

October 16, 2024

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

Mr. John Elvidge, City Clerk
City of Toronto
100 Queen Street West
13th Floor West Tower
Toronto, ON M5H 2N2

Attention: Ms. Tanya Spinello

Dear Ms. Spinello:

**Re: Written Submissions to the Toronto Preservation Board
Meeting October 17, 2024 – Agenda Item 2024.PB23.3
40-44 Mitchell Avenue, Toronto (collectively, the “Subject Properties”)**

We are counsel to Mr. Amit Patel, the legal owner of 40 Mitchell Avenue; Mr. Ratinder Mundi and Mr. Kuldip Mundi, the legal owners of 44 Mitchell Avenue; and Orioncap Management Inc. (the “**Applicant**”), the representative of the owners of 40 Mitchell Avenue and 44 Mitchell Avenue in the City of Toronto. The Applicant is the agent for the subject application to demolish a building designated under Part IV of the *Ontario Heritage Act* (the “**OHA**”), which was submitted by LHC Heritage Planning and Archaeology Inc. (“**LHC**”) on June 27, 2024 (the “**Heritage Demolition Application**”).

We have reviewed the report prepared by the Senior Manager of Heritage Planning, Urban Design and City Planning dated October 1, 2024 (the “**Staff Report**”), which recommends that City Council refuse the Heritage Demolition Application. We understand that the Staff Report is to be considered by the Toronto Preservation Board (the “**TPB**”) on October 17, 2024.

For the reasons expressed below and elaborated upon in the Heritage Impact Assessment dated June 21, 2024 and prepared by LHC in support of the Heritage Demolition Application (the “**HIA**”), the purpose of this letter is to request the TPB to reject the recommendations set out in the Staff Report.

Background

In 2018, the Applicant submitted minor variance and consent applications to the Committee of Adjustment (the “**Committee**”) which development scheme proposed to demolish the existing one-storey semi-detached building on the Subject Properties and

to construct two new residential buildings. The Applicant was at that time unaware that City of Toronto (the “**City**”) staff considered the building to be of heritage significance. After City heritage staff raised concerns at the Committee hearing, the Committee deferred the applications to permit time for discussions to occur between the Applicant and heritage staff.

On July 16, 2019, City Council included the Subject Properties along with 71-75 Mitchell Avenue and 735-737 and 753-755 Richmond Street West on the City’s Heritage Register and stated its intention to designate the Subject Properties under section 29 of the *OHA*. Contrary to what is stated in the Staff Report, the Applicant submitted an objection of the intended designation to the Conservation Review Board, now continued as the Ontario Land Tribunal (“**OLT**”). However, in a letter from our firm to the City dated July 21, 2021, our clients withdrew their objection but expressly stated that their withdrawal of the objection should not be interpreted or construed in any way as agreement or acquiescence that the Subject Properties are worthy of designation. Rather, the letter stated that our clients were aware of the OLT’s mandate under section 29 of the *OHA*, in that the Tribunal then did not at that time have the jurisdiction to rule on the appropriateness of the City’s intention to designate the Subject Properties, as it could only make a non-binding recommendation to City Council on same. Therefore, it was the position of our clients that proceeding with the objection amounted to an expensive yet fruitless exercise that would not maximize efficiency of their time and resources.

These resources were instead used to retain LHC, a respected heritage consulting firm, to prepare a Cultural Heritage Evaluation Report (“**CHER**”) for the Subject Properties. The *CHER* was finalized on May 20, 2021, and provided a detailed analysis which did not support a designation.

Notwithstanding the *CHER*, on October 15, 2021, Toronto City Council enacted By-law 820-2021 to designate the Subject Properties (the “**Designating By-law**”); however, due to errors in the Designating By-law, two further amendments were enacted on December 15, 2021 and February 10, 2022.

On June 27, 2024, LHC submitted the Heritage Demolition Application to demolish the building on the Subject Properties which included the HIA. The HIA supports the Heritage Demolition Application and concludes on pg. 139 that:

While the Properties are representative of a set of one-storey semi-detached buildings built as speculative workers’ housing in 1858 for James Lukin Robinson, significant alterations and additions over time have changed the buildings and removed most of their architectural details except for the overall form. Ongoing infill development and renovations throughout the late nineteenth, twentieth, and twenty-first centuries have changed the Mitchell Avenue, Richmond Street West, and Adelaide Street West streetscapes to consist of two-to-three storey infill townhouse and rowhouse buildings. The evolution of the streets over time has divided the remaining one-storey semi-detached buildings built for Robinson so

they no longer function as a cohesive grouping. Furthermore, changes to the architectural details of the remaining one-storey semi-detached buildings have altered each one differently, including the halves of 40 Mitchell Avenue and 44 Mitchell Avenue from each other. The Properties have limited and compromised heritage integrity according to the City definition and are in fair to poor physical condition.

Further, the HIA concludes that the proposed development will have no adverse impacts to surrounding and adjacent properties.

Reasons

The TPB should reject staff's recommendations in the Staff Report because, among other things:

1. As outlined in the CHER and the HIA, according to the structural condition assessment prepared by Tacoma Engineers Inc., the building on the Subject Properties is generally in poor to fair condition. In addition, significant alterations and additions over time have changed the buildings and removed most of their architectural details except for the overall form.
2. Rehabilitation of the building on the Subject Properties will require significant reconstruction, and the HIA concluded that it is not a good candidate for restoration or rehabilitation due to poor existing conditions, lack of unaltered original structure elements and the anticipated scale of the work.
3. The specific "heritage attributes" as identified by the City are generally in poor to fair condition.
4. As a result of the Designating By-law, the Subject Properties have remained underutilized for many years and the Applicant has been unable to proceed with a development that proposes to bring the much needed missing-middle housing to the market. This is contrary to Provincial direction to, among other things, provide an appropriate range and mix of housing options and densities to meet projected needs of current and future residents and to make efficient use of existing infrastructure and public service facilities. It is also contrary to City direction, including policy 3.2.1.2 of the City's Official Plan, which states that:

The existing stock of housing will be maintained, improved and replenished...New housing supply will be encouraged through intensification and infill that is consistent with this Plan.

In conclusion, the Staff Report does not accurately present the entire background and context to the TPB, and instead emphasizes the fact that the Subject Properties are designated by the Designating By-law, rather than looking at the building that exists on

the site today and whether it is able to be retained at all, and if so, whether the extent that it could be