

## **789-793 Don Mills Road - Proposed Designation By-Law under Part IV, Section 29 of the Ontario Heritage Act – Consideration of Objection**

Date: July 4, 2023

To: City Council

From: Chief Planner and Executive Director, City Planning

Wards: Ward 16 - Don Valley East

### **SUMMARY**

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This report recommends that City Council affirm its decision of May 10, 2023, (Item PH3.14) stating its intention to designate the property at 789-793 Don Mills Road (including entrance address at 793 Don Mills Road) (the "subject property") under Part IV, Section 29 of the Ontario Heritage Act (the "Act"). The City has received an objection to the notice of intention to designate on behalf of 789 Don Mills Developments Inc., the property owner within the statutory timeline.

The subject property, known as Foresters House, is located on the east side of Don Mills Road just south of Eglinton Avenue East, and contains a 22-storey office tower complex connecting to a low-rise two-storey pavilion building (one storey is visible from the street). It was constructed as part of Olympia Square complex, developed by Olympia and York, in 1965-1967 and has been a landmark in the Don Mills area for more than 55 years. The subject property is a representative example of a skyscraper typology constructed in the Late Modern style. It is located in the Flemington Park Industrial Estate established in 1958. The subject property is also located in the Core Character Area within the Don Mills Crossing Secondary Plan (OPA 404) boundary, and is identified as a heritage potential property on Map 40-9 Views and Vistas.

In June 2019, the More Homes, More Choice Act, 2019 (Bill 108) received Royal Assent. Schedule 11 of this Act included amendments to the Ontario Heritage Act which included amendments to the listing and designation processes. The Bill 108 Amendments to the Act came into force on July 1, 2021. City Council has 90 days from the date of the end of the objection period, to make a decision on this objection as per the timeline under the Act.

Staff have reviewed the objections raised on behalf of 789 Don Mills Developments Inc. and remain of the opinion that this property holds cultural heritage value or interest. The property meets Ontario Regulation 9/06, the criteria prescribed for municipal designation under Part IV, Section 29 of the Act under all three categories of design and physical, historical and associative, and contextual values.

As the property has cultural heritage value or interest and meets the prescribed criteria pursuant to Part IV, Section 29 of the Act, City staff are of the opinion that this property should be designated. Designation enables City Council to review proposed alterations for the property, enforce heritage property standards and maintenance, and refuse demolition.

## **RECOMMENDATIONS**

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The Chief Planner and Executive Director, City Planning recommends that:

1. City Council affirm its decision to state its intention to designate the property at 789-793 Don Mills Road (including entrance address at 793 Don Mills Road) under Part IV, Section 29 of the Ontario Heritage Act as set out in Council Decision (Item PH3.14) on May 10, 2023.
2. City Council authorize the City Solicitor to introduce the bill in City Council designating the property at 789-793 Don Mills Road (including entrance address at 793 Don Mills Road) under Part IV, Section 29 of the Ontario Heritage Act.

## **FINANCIAL IMPACT**

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

## **DECISION HISTORY**

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On May 10, 2023, City Council adopted a report from the Chief Planner and Executive Director, "789-793 Don Mills Road - Notice of Intention to Designate a Property under Part IV, Section 29 of the Ontario Heritage Act" (Item PH3.14) and stated its intention to designate the property at 789-793 Don Mills Road (including entrance address at 793 Don Mills Road) under Part IV, Section 29 of the Ontario Heritage Act.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.PH3.14>

## **BACKGROUND**

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City Council has stated its intention to designate the subject property under Part IV, Section 29 of the Act. A notice of intention to designate was served on the property owner and the Ontario Heritage Trust, and was published in accordance with the Act. The objection period ended on June 15, 2023.

The City Clerk received a notice of objection on behalf of the property owner within the required timeframe set out in the Act. The Act requires that City Council consider and make a decision on an objection within 90 days from the end of the objection period.

