the Conservation of Historic Places in Canada

In 2008 Toronto City Council adopted the Parks Canada Standards and Guidelines for the Conservation of Historic Places in Canada as the official document guiding planning, stewardship and conservation approach for all listed and designated heritage resources within the City of Toronto.

<http://www.toronto.ca/legdocs/mmis/2008/cc/decisions/2008-03-03-cc17-dd.pdf>

The following Standards for Preservation, Rehabilitation and Restoration can be applied to the demolition application for 10 St. Mary Street:

- Conserve the heritage value of an historic place. Do not remove, replace or substantially alter its intact or repairable character-defining elements. Do not move a part of an historic place if its current location is a character-defining element.
- Conserve heritage value by adopting an approach calling for minimal intervention.
- Find a use for an historic place that requires minimal or no change to its character-defining elements.

Provincial Policy Statement and Planning Act

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. The PPS sets the policy foundation for regulating the development and use of land. The key objectives include: building strong communities; wise use and management of resources; and, protecting public health and safety. City Council's planning decisions are required to be consistent with the PPS.

The Planning Act and associated Provincial Policy Statement guide development in the Province and they include provincial interests regarding heritage resources as described in the Provincial Policy Statement issued under the authority of Section 3 of the Planning Act. The Planning Act requires that all decisions affecting land use planning matters "shall be consistent with" the Provincial Policy Statement. The Provincial Policy Statement (PPS) provides direction on matters of provincial interest related to land use planning and development, and promotes the provincial policy-led planning system.

Provincial Policy Statement 2.6.1 reads "Significant built heritage resources and significant cultural heritage landscapes shall be conserved".

Ontario Heritage Act

Section 34 (1) of the Ontario Heritage Act (OHA) states that no owner of property designated under section 29 shall demolish or remove a building or structure on the property or permit the demolition or removal of a building or structure on the property unless the owner applies to the council of the municipality in which the property is situated and receives consent in writing to the demolition or removal. Section 34.1 (1) provides that if Council refuses the permit applied for or gives the permit with terms and conditions attached, the owner of the property may appeal to the Ontario Municipal Board (OMB).

Official Plan

Policy 3.1.5.2 of the Official Plan directs that "Heritage resources on properties listed on the City's Inventory of Heritage Properties will be conserved."

While the City's amended Official Plan policies (OPA199) are in force across the city, the property at 10 St. Mary Street is currently subject to a site specific appeal of those policies, which is still before the OMB.

Proposal Background

On November 19, 2013 the Toronto and East York Community Council requested the Acting Director of Urban Design, City Planning Division to evaluate the subject property for possible designation under Part IV of the Ontario Heritage Act. On May 6, 2014 City Council stated its Intention to Designate the property.

Pre-application meetings with a development team for 10 St. Mary Street commenced in December 2013. Staff advised that the property was under review for potential designation under the Ontario Heritage Act and integration of the existing building into the new development was encouraged. On August 19, 2014 a zoning by-law amendment application was received by the City Planning Division showing the heritage building demolished as part of the development proposal. An appeal to the OMB was subsequently filed by the applicant on the zoning by-law amendment application and city staff received direction from Council to appear in opposition.

On April 4, 2015, City Council enacted By-law No. 353-2015 designating the subject property under Part IV of the Ontario Heritage Act. Schedule "A" to By-law No. 353-2015, which is attached as Attachment 1 to this report, sets out the reasons for the designation.

The applicant submitted an application to demolish the property under the Ontario Heritage Act on May 22, 2015 and the application was deemed complete on May 27, 2015. A staff report recommending refusal of the demolition application was adopted by the Toronto Preservation Board (TPB) at its meeting of May 28, 2015.

The staff report was subsequently withdrawn from the Toronto and East York Community Council meeting of June 16, 2016 when it was determined that the report and recommendations should not have proceeded in light of By-law 277-2015, which designated the area between Davenport Road and College Street as a Heritage Conservation District Study Area and prohibited demolition and exterior alterations for one year.

The applicant was advised by staff that when the Yonge Street HCD Study Area By-law expired on February 11, 2016, the demolition application could be resubmitted at that time or, if a new application was not submitted, staff would treat the application on file as having been received on February 12, 2016. A new demolition application has not been submitted. Accordingly, the City had 90 days from February 12, 2015 within which to give notice of it's a decision on the application. However the applicant has consented to extend the period to give notice of the decision until June 18, 2016.

PROPOSAL

The property at 10 St. Mary Street is currently the subject of a zoning by-law amendment application which involves the full demolition of the existing heritage building and construction of a 42-storey mixed use condominium building with retail at grade. A building condition assessment prepared by S2S Environmental Inc., dated February 11, 2014 was submitted with the demolition application. The condition assessment presented the conclusion that the subject property appeared to be in fair to good condition.

COMMENTS

This report is about litigation before the Ontario Municipal Board and contains advice or communications that are subject to solicitor-client privilege. Attachment 2 to this report contains confidential information.

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SIGNATURE

Anna Kinastowski, City Solicitor

ATTACHMENTS

Public Attachment 1 - Schedule "A" to By-law No. 353-1015

Confidential Attachment 2 - Confidential Information

Confidential Appendix "A" – Confidential Information