

Christopher J. Tanzola
Partner
Direct 416-730-0645
Cell 416-428-7493
ctanzola@overlandllp.ca

Overland LLP
5255 Yonge St, Suite 1101
Toronto, ON M2N 6P4
Tel 416-730-0337
overlandllp.ca



June 13, 2023

VIA EMAIL AND COURIER

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

Attn: Administrator, Secretariat

Dear Mr. Elvidge:

**RE: 789-793 Don Mills Road and 10 Ferrand Drive
Notice of Objection by 789 Don Mills Developments Inc. to the Notice of Intention to
Designate issued by the City of Toronto on May 16, 2023
Section 29(5) of the *Ontario Heritage Act***

We are the solicitors for 789 Don Mills Developments Inc. (the “**Owner**”), the owner of the property municipally known as 789-793 Don Mills Road and 10 Ferrand Drive (the “**Site**”).

On May 16, 2023, the City of Toronto (the “**City**”) issued a Notice of Intention to Designate the Site under Part IV, Section 29 of the *Ontario Heritage Act*, R.S.O. 1990, c.O.18, as amended (the “**Notice of Intention**”). On behalf of our client, we hereby object to the Notice of Intention pursuant to Section 29(5) of the *Ontario Heritage Act* (the “**Notice of Objection**”). Our reasons in support of the Notice of Objection are set out below.

Through this Notice of Objection, the Owner seeks revisions to the proposed heritage attributes of the Site to remove references to the two-storey pavilion building and references to certain interior features of the Foresters office building. In the alternative, the Owner seeks to have the City withdraw the Notice of Intention in its entirety.

The Subject Site

The Site is located south of Eglinton Avenue East, at the northeast corner of Don Mills Road and Rochefort Drive. The Site has a frontage of approximately 113.0 m on Don Mills Road, 59.0 m on Ferrand Drive, and 223.0 m on Rochefort Drive. In total, the Site has an area of approximately 20,659.98 m² (5.1 acres).

The Site is located in close proximity to existing and planned transit infrastructure including the planned Science Centre Station (195 m to the north), Flemingdon Park Station (750 m to the south), and the Aga Khan Park and Museum LRT Station (550 m to the north). The Site is also well served by multiple surface transit routes that operate along the major arterials of Don Mills Road and Eglinton Avenue East.

793 Don Mills Road is currently occupied by a low-rise pavilion building fronting onto Don Mills Road that is used as a conference facility and an associated 4-storey parking structure to the immediate east. At the approximate mid-point of Rochefort Drive (between Don Mills Road and Ferrand Drive) is Foresters Lane, which is a privately-owned lane that forms part of the Site. East of Foresters Lane is 10 Ferrand Drive, which is currently occupied by a surface parking lot that is used by the existing office building at 789 Don Mills Road (the “**Foresters Office Building**”) and the conference facility that is located at 793 Don Mills Road.

Proposed Development

On July 29, 2022, the Owner filed applications for an Official Plan Amendment, a Zoning By-law Amendment, and Site Plan Approval (the “**Applications**”) for a multi-phase, multi-tower development on the Site. The Applications were determined to be complete on September 16, 2022.

Through the Applications, the Owner is proposing to redevelop the Site with two towers of 45- and 50-storeys connected by a 6-storey podium on the east portion of the Site, and two towers of 57- and 60-storeys connected by a 6-storey podium on the west portion of the Site. An outdoor plaza with a privately-owned publicly accessible open space (POPS) and a 1,380 m² public park are also proposed (collectively, the “**Proposed Development**”).

The Proposed Development is predicated on the conservation of the Foresters Office Building at the southwest corner of the Site. However, the two-storey pavilion/conference centre and the elevated parking structure are proposed to be demolished and replaced with a public park and a Privately-Owned Public Space (POPS), in addition to two of the residential buildings that are described above. As set out in the Applications, the addition of the new high-rise buildings adjacent to the Foresters Office Building, which is also a high-rise building, will not result in any negative impact to the cultural heritage value of this building.

On February 21, 2023, our client appealed the Applications to the Ontario Land Tribunal (the “**Tribunal**”) pursuant to Sections 22(7) and 34(11) of the *Planning Act* and Section 114(15) of the *City of Toronto Act* on the basis of City Council’s failure to make a decision within 120 days of the date that the complete Applications were filed with the City (the “**OLT Appeals**”). The first Case Management Conference for the OLT Appeals is scheduled for June 16, 2023.