City Council may decide to withdraw, amend, or affirm its intention to designate. City Council has until September 13, 2023, to make a decision on the objection.

The subject property was recommended for inclusion on the City's Heritage Register in the Don Mills Crossing Final Report, Cultural Heritage Resource Assessment adopted by City Council on April 17, 2019. The Toronto Preservation Board adopted item PB12.3, Inclusion on the City of Toronto's Heritage Register – Don Mills Crossing, on December 2, 2019. At its meeting of January 29, 2020, the City Council adopted a supplementary report that deferred consideration of seven properties including the subject property at 789-793 Don Mills Road for inclusion on the Heritage Register, which provided City staff more time to communicate with the property owners.

On October 14, 2022, the City Clerk issued a complete application notice for an Official Plan Amendment, Zoning By-law Amendment and Site Plan Control application for a development proposed for the subject property and the surface parking at 10 Ferrand Drive. The application proposes the redevelopment of the site in three phases which includes the introduction of four new towers with podiums with below-grade parking and demolition of the existing two-storey pavilion building to create a Privately-Owned Publicly Accessible Open Space (POPS). On February 21, 2023, the applicant appealed the application to the Ontario Land Tribunal due to Council not making a decision within the 120-day time frame in the Planning Act. The first Case Management Conference was held on June 16, 2023.

## **COMMENTS**

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Staff have reviewed the notice of objection dated June 13, 2023 and prepared by Overland LLP. A copy of the notice of objection is included as Attachment 1 to this report. Within this letter the objector outlines a number of reasons for their objection, all of which primarily relate to the inclusion of the two-storey pavilion building, the interior elements of the lobby of the office tower, and the landscape setting in the heritage attributes.

Staff have re-examined the Statement of Significance (Reasons for Designations) for the property at 789-793 Don Mills Road (including entrance address at 793 Don Mills Road) and remain of the opinion that the Statement of Cultural Heritage Value and the Heritage Attributes accurately describe the cultural heritage value or interest of this property as it relates to the criteria prescribed by Ontario Regulation 9/06 of the Act. This includes references to the two-storey pavilion, the interior features of the lobby of the office tower building, and the landscape setting in the Heritage Attributes. Staff do not recommend revisions to the extent of this statement.

The objector notes that "the current Reasons for Designation are far more expansive than the Official Plan's cultural heritage policies that apply to the Site under the Don Mills Crossing Secondary Plan (OPA 445)." The objector states that in OPA 404 "there is no references to the two-storey pavilion building, nor to interior elements of the office building, nor to other elements included in the proposed heritage attributes." Further, the objector has expressed the opinion that the current landscape setting, identified as a

heritage attribute, is proposed to be replaced by a POPS in the proposed development and should be removed from the Heritage Attributes.

City staff have reviewed Policy 6.5.4 of the Don Mills Crossing Secondary Plan and this policy does not prescribe the heritage attributes of the property. Instead, Policy 6.5.4 establishes protected views towards the Foresters Headquarters from specific locations. The subject property is one of the heritage resources identified on Map 40-9 Views of Vistas. The identified views and vistas connect the public realm to significant natural and heritage resources, cultural institutions, community destinations and landmarks. The subject property, as a highly visible heritage landmark, has been identified as one of the view termini with two specific directions which are described in Policy 6.5.4. Specific guidance to the conservation and enhancement of the identified views to heritage landmarks has been provided in Policy 6.5.1 (view to the John Parkin Building), Policy 6.5.3 (view to the Ontario Science Centre), and Policy 6.5.4 (view to the subject property).

