

Construction of a Building and Alterations to a Designated Heritage Property within the Garden District Heritage Conservation District – 294-298 and 300 Sherbourne Street

Date: June 27, 2023

To: Toronto Preservation Board and City Council

From: City Solicitor

Wards: Ward 13 - Toronto Centre

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

On July 2, 2021, Official Plan and Zoning By-law Amendment applications were submitted for the properties at 294-298 Sherbourne Street which proposed to construct a 10-storey student residence with 7-storey tower element stepped back 3 metres from a 3-storey podium on vacant, non-contributing designated properties within the Garden District Heritage Conservation District. On December 13, 2021, Heritage Permit applications were submitted to erect the above-noted structure on 294-298 Sherbourne Street.

On January 14, 2022, the applicant appealed the Official Plan and Zoning By-law Amendment applications due to Council not making a decision within the time frame in the *Planning Act*. On April 6, 2022, the applicant appealed Council's refusal of the Heritage Permit application under Section 42 of the *Ontario Heritage Act* to the Ontario Land Tribunal (the "OLT").

On June 12, 2023, the owner submitted a with-prejudice settlement offer (the "Settlement Offer") with respect to its appeals. The Settlement Offer includes a new Heritage Permit application under Section 42 of the *Ontario Heritage Act* to alter the on-site heritage resource located at 300 Sherbourne Street, which property was acquired by the owner and incorporated into a new development proposal and conservation strategy.

This report has been prepared in consultation with staff from City Planning, including Heritage Planning. This report deals specifically with matters related to the Toronto Preservation Board and requested alterations under Section 42 of the *Ontario Heritage Act*. A further report from the City Solicitor will be prepared in consultation with staff to provide further advice and detail with regard to the Revised Proposal under the *Planning Act*. The sole focus of this Report is the requested alterations pursuant to Section 42 of the *Ontario Heritage Act*.

The City Solicitor requires further directions for upcoming OLT proceedings relating to the OPA, Zoning and Heritage appeals.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the recommendations contained in Confidential Attachment 1 to this report from the City Solicitor.
2. City Council authorize the public release of the confidential recommendations contained in Confidential Attachment 1 if adopted by City Council
3. City Council direct that all other information contained in Confidential Attachment 1 to this report from the City Solicitor is to remain confidential at the discretion of the City Solicitor as it contains advice which is subject to solicitor-client privilege.

FINANCIAL IMPACT

There is no financial impact arising from the adoption of the Confidential Recommendations beyond what has already been approved in the current year's budget.

DECISION HISTORY

On June 15 and 16, 1992, City Council included the properties at 294-298 Sherbourne Street on the City of Toronto's Heritage Register.

On October 10, 2000, City Council passed an intention to designate the properties at 294-298 Sherbourne Street under Part IV, Section 29 of the *Ontario Heritage Act*.

On January 11, 1993, City Council included the property at 300 Sherbourne Street on the City of Toronto's Heritage Register.

On July 24, 25 and 26, 2001, City Council passed a motion to withdraw the intention to designate the properties at 294-298 Sherbourne Street under the *Ontario Heritage Act*.

On October 2, 3 and 4, 2012, City Council directed staff to initiate the Garden District Heritage Conservation District study as a result of the application of prioritization criteria.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.PG17.12>

On July 17, 2014, the Toronto Preservation Board endorsed the Garden District Heritage Conservation District Study to proceed to district designation.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.PB33.21>

On April 2, 2015, seven appeals were filed to the Local Planning Appeals Tribunal (now the OLT) against the adoption of OPA 82 by the City of Toronto. The appeals were filed pursuant to s. 17(24) of the *Planning Act*. On March 31, 2015, City Council adopted OPA 82 to bring forward the Downtown East Planning Study. The OPA policies were drafted to align with the emerging HCD Plan policy.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.TE4.8>

On January 31, 2017, City Council designated through By-law 232-2017 the area that is now the Garden District Heritage Conservation District and adopted by by-law the Garden District Heritage Conservation District Plan.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.TE21.12>

Several parties appealed City Council approval of By-law 232-2017 designating the Garden District Heritage Conservation District. The former Local Planning Appeal Tribunal (now the OLT), directed on May 23, 2018 that the remaining appeals of the site specific policies of Official Plan Amendment (OPA) 82 and the HCD Plan appeals would be 'heard together.'

<https://www.omb.gov.on.ca/e-decisions/pl150374-May-23-2018.pdf>

On October 18, 2021, the Ontario Land Tribunal (OLT) issued an order allowing the appeal in part against By-law 232-2017 and bringing the Garden District Heritage Conservation District Plan into force. The official order follows an oral decision approving the Garden District Heritage Conservation District Plan on June 22, 2021.