Reasons for Objection

At the time of making the Applications and in conjunction with the determination of their completeness, the Owner was asked by City Staff to sign a waiver/extension under the *Ontario Heritage Act* to allow the City an extended period of time, beyond the statutory time limit, to consider the heritage status of the Site. The Owner acquiesced to City Staff’s request and signed an extension to June 2023.

However, notwithstanding the Owner’s agreement to cooperate with the City regarding timing, no further discussions regarding the heritage attributes of the Site or the proposed designation took place. Nor were any comments provided back to the Owner regarding the Heritage Impact Assessment that was submitted with the Applications. Rather, City Staff proceeded to move forward with a report recommending designation without further consultation with the Owner.

Prior to the issuance of the Notice of Intention, the proposed designation was considered by the Toronto Preservation Board at its meeting on April 24, 2023 (the “**TPB Meeting**”). In advance of the TPB Meeting, a Report for Action was issued by the Senior Manager, Heritage Planning, Urban Design, City Planning on April 6, 2023 (the “**Report for Action**”) recommending that City Council state its intention to designate the Site under Section 29 of the *Ontario Heritage Act*.

On April 21, 2023, we filed a letter with the Toronto Preservation Board to lay out certain background information and to advise of our concerns with the proposed designation, and more specifically certain features of the Site that were included in the Statement of Significance (the “**Reasons for Designation**”). A copy of the letter that was filed with the Toronto Preservation Board is attached as Appendix “A” of this Notice of Objection.

In addition, we attended the Toronto Preservation Board meeting on April 24, 2023 to speak to make a delegation in support of our written submissions on the Owner’s behalf.

Proposed Revisions to Reasons for Designation

Based on the concerns raised by our client, we have prepared a modified version of the Reasons for Designation which is attached as Appendix “B” of this Notice of Objection.

The proposed revisions continue to recognize the Foresters Office Building as an identified cultural heritage resource while removing references to the two-storey pavilion building and to certain interior elements of the Foresters Office Building. These revisions will provide our client and City Staff with an appropriate level of flexibility to deal with the development of the Site through the determination of the Applications. In our view, the revised language would allow for the Proposed Development to be evaluated by the City on its merits without imposing undue restrictions on the development and future use of the Site.

Rationale for Proposed Revisions

As set out in our previous correspondence, the Owner has concerns with the identification of the “two-storey pavilion building” as an attribute that contributes to the heritage value of the Site. The Proposed Development has been designed to replace the pavilion building with a public park and POPS area that can pay homage to the Olympia Square development that previously existed on the Site while also creating new amenity space that can be enjoyed by existing and future residents and tenants.

The Owner also continues to have significant concerns about the implications of identifying interior elements of the Foresters Office Building as heritage attributes. Our client intends to preserve the office building entirely as part of the Proposed Development. In order to maintain viable commercial office space, especially with current economic realities, a landlord must have flexibility to adapt spaces 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. However, designating heritage status to these interior areas would impose legislative obligations for dealing with functional components of the building.

We also note 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 404**”). OPA 404 was approved by the Tribunal following a settlement with the City, in which the heritage attributes of the Site were specifically limited to: (i) the westernmost 20-foot bay system of windows on the southern tower façade of the Foresters Office Building above the tenth storey of the building; and (ii) the upper floors of the Foresters building as viewed from Eglinton Avenue East near the CP Rail Corridor bridge. There is no reference to the two-storey pavilion building, nor to interior elements of the office building, nor to other elements included in the proposed heritage attributes. Despite the clear direction of OPA 404, the Reasons for Designation are broadly worded and include other elements on the Site including certain landscaped areas. The current landscaped setting is proposed to be replaced by a public park and privately-owned publicly accessible open space which will significantly increase the amount of greenspace that is located on-site.

In this regard, we note that the Notice of Intention has been issued during the Tribunal’s consideration of the Applications and the various studies that were submitted in support thereof, which include an in-depth evaluation of the heritage features on the Site. Absent the requested revisions, the concerns set out above will nevertheless need to be addressed, and the Reasons for Designation may need to be refined in conjunction with the final determination of the Applications. This will help to ensure that the designation process does not prejudice the determination of the Applications on their merits and that the Proposed Development and the Reasons for Designation are consistent.

Should you require any further information to constitute this Notice of Objection, please advise the undersigned and Michael Cara (at mcara@overlandllp.ca or 416-730-8844)

Yours truly,
Overland LLP



Per: Christopher Tanzola
Partner

Encl.

Appendix "A"

Letter from Overland LLP to Toronto Preservation Board (dated April 21, 2023)

Michael Cara
Associate
Direct 416-730-8844
mcar@overlandllp.ca

Overland LLP
5255 Yonge St, Suite 1101
Toronto, ON M2N 6P4
Tel 416-730-0337
overlandllp.ca

The logo for Overland LLP, featuring the word "overland" in a lowercase, sans-serif font with a horizontal line underneath the letter "o".