With respect to the two-storey pavilion building, the Statement of Significance describes that this building along with the Foresters tower and the 16-storey tower at 797 Don Mills Road were part of a complex known as Olympia Square, developed by Olympia and York. The 16-storey tower was converted to condominiums in 1994 which involved significant alterations of the building and is now known as Tribeca Lofts. The two-storey pavilion, originally contained restaurants and shops, is located between the Foresters tower and the 16-storey tower. A raised plaza connects these three structures. The pavilion building is an important part of the original Olympia Square complex that contributes to the cultural heritage value of the subject property. As such, Heritage Planning staff are of the opinion that the two-storey pavilion must be included in the Heritage Attributes.

With respect to the landscape setting, the Statement of Cultural Heritage Value states that the subject property is in the Flemingdon Park Industrial Estate, developed in tandem with the residential section of Flemingdon Park, south of Eglinton, in 1958. The integration of landscape and landscaped setbacks are characteristic of Don Mills and Flemingdon Park planning principles. The subject property is an example of the Flemingdon Park typology which includes extensive open space with landscaped setbacks from the street and buildings designed in a modern architectural style.

The interior elements of the lobby of the Foresters tower, including two sets of doors and the elevator core, are characteristic features of Late Modernism architectural style. The subject property represents a skyscraper typology constructed in the Late Modern style. The identified interior elements are representative of the Late Modern office headquarters and skyscraper typology and contribute to the overall heritage value and significance of the subject property.

Further, the objector is of the opinion that they were not contacted or consulted on the identified heritage attributes of the subject property in the designation report. In addition, the objector is of the opinion that City has not provided any comments on the Heritage Impact Assessment that was submitted as part of the development application on July 29, 2022. The objection letter states that "City Staff proceeded to move forward with a report recommending designation without further consultation with the Owner."

The objector is concerned the Statement of Significance, as written, which includes the two-storey pavilion building and the interior elements of the lobby of the office tower in the Heritage Attribute, would preclude the viability of providing certain portions of the proposed development. The proposed development has been designed to replace the two-storey pavilion building with a POPS. The objector asserts that the property owner should have flexibility to adapt the interior spaces of the lobby of the tower building "to the needs of its tenants; to make upgrades, improvements, and repairs; and to introduce new technologies and efficiencies, so that the space remains viable over the long term."

The Ontario Heritage Act prescribes the process of designation of a property and provides for the alteration of a heritage property under Part IV of the Act. The Act also prescribes criteria under Ontario Regulations 9/06 required to be evaluated to determine whether a property has cultural heritage value or interest and therefore should be recommended for designation under the Act. Planning Act applications do not determine the cultural heritage value or interest of a heritage property nor are they included in criteria for the evaluation or determination of cultural heritage value.

Instead, Planning Act applications are to be informed by the designation by-laws and cultural heritage value or interest determined under the Act such that a determination can be made whether the level of intervention and conservation proposed for a designated property is appropriate. To reach this understanding, it is necessary to first understand the cultural heritage value of a property prior to planning for change and considering interventions to the heritage property. In other words, the designation of a property under Part IV of the Act does not reflect the future state of a property with respect to any specific development application. Following designation under Part IV of the Act, the appropriateness of any proposed intervention to a heritage property is determined through an alteration or demolition application under Section 33 and Section 34 of the Act.

The distinction between a designation made under Section 29 and the alteration and demolition process under Sections 33 and 34 of the Act are conflated by the applicant in their objection notice. A designation by-law is not tailor-made to a specific development application. The process to support a development application is considered and determined through Section 33 and 34 permits.

With respect to the subject property, a staff report addressing the alteration will be brought forward to the Toronto Preservation Board and subsequent City Council meeting with respect to the proposed interventions related to the site-specific development application. The sequential approach described above is consistent with the Standards and Guidelines for the Conservation of Historic Places in Canada and is also consistent with the intent of the changes to the Provincial Policy Statement (2020), which clarify that determination of the cultural heritage value of a property, in accordance with the Act, should be undertaken prior to the application of heritage conservation policies to a particular planning application.

