



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

Alterations to a Heritage Property and Authority to Enter into a Heritage Easement Agreement - 1134 and 1140 Yonge Street

Date: May 30, 2022

To: Toronto Preservation Board and City Council

From: City Solicitor

Wards: Ward 11 – University – Rosedale

REASON FOR CONFIDENTIAL INFORMATION

This report concerns litigation or potential litigation that affects the City of Toronto.

This report contains advice or communications that are subject to solicitor-client privilege.

SUMMARY

The purpose of this report is to seek instruction with respect to an application to alter a property that has been designated under Part 4 of the Ontario Heritage Act. Authority is also requested to enter into a Heritage Easement Agreement for the properties at 1134 and 1140 Yonge Street. The owner has provided a revised development proposal that proposes the retention of the heritage designated buildings. The revised development proposal has been considered by City Council, in the form of the owner's settlement offer to the City, which has been accepted by City Council. The outstanding matters to be considered by City Council are with respect to the heritage alteration aspects of the revised development proposal.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential recommendations contained in Confidential Attachment 1.

2. City Council authorize the public release of the instructions in Confidential Attachment 1 if adopted by City Council, with the balance of Confidential Attachment 1 to remain confidential as it contains advice which is subject to solicitor-client privilege.

FINANCIAL IMPACT

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

DECISION HISTORY

The property at 1140 Yonge Street was included in the City's Inventory of Heritage Properties (now, Heritage Register) on September 25, 1978.

At its June 8, 2021 meeting, City Council adopted the following item directing the City Solicitor and appropriate City staff to attend the Ontario Land Tribunal (formerly Local Planning Appeal Tribunal) in opposition to the application regarding the Official Plan and Zoning By-law Amendment appeal for the lands at 1134-1140 Yonge Street and to continue discussions with the Applicant in an attempt to resolve outstanding issues. Recommendation 2(e.) further states that the properties at 1134 and 1140 Yonge Street first be designated under Part IV, Section 29 of the Ontario Heritage Act in the event that the LPAT allows the appeals of the applicant in whole or in part.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.TE25.7>

At its October 1 and 4, 2021 meeting, City Council passed By-Law 1081-2021 and 1082-2021, designating the properties at 1034 and 1040 Yonge Street under Part 4 of the Ontario Heritage Act.

www.toronto.ca/legdocs/bylaws/2021/law1081.pdf

www.toronto.ca/legdocs/bylaws/2021/law1082.pdf

On April 29, 2022, the City Solicitor received a without prejudice settlement offer from the Applicant's solicitors, Goodmans LLP (the "**Without Prejudice Settlement Offer**" or "**Settlement Offer**"). As part of that Settlement Offer, the owner agreed to revise the conservation strategy of the proposal at the designated heritage properties at 1134 and 1140 Yonge Street.

At its May 11, 2022 meeting, City Council adopted the following item, thereby accepting the owner's Settlement Offer, and, amongst other things, authorizing the City Solicitor and appropriate City staff to attend the Ontario Land Tribunal in support of the Settlement Offer. City Council also recommended that a Holding ("H") symbol be placed on the lands in order that the heritage alteration aspects of the revised development proposal obtain the necessary approvals under the Ontario Heritage Act.

BACKGROUND

Located on the west side of Yonge Street directly south of Marlborough Avenue within the Ramsden Park neighbourhood, and adjacent to the Annex, Summerhill and South Rosedale neighbourhoods, the property at 1134 Yonge Street is composed of three, 3-storey main street commercial row buildings constructed together in 1894. Only the property at 1134 Yonge Street is associated with the proposal.

The property at 1140 Yonge Street (now known as the Pierce-Arrow Showroom) has been recognized on the City of Toronto's Heritage Register since September 25, 1978. The property contains a single-storey commercial building originally constructed in 1930 as a Pierce-Arrow car dealership and showroom. Designed by Toronto architects Sparling, Martin & Forbes in 1930, the property is a rare surviving example in the city of the automobile showroom/dealership building typology. The building is also significant for its cast stone sculptural detailing created by the renowned local female artist and OCAD graduate (1919), Merle Foster. During the second half of the 20th century, the property was owned by the Canadian Broadcasting Corporation (CBC) and functioned as that organization's primary filming production studio in Toronto of notable series including Front Page Challenge, Mr. Dressup, Juliette, and the Tommy Hunter Show.

The properties at 1130-1134 and 1140 Yonge Street contribute architecturally, typologically and contextually to the eclectic mix of late-19th and early-20th century main street commercial and residential properties that characterize the historic upper Yonge streetscape.

Development Proposal

On September 2, 2020, an Official Plan and Zoning By-law Amendment application was submitted to permit a 13-storey mixed-use building at 1134-1140 Yonge Street. The property at 1140 Yonge Street was at that time listed on the Toronto Heritage Register. The property at 1134 Yonge Street was not at that time listed upon the City's Heritage Register.

