

November 2, 2022

By Courier and E-Mail to clerk@toronto.ca and hertpb@toronto.ca

John Elvidge, City Clerk
City of Toronto
100 Queen Street West, 2nd Floor
Toronto, ON
M5H 2N2

ATTENTION: ADMINISTRATOR, SECRETARIAT, CITY CLERK'S OFFICE

**Re: Notice of Objection
Notice of Intention to Designate 18 Portland Street (the "Property")
Proposed Designation Pursuant to Part IV, Section 29 of the *Ontario
Heritage Act* (the "Act")
Palm One Investments LLC (the "Owner")**

We are counsel to the Owner of the Property.

We are in receipt of the City of Toronto (the "**City**") Notice of Intention to Designate the Property, dated October 3, 2022 (the "**NOID**"). We are also now aware of the City Staff Report for Action, dated September 19, 2022 (the "**Staff Report**"), as well as the Toronto Preservation Board decision letter from its meeting of September 20, 2022. Regrettably, neither we, nor our client, nor its consultants, were provided prior notice of the City's actions leading to the issuance of the NOID, which is not consistent with our experience on other files within the City where prior notice has been given.

Objection to NOID

As *per* a review of the City's Heritage Register, the Property is currently not listed under the *Act*.

In our opinion, the reasons for designation and the heritage attributes identified in the NOID are not appropriate. As a result, our client formally objects to the City's NOID.

Background

Zoning By-law Amendment and Draft Plan of Subdivision Applications

On behalf of the Owner, MHBC Planning, Urban Design & Landscape Architecture ("**MHBC**") filed Zoning By-law Amendment and Draft Plan of Subdivision Applications

with respect to 18 Portland Street, 1 and 9 Niagara Street (the “**Development Lands**”), which includes the Property, on October 29, 2021 (the “**ZBLA and DPS Applications**”). The purpose of the ZBLA and DPS Applications is to facilitate redevelopment of the Development Lands with a 23-storey mixed-use building (the “**Proposal**”).

The ZBLA and DPS Applications were submitted to the City following a pre-application consultation meeting held on April 29, 2021. The City’s Draft Pre-Application Consultation Checklist (the “**Checklist**”) specifically notes that the Proposal is described as a “23-storey mixed-use building” and that the Property is currently used as an office. The Checklist identifies that only a Zoning By-law Amendment Application is necessary, and that a Heritage Impact Statement (Conservation Strategy) is a requirement of the application submission. This confirms that the City was aware, at least as early as April 29, 2021, of potential cultural heritage matters associated with the Proposal.

A Heritage Impact Assessment Report, prepared by MHBC and dated October 2021 (the “**HIA**”), was filed as part of the ZBLA and DPS Applications. The HIA acknowledges that the Property has cultural heritage value or interest, that the Proposal includes the retention of the east (front) façade and portions of the north and south (side) facades, and confirms that the overall impact on the built heritage resource is minor. While formal comments from the City’s Heritage Preservation Services staff have not been provided in writing, City Planning staff did comment on “Heritage Conservation” in a letter authored by Mr. Mladen Kukic (Acting Manager, Community Planning) dated March 4, 2022. Additionally, we are advised that heritage comments were received by the Owner’s consultants verbally from the City during two virtual meetings held with staff, the second of which took place on March 1, 2022.

The City deemed the ZBLA and DPS Applications complete as of November 5, 2021, which were subsequently appealed to the Ontario Land Tribunal (the “**Tribunal**”) on March 10, 2022, due to the City’s failure to make a decision on the applications within the statutory time periods. A Tribunal Case Management Conference (“**CMC**”) was held on July 20, 2022. At the CMC, a ten (10) day hearing of the above noted appeals was scheduled and will commence on July 20, 2023 (the “**Hearing**”). A second CMC was also scheduled for February 14, 2023.

It has been approximately one year since the ZBLA and DPS Applications were submitted to the City, and nearly a year and a half since the pre-application consultation meeting took place. Yet, the City did not take any action to seek designation of the Property under Part IV of the *Act* until approximately September of this year. Notably, the NOID was also issued well after the Tribunal scheduled the Hearing. The City’s unreasonable delay in proceeding with a NOID in these circumstances is clearly contrary to the objectives that the Province was attempting to address through recent amendments to the *Act*.

Official Plan Amendment Application

On May 17, 2022 MHBC filed an Official Plan Amendment application for the Development Lands in furtherance of the Proposal (the “**OPA Application**”), which was deemed complete by the City by way of a notice letter dated July 20, 2022. The OPA Application was appealed to the Tribunal on October 21, 2022 due to City Council’s failure to make a decision on the application within the statutory time period.