In addition, the Act prescribes the content and process that Council must follow when serving notice of its intention to designate a property under Section 29 of the Act. There

is no requirement to notify the property owner in advance of Council stating its notice of intention to designate any property under Part IV, Section 29 of the Act. The City typically exceeds the requirements of the Act by advising property owners in advance of meetings where staff may be recommending that a property be designated. Staff are satisfied that the process Council followed in order to serve its intention to designate the subject property meets the requirements of the Act. Further, City staff arranged two productive meetings with the Overland LLP to discuss and review the draft Statement of Significance for inclusion of the property at 789-793 Don Mills Road on the City's Heritage Register in November 2019 and February 2020. Staff also met with the heritage consultant, Goldsmith Borgal & Company Ltd. Architects (GBCA), on April 20, 2023, and clarified two distinct processes for the heritage designation (under Section 29) and alteration or demolition (under Sections 33 and 34) reports.

Should Council affirm its intention to designate, the City Solicitor will introduce a designating by-law to Council under Section 29 of the Act. Once Council has passed a designating by-law, notice has been provided, and the by-law has been published in accordance with the Act, an appeal may be made to the Ontario Land Tribunal in accordance with the Act. The Ontario Land Tribunal Decision is binding.

## **CONCLUSION**

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The property at 789-793 Don Mills Road meets Ontario Regulation 9/06, the criteria prescribed for municipal designation under Part IV, Section 29 of the Ontario Heritage Act, under all three categories of design/physical, historical/associative, and contextual values. As such, despite the notice of objection, this property should be designated.

## **CONTACT**

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## **SIGNATURE**

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Gregg Lintern, MCIP, RPP  
Chief Planner and Executive Director  
City Planning

## **ATTACHMENTS**

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Attachment 1 – Letter of Objection – 789-793 Don Mills Road  
Attachment 2 – Statement of Significance (Reasons for Designation) – 789-793 Don Mills Road (entrance address at 793 Don Mills Road)  
Attachment 3 – Photograph

**(ENTRANCE ADDRESS AT 793 DON MILLS ROAD)****STATEMENT OF SIGNIFICANCE****(REASONS FOR DESIGNATION)**

The property at 789-793 Don Mills Road (including entrance address at 793 Don Mills Road), is worthy of designation under Part IV, Section 29 of the Ontario Heritage Act for its cultural heritage value, and meets Ontario Regulation 9/06, the provincial criteria prescribed for municipal designation under all the criteria of design/physical, historical/associative and contextual value.

**Description**

The property is located in the Core Character Area within the Don Mills Crossing Secondary Plan (Official Plan Amendment 404) boundary. It was identified as having cultural heritage value in the inventory included in North York's Modernist Architecture, first published in 1997, with a revised edition in 2009.

The Independent Order of Foresters building, known as Foresters House, at 789-793 Don Mills Road was constructed between 1965 and 1967 as part of a complex known as Olympia Square, developed by Olympia and York and designed by Kaljo Voore, an Estonian Canadian architect, of Bregman and Hamman with Craig, Zeidler & Strong. Foresters House, is a 22-storey office tower which sits on a wide, raised plaza accessed by stairs and a ramp, a parking structure to the east and a landscaped surround which includes a sunken garden on the west side of the two-storey pavilion building (one storey is visible from the street) to the north which originally contained restaurants and shops. Originally clad in self-cleaning, glazed, white ceramic tiles, the building has been re-clad in insulated aluminium panels in 1988. Olympia Square also originally included the 16-storey tower at 797 Don Mills Road, also designed by Bregman and Hamman and completed in 1964-1965. The second tower, now known as Tribeca Lofts, was converted to condominiums in 1994 which involved the alterations of the building to include balconies.

