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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](mailto: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