<https://www.omb.gov.on.ca/e-decisions/MM170028-OCT-18-2021.pdf>

Related Development Application

On March 9, 2022, City Council refused an application to construct a new building at 294-298 Sherbourne Street under Section 42 of the *Ontario Heritage Act* and recommended that City Council authorize staff to attend the Ontario Land Tribunal hearing in opposition to the appeal.

<https://secure.toronto.ca/council/agenda-item.do?item=2022.TE31.18>

On March 9, 2022, City Council considered a Request for Direction Report from Community Planning in which it was recommended that City Council authorize staff to attend the OLT in opposition to the applications as filed for the lands at 294-298 Sherbourne Street and to continue discussions with the owner in an attempt to resolve outstanding issues.

<https://secure.toronto.ca/council/agenda-item.do?item=2022.TE31.21>

The owner and the City have continued discussions on the development application as the OLT process has progressed.

COMMENTS

The Settlement Offer proposes a revised built form, incorporating the property at 300 Sherbourne Street. The Settlement Offer will be the subject of a separate report to City Council, whereas this report will consider the heritage alteration aspects of the Settlement Offer.

Heritage Properties

The subject properties at 294-300 Sherbourne Street are designated under Part V of the *Ontario Heritage Act* as part of the Garden District Heritage Conservation District (GDHCD). The properties at 294, 296 and 298 Sherbourne Street have been vacant since 2005 and are classified as non-contributing properties within the GDHCD Plan. The property at 300 Sherbourne Street comprises a two and a half storey yellow brick house-form building designed in the Second Empire style and constructed in 1873. The property is classified as a contributing property within the GDHCD Plan and is included in the City's Heritage Register.

Development Proposal

An Official Plan, Zoning By-law Amendment and Heritage Permit application were submitted for the properties at 294-298 Sherbourne Street which proposed to construct a 10-storey student residence with 7-storey tower element stepped back 3 metres from a 3-storey podium.

Following continued discussions between the owner and the City, the owner acquired the property at 300 Sherbourne Street and incorporated it into a revised development proposal and conservation strategy, which forms the basis of the Settlement Offer.

The revised development proposal, including the new heritage permit application is for a 20-storey student residence building at 294-300 Sherbourne Street. The tower element is stepped back 10 metres from a 3-storey podium building at 294-298 Sherbourne Street. The height of the podium and its front and side-yard setbacks generally align with that of the adjacent heritage properties. The heritage property at 300 Sherbourne Street is proposed to be conserved with alterations and incorporated into the development proposal with the tower element located behind the primary structure. Architectural plans are included within the Heritage Impact Assessment included as Public Attachment 1 to this report.

The conservation strategy proposed through the heritage permit application for 300 Sherbourne Street is consistent with the policies of the Garden District Heritage Conservation District Plan, and includes:

- The positioning of new massing behind the primary building structure.
- The conservation in-situ of the primary building structure with the removal of later 1 and 2-storey rear additions and 3-storey side addition which gives a false sense of historical evolution (c.2004).
- Rebuilding of the south and west elevations with salvaged and in-kind bricks.
- Introduction of new window and door openings on the re-built south elevation and replacement of non-original openings on the north elevation that are physically and visually compatible with the property, yet distinguishable as contemporary interventions that have regard for the form, design, material and detail of the contributing property.
- Restoration of original mansard roof and original dormer details, including removal of metal flashing and introduction of wood detailing based upon historic or archival documentation.
- Reinstatement of original front entrance on east elevation, based upon historic or archival documentation with modifications for universally accessible access.
- Replacement of all existing non-original windows with new windows with form, design, material and detail based upon historic or archival documentation.
- Masonry cleaning and repair, where required.
- Landscape strategy that includes streetscape with large, hardy plants; front-yard with softscape ground cover; and interior courtyard with high quality masonry units, pea-stone gardens and feature trees.

Conclusion

The City Solicitor requires further instructions on this matter. This report is about ongoing litigation before the OLT and contains advice or communications that are subject to solicitor-client privilege.

CONTACT

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SIGNATURE

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City Solicitor

ATTACHMENTS

1. Public Attachment 1 - Heritage Impact Assessment for 294-300 Sherbourne Street prepared by ERA Architects dated June 23, 2023 (including appendix with architectural plans)
2. Confidential Attachment 1 - Confidential Report from City Solicitor