Foresters House was constructed for the Independent Order of Foresters (IOF), a "family fraternal benefit society"<sup>1</sup> which began in the 19th century to provide insurance to working class families. One of its first leaders, was Dr. Oronhyatekha (Burning Cloud, 1841-1907), a member of the Six Nations, educated at the University of Toronto and Oxford who provided exceptional leadership in his support and care for women, minorities and children. In 1879, he introduced a motion to include women as members in the IOF. Now an international organization, throughout its history the IOF has provided charitable assistance to individuals and nations in need during times of economic depression, war and natural disasters as well as supporting children through charities such as the Children's Miracle Network. Today, it is an international financial services provider offering opportunities for investment as well as insurance and continues philanthropic work.

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1 Toronto Historical Board, plaque, 1995.

Located on the east side of Don Mills Road just south of Eglinton Avenue East, the property is in the Flemingdon Park Industrial Estate, developed in tandem with the residential section of Flemingdon Park, south of Eglinton, in 1958. Laid out by Macklin Hancock, the Flemingdon Park plan repeated many of the core principles and elements of the Don Mills plan to the north. These included extensive open space with landscaped setbacks from the street and buildings designed in a modern architectural style. It was Hancock's intention that whereas low-rise buildings would line Wynford Drive, mid-rise and high-rise office towers would be located on Eglinton Avenue East and at the intersection of Eglinton with Don Mills Road. Foresters House at 789-793 Don Mills Road is an example of this Flemingdon Park typology.

### **Statement of Cultural Heritage Value**

The International Order of Foresters building, now known as Foresters House, has cultural heritage value for its design which represents a skyscraper typology constructed in the Late Modern style. The style is evident in the heavily-articulated façade with its deep, vertical piers, and chamfered, horizontal panels under the customary ribbon windows. With its tall, double-height first storey, repetitive intervening floors and tall parapet wall at the top, it represents the skyscraper typology with its tripartite composition of base, column and top. Its surrounding with and access from a large, raised plaza, with a double-storey, fully-glazed ground floor and the sunken, out-door garden with a sloping lawn, paved area, trees and plantings on the west side of the two-storey pavilion building (one storey is visible from the street) are characteristic setting and landscape features of Late Modernism. The integration of landscape and landscaped setbacks are characteristic of Don Mills and Flemingdon Park planning principles.

Constructed in 1965-1967, the property has historic value as the international headquarters for the Independent Order of Foresters (IOF), a historic fraternal organization which was established in Canada in the 1870s to provide insurance to working class families and was from 1881, guided by the leadership of the visionary and egalitarian Dr. Oronhyatekha, a member of the Six Nations. The IOF is an international insurance and investment organization which, throughout its history, has been a leader in philanthropy assisting during wars, depressions and natural disasters.

The property has value as it is associated with the development of Flemingdon Park from 1958 onwards by Toronto Industrial Leaseholds and Webb and Knapp Canada with the layout undertaken by Macklin Hancock who was also the lead planner of Don Mills. It is also valued for its association with the subsequent owners of Flemingdon Park, the Reichmann brothers, of Olympia & York, who developed this property as Olympia Square, creating a highly visible landmark for Flemingdon Park and Don Mills and who would become one of Canada's most significant international development companies who championed the cause of high quality, innovative design. The design of Don Mills with Flemingdon Park is significant to the local community and is an example of post-war suburban planning.

The property has value as it reflects the ideas of the architects, Bregman and Hamman and Craig, Zeidler and Strong. Bregman and Hamman, now known as B+H Architects,



which was established in 1953 by Sidney Bregman and George Frederick Hamann, is now one of the 50 largest architectural firms in the world. The firm has been awarded numerous times including the Governor General's Medal and an Award of Merit, and the RAIC Innovation in Architecture Award and two Ontario Association of Architects Awards. The lead architect, Kaljo Voore, was part of a significant diasporic community of Estonian architects who immigrated to Canada during and after the Second World War. He was the leading design architect at Bregman and Hamann and master planned and designed several high profile projects in Ontario including the Skylon Tower and Exhibition Hall (1964) overlooking Niagara Falls, Voore also master planned the Scarborough Town Centre, the Scarborough Centenary Hospital (1967), and Don Mill's Olympia Square at 797 Don Mills Road and 789-793 Don Mills Road.