This initial application conserved the heritage properties at 1134 and 1140 Yonge Street. The Conservation strategy retained the street facing facades of the properties in situ while providing for a 1.2 metre step back to the new development above.

On January 6, 2021, the applicant appealed the application to the Local Planning Appeal Tribunal ("LPAT") due to Council not making a decision within the 90-day time frame in the Planning Act.

On October 1 and 4, 2021, subsequent to the application submission, the properties at 1134 and 1140 Yonge Street were designated (per By-Law(s) 1081-2021 and 1082-2021) under Part 4 of the Ontario Heritage Act.

On April 29, 2022, the applicant submitted the Settlement Offer, containing a revised development proposal, to the City Solicitor, for City Council's consideration. The revised development proposal seeks to construct a 10-storey mixed-use building at the site. In terms of heritage conservation features included within the revised proposal, the revisions will improve heritage-related step backs and elevations.

Conservation Strategy for the Revised Proposal

The preliminary conservation strategy as provided by ERA Architects Inc. contemplates in situ retention and repair of the east and north elevations of 1140 Yonge Street. However, as identified in the condition assessment, the street-facing elevations of 1140 Yonge Street are not in good condition, specifically the decorative cast stone arches, capitals and columns with terrazo bases, and remaining decorative cast stone elements. As such, repair of the existing decorative cast stone elements is not preferred, as the scale of repairs would likely lead to a mottled appearance, diminishing the heritage character of the building.

Given that the original cast stone details that were removed, including the projecting gargoyles, modillions, articulated ledge frieze and Grecian mask-adorned parapet, are proposed to be replicated and reinstated to their original location, the deteriorated cast stone concrete arches, capitals and columns are also proposed to be replicated and reinstated in order to maintain a consistent colour and texture across the repaired elevations.

The revised proposal increases the step back above the heritage property from 1.2 to 3 metres at the east and north street facing facades of the property.

The proposed development will also retain in situ and conserve the east (primary) elevation of 1134 Yonge Street. The elevation, containing the primary commercial entrance, will be rehabilitated, and unsympathetic alterations such as non-original doors and windows removed. Additional investigation, including selective demolition, will be undertaken to determine the extent of original heritage fabric and to guide the conservation strategy. Opportunities to restore the original cornice across the row of adjacent buildings, including 1130 and 1132 Yonge Street, will be explored through discussions with adjacent land owners.

Heritage Planning staff acknowledge that some of the original cast stone details has been removed and some of the detailing has weathered and because of this the applicant wishes to replicate the cast stone details (including the gargoyles, modillions, articulated ledge frieze and Grecian mask adorned parapet) in order to maintain a consistent colour and texture across the repaired elevations. Staff acknowledge that some replication will be necessary but will work with the applicant as part of the required Conservation Plan to seek opportunities to retain areas of the original stone detailing that are not too severely deteriorated.

The paint from the brickwork of the retained facades of the heritage building at 1140 Yonge Street will be removed and the masonry restored to its original polychromatic Flemish bond appearance.

Archival photographs and other documentation, where existing, will also be used to inform the conservation approach. Further details on the construction-related protection and later repair of the heritage building will be provided in a future Conservation Plan.

Heritage Planning Policy Framework

The Planning Act

The Planning Act guides development in the Province of Ontario. It states that municipalities must have regard for matters of provincial interest. Section 2(d) specifically refers to “the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest” and 2(r) refers “to a built form that is well designed and provides for a sense of place.”

The Provincial Policy Statement (2020)

The Provincial Policy Statement (2020) (the "PPS") provides policy direction province-wide on land use planning and development to promote strong communities, a strong economy, and a clean and healthy environment. It includes policies on key issues that affect communities, such as:

- the efficient use and management of land and infrastructure;
- ensuring the sufficient provision of housing to meet changing needs including affordable housing;
- ensuring opportunities for job creation;
- ensuring the appropriate transportation, water, sewer and other infrastructure is available to accommodate current and future needs;
- protecting people, property and community resources by directing development away from natural or human-made hazards; and
- conservation of cultural heritage and archaeology.

The provincial policy-led planning system recognizes and addresses the complex inter-relationships among environmental, economic and social factors in land use planning. The PPS supports a comprehensive, integrated and long-term approach to planning, and recognizes linkages among policy areas.

The PPS is issued under Section 3 of the Planning Act and all decisions of Council in respect of the exercise of any authority that affects a planning matter shall be consistent

with the PPS. Comments, submissions or advice affecting a planning matter that are provided by Council shall also be consistent with the PPS.

The PPS recognizes and acknowledges the Official Plan as an important document for implementing the policies within the PPS. Policy 4.6 of the PPS states that, "The official plan is the most important vehicle for implementation of this Provincial Policy Statement. Comprehensive, integrated and long-term planning is best achieved through official plans."