Pursuant to City Official Plan policies in force at the time of the filing of the ZBLA and DPS Applications, an Official Plan Amendment was not required to permit redevelopment of the Development Lands as envisioned by the Proposal. In our opinion, this was also confirmed by way of the Checklist. Meanwhile, the updated King-Spadina Secondary Plan was adopted by City Council through Official Plan Amendment No. 486 (“**OPA 486**”) on January 29, 2020 by the passage of By-law No. 112-2020. OPA 486 was then appealed by dozens of appellants to the Tribunal and, as a result, no part of OPA 486 is currently in effect. The appeals of OPA 486 were scheduled to be heard by the Tribunal in July 2022 but we understand that hearing has since been adjourned to August 2023.

Since the ZBLA and DPS Applications were submitted and deemed complete when OPA 486 was not in effect, our position has always been that the Proposal is not required to conform to OPA 486, either as adopted or as may ultimately be approved by the Tribunal. Rather, the ZBLA and DPS Applications should be evaluated in the context of the City Official Plan policies in effect as of the date of submission in October 2021. This position has been repeatedly conveyed to the City.

On April 26, 2022, the City lawyers advised that they could not accept our position on the applicable City Official Plan policies noted immediately above. As a result, the OPA Application was filed by the Owner out of an abundance of caution, as in our view no Official Plan Amendment is actually needed.

The Notice of Intention to Designate

Portions of the NOID, including the heritage attributes listed under the “Design and Physical Value” heading are vague. For example, it is unclear how the City may interpret descriptions such as “the scale, form and massing of the two-storey, early twentieth-century factory/warehouse type building ...”, particularly when the City is well aware of the Owner’s intention for the existing building in the context of the Proposal.

We also note that, even if the Property meets one or more of the criteria identified in O.Reg. 9/06, there is no requirement for the Property to be designated under Part IV of the *Act*, and the City has failed to demonstrate appropriate justification for the proposed designation. Likewise, designation of the Property under Part IV of the *Act* is not

required to ensure that the cultural heritage values of the Property are appropriately conserved through the Proposal.

Submission of a Heritage Permit Application

As a result of the City's recent issuance of the NOID, MHBC, on behalf of the Owner, submitted a heritage permit application to the City on October 31, 2022, pursuant to sections 33 and 34(1)2 of the *Act* to alter and/or demolish a building or structure on the Property (the "**Heritage Permit Application**"). While MHBC attempted to schedule a pre-application consultation meeting with relevant City staff prior to submission of the Heritage Permit Application, we understand that City staff were unwilling to meaningfully engage MHBC or the Owner in scheduling a meeting. Consequently, MHBC proceeded to file the Heritage Permit Application without the benefit of a pre-application consultation meeting to avoid potential further delay.

The Heritage Permit Application, which was filed together with a Conservation Plan prepared by MHBC, describes how the portions of the building on the Property proposed to be retained will be temporarily relocated and then reconstructed in a new proximate location, and integrated into the Proposal in an appropriate manner. A comprehensive set of conservation measures before, during, and post-construction is also provided.

We are hopeful that the City will either approve the Heritage Permit Application and consent to the proposed alteration / demolition or, alternatively, that the City will withdraw the NOID and thereby negate the need for the Heritage Permit Application. However, if the City fails to do either, we anticipate that a refusal of the Heritage Permit Application would be appealed by the Owner to the Tribunal and that we would then seek to have the appeal(s) heard together with the existing appeals currently before the Tribunal.

Conclusion

The City has known since at least October 2021 (and likely earlier given the pre-application consultation meeting on April 29, 2021, during which the City identified the HIA as a submission requirement) of the Owner's intention to advance the Proposal, which includes alterations to, and demolition on, the Property. If the City legitimately believed that the Property should be designated under Part IV of the *Act*, the City could have issued a NOID for the Property prior to, or shortly after, the submission of the ZBLA and DPS Applications, but did not do so.

Instead, and without any apparent justification for the delay, the City waited roughly one year to proceed with the NOID, and only did so several months after the Tribunal had already scheduled the Hearing, and in response to the Owner's submission of the OPA

Application, which, as noted above, was made out of an abundance of caution given the City's position in relation to OPA 486.

As described above, the City has failed to provide appropriate justification for the proposed designation of the Property, and there are concerns with the content of the NOID.

Moreover, the failure of City staff to advise the Owner of its intention to proceed with the Staff Report recommending the issuance of the NOID, together with the City's failure to provide the Owner and its representatives with advance notice of the public meetings at which the Staff Report was considered, is quite troubling and contrary to a fair, open and transparent process.

For all of the above reasons, the Owner objects to the proposed designation of the Property under Part IV of the *Act*, and we therefore request that the City withdraw the NOID as soon as possible.

Kindly ensure that we receive prior notice of any public meeting(s) at which this objection will be considered, as well as notice of any decision(s) made in response to this objection. In the meantime, should you have any questions related to this Notice of Objection, please feel free to contact me, or my partner, Andy Margaritis.

Yours truly,

DAVIES HOWE LLP



Mark R. Flowers
Professional Corporation

MRF:AM

copy: Client
Dan Currie, Vanessa Hicks, Mariusz Jastrzebski and David McKay, MHBC
Daniel Elmadany and Colin Dougherty, City Legal Services Division