April 21, 2023

VIA ELECTRONIC SUBMISSION (to hertpb@toronto.ca)

Toronto Preservation Board
Toronto City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Dear Sirs/Madams:

**RE: Item PB5.4 – Notice of Intention to Designate a Property under Part IV,
Section 29 of the Ontario Heritage Act – 789-393 Don Mills Road**

We are the lawyers for 789 Don Mills Developments Inc., owner of the lands municipally known as 789-793 Don Mills Road (the “**Site**”). On April 18, 2023, we received notice by way of email that the Site is proposed to be designated under Section 29 of the *Ontario Heritage Act*.

The Site was previously proposed to be listed on the Heritage Register (in January 2020) but the item was deferred by City Council so that staff could communicate with the previous owners of the Site about the reasons or designation. In February 2020, the previous owners met with staff to discuss which elements of the Site warrant recognition as heritage features. Our office has had no further discussions with staff about the listing or designation of the Site since that time. As a result, we have not had an opportunity to comment on the “Statement of Significance” that included as Attachment 3 of the Staff Report (the “**Reasons for Designation**”).

The Site was acquired by the current owners in March 2022. Our clients share certain concerns that were expressed by the previous owners, including the identification of the “two-storey pavilion building” as an attribute that contributes to the heritage value of the Site. The pavilion building is addressed in the Heritage Impact Assessment (HIA) that was prepared by GBCA Architects and filed in support of the site-specific applications for an Official Plan Amendment, a Zoning By-law Amendment and Site Plan Approval that were submitted by the current owners of the Site on July 29, 2022 (the “**Applications**”). The HIA also confirms that the Applications are proposing to retain the existing Foresters office building as part of the redevelopment.

The Reasons for Designation should be developed concurrently with staff’s review of the HIA that was submitted in support of the Applications. At minimum, the heritage designation process should not prejudice the determination of the Applications on their merits. In this regard, we note that the staff comments provided on January 11, 2023 do not seem to indicate any particular concern with the development proposal with regards to the two-storey pavilion building. For this reason, we are concerned about the potential for inconsistency between the feedback received from staff in respect of the Applications and the recommendations that are being advanced with the Reasons for Designation as currently worded.

We are similarly concerned that the Reasons for Designation as currently worded are far more expansive than the Official Plan's cultural heritage policies that apply to the Site, as set out in the Don Mills Crossing Secondary Plan ("OPA 404"). OPA 404 was recently approved by the Ontario Land Tribunal following a settlement, in which the heritage attributes of the Foresters building on the Site was specifically limited to: (i) the westernmost 20-foot bay system of windows on the southern tower façade of the Foresters building above the tenth storey of the building; and (ii) the upper floors of the Foresters building as viewed from Eglinton Avenue East near the CP Rail Corridor bridge. The proposed Reasons for Designation are largely descriptive, including describing portions of the tower that have been recently renovated like the exterior cladding. Describing what is on a site is not synonymous with identifying its heritage value.

Finally, our client is very concerned about the proposal to identify heritage attributes within the interior of the Forester's office building. Our client is proposing to fully retain the office building as part of its proposed development. In order to maintain viable commercial office space, especially with current economic realities, a landlord must have flexibility to adapt spaces 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. Applying a heritage designation to these interior spaces will make this more difficult to do by imposing legislative requirements for dealing with these functional parts of the building. For this reason, our client requests and strongly urges the Preservation Board, Community Council, and City Council, not to identify building interiors as part of any Reasons for Designation that are ultimately adopted.


The Site is undergoing a planning process to determine its future as part of the Don Mills Crossing area at the same time as its historical and heritage attributes are being considered in a public forum. In order to ensure that decisions made through these parallel processes do not contradict each other, we are requesting that our client and staff be given additional time to discuss the proposed development and the HIA that has been submitted in support of it and, along with the other issues identified in our letter, work to refine the Reasons for Designation.

In these circumstances, we would ask that this item be deferred, or failing that, that staff be given direction to continue discussions with the owner prior to this item coming before City Council regarding the scope of the Reasons for Designation and their relationship to the ongoing planning process for the Site.

Please provide us with written notice of the decision in this matter and the consideration of this item by any other committee of City Council. Our contact information is provided herein.

Yours truly,

Overland LLP



Per: Michael Cara
Associate

Appendix “B”

Proposed Revisions to Reasons for Designation

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 as a heritage attribute.