Craig, Zeidler and Strong was founded in 1961 by James Craig, Eberhard Zeidler and William A. Strong and is well-known for their work at Ontario Place and the McMaster Health Sciences Centre, the Hospital for Sick Children and for the Eaton Centre, also done in partnership with B+H Architects. In 1975, the firm became known as the Zeidler Partnership and was responsible for Canada Place at Vancouver's Expo 86. Eberhard Zeidler received the Order of Canada in 1984 and the firm has received numerous awards including the Ontario Association of Architects Awards, Canadian Architect Awards, City of Toronto Architecture and Urban Design Awards, Heritage Toronto Awards, the American Institute of Architects, and the RAIC – National Trust Prix du XXE Siècle Award for Ontario Place. It is now an international practice with offices in Berlin and Beijing.

The Foresters tower property has contextual value as it contributes to and defines the 1960s, Late Modern, mid-rise character of Flemingdon Park at the intersection of Don Mills Road and Eglinton Avenue East as designed by Macklin Hancock. In its typology, location, scale, massing and period details it is historically as well as visually and functionally linked to its surroundings. As it is seen from various viewpoints along Eglinton Avenue and Don Mills Road, it is a landmark marking the heart of the Flemingdon Park Community and Don Mills.

## **Heritage Attributes**

### **Design or Physical Value**

The following heritage attributes contribute to the cultural heritage value of the property at 789-793 Don Mills Road as representative of the Late Modern office headquarters and skyscraper typology:

- The scale, form and massing of the 22-storey, flat-roofed building set on a raised plaza, with an adjacent sunken low-rise (two-storey) pavilion building to the north
- The design of all four elevations as a composition of prominent vertical elements with the piers set forward from the elevation and minor horizontal elements with the recessed chamfered horizontal panels beneath the windows, terminating in the prominent solid band at the top of the building
- The ribbon windows which are continuous at the corners
- The double height curtain wall glazing at the ground floor

Interior heritage attributes that contribute to the value of the property at 789-793 Don Mills Road as representative of the Late Modern office headquarters and skyscraper typology include:

- The entrance lobby, accessed through two sets of doors on the east and west elevations and aligned directly across from each other on the same east-west axis
- The elevator core with the book-matched marble wall panels creating a special pattern with hidden doors, stainless steel elevator doors and surrounds, and the granite flooring

### **Historical or Associative Value**

The following heritage attributes contribute to the cultural heritage value of the property at 789-793 Don Mills Road as the international headquarters for the Independent Order of Foresters and as an example of post-war suburban planning:

- The set-back, placement and orientation of the building on the east side of Don Mills Road just south of Eglinton Avenue East

### **Contextual Value**

The following heritage attributes contribute to the cultural heritage value of the property at 789-793 Don Mills Road as contributing and defining the 1960s, Late Modern, mid-rise character of Flemingdon Park, at the intersection of Don Mills Road and Eglinton Avenue East, and as being historically, visually and functionally linked to its surroundings:

- The set-back, placement and orientation of the building on the east side of Don Mills Road just south of Eglinton Avenue East
- The scale, form and massing of the 22-storey, flat-roofed building set on a raised plaza, with an adjacent two-storey pavilion building to the north
- The landscaped setting including:
  - planters on the plaza
  - the sunken garden on the west side of the complex adjacent to Don Mills Road with its paved outdoor area, sloping grass lawn, tree and plantings and relationship to the interiors of the two-storey building to the east
  - at street level the landscaped border between the sidewalk and the plaza which includes grass and trees on the west and south sides of the property

NOTE: The parking structure to the east of the office tower is not considered to be a heritage attribute.



View of the property at 789-793 Don Mills Road looking southeast (Heritage Planning, 2023)