Policy 2.6.1 of the PPS directs that "Significant built heritage resources and significant cultural heritage landscapes shall be conserved." Properties included on the City's Heritage Register are considered to be significant in this context. "Conserved" is defined in the PPS as "the identification, protection, management and use of built heritage resources in a manner that ensures their cultural heritage value or interest is retained under the Ontario Heritage Act."

Policy 2.6.3 states that "Planning authorities shall not permit development and site alteration on adjacent lands to protected heritage property except where the proposed development and site alteration has been evaluated and it has been demonstrated that the heritage attributes of the protected heritage property will be conserved."

Provincial Plans

Provincial Plans are intended to be read in their entirety and relevant policies are to be applied to each situation. The policies of the Plans represent minimum standards. Council may go beyond these minimum standards to address matters of local importance, unless doing so would conflict with any policies of the Plans.

All decisions of Council in respect of the exercise of any authority that affects a planning matter shall be consistent with the PPS and shall conform with Provincial Plans. All comments, submissions or advice affecting a planning matter that are provided by Council shall also be consistent with the PPS and conform with Provincial Plans.

A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2020)

A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2020) (the "Growth Plan (2020)") came into effect on May 16, 2019 and was amended through an Order in Council that came into effect on August 28, 2020. This plan replaces the previous Growth Plan for the Greater Golden Horseshoe, 2017. The Growth Plan (2020) continues to provide a strategic framework for managing growth and environmental protection in the Greater Golden Horseshoe region, of which the City forms an integral part.

The Growth Plan (2020) builds upon the policy foundation provided by the PPS and provides more specific land use planning policies to address issues facing the GGH region. The policies of the Growth Plan (2020) take precedence over the policies of the PPS to the extent of any conflict, except where the relevant legislation provides otherwise.

In accordance with Section 3 of the Planning Act all decisions of Council in respect of the exercise of any authority that affects a planning matter shall conform with the Growth Plan. Comments, submissions or advice affecting a planning matter that are provided by Council shall also conform with the Growth Plan.

Policy 4.2.7.1 of the Growth Plan states that "Cultural Heritage Resources will be conserved in order to foster a sense of place and benefit communities, particularly in strategic growth areas."

Toronto Official Plan

This application has been reviewed against the policies of the City of Toronto Official Plan. The Plan provides the policy framework for heritage conservation in the City. The following Official Plan policies apply to the proposed alterations:

3.1.5.4: "Properties on the Heritage Register will be conserved and maintained consistent with the Standards and Guidelines for the Conservation of Historic Places in Canada, as revised from time to time and adopted by Council."

3.1.5.5: "Proposed alterations, development, and/or public works on or adjacent to, a property on the Heritage Register will ensure that the integrity of the heritage property's cultural heritage value and attributes will be retained, prior to work commencing on the property and to the satisfaction of the City."

3.1.5.6: "The adaptive re-use of properties on the Heritage Register is encouraged for new uses permitted in the applicable Official Plan land use designation, consistent with the "Standards and Guidelines for the Conservation of Historic Places in Canada."

3.1.5.16: "Properties on the Heritage Register and publicly known archaeological sites and artifacts will be promoted through educational programs, museums, local celebrations and other programming opportunities."

3.1.5.26: "New construction on, or adjacent to, a property on the Heritage Register will be designed to conserve the cultural heritage values, attributes and character of that property and to mitigate visual and physical impact on it."

3.1.5.27: "Where it is supported by the cultural heritage values and attributes of a property on the Heritage Register, the conservation of whole or substantial portions of buildings, structures and landscapes on those properties is desirable and encouraged. The retention of façades alone is discouraged."

The City of Toronto Official Plan can be found here: <https://www.toronto.ca/city-government/planning-development/official-plan-guidelines/official-plan/>

Standards and Guidelines

The Standards and Guidelines for the Conservation of Historic Places in Canada (the "Standards and Guidelines") is the official document guiding planning, stewardship and the conservation approach for all listed and designated heritage resources within the City of Toronto. The General Standards (1-9) the Standards for Rehabilitation (10-12), and the Standards for Restoration (13-14) apply to this project.

The Standards and Guidelines can be accessed here:

<http://www.historicplaces.ca/media/18072/81468-parks-s+g-eng-web2.pdf>

COMMENTS

This report is about ongoing litigation and contains advice or communications that are subject to solicitor-client privilege. The attachment to this report contains confidential information and should be considered **in camera**.

CONTACT

Marc Hardiejowski, Solicitor, Planning & Administrative Tribunal Law; Tel: (416) 392-4960; Fax: (416) 397-5624; Email: marc.hardiejowski@toronto.ca

Gabe Szobel, Solicitor, Planning & Administrative Tribunal Law; Tel: (416) 338-1889; Fax: (416) 397-5624; Email: gabe.szobel@toronto.ca

SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

Public Attachment 1 - Location Map
Public Attachment 2 - Photographs
Public Attachment 3 - Selected Drawings
Public Attachment 4 - Statements of Significance and Attributes for properties

Confidential Attachment 1 - Confidential Report form City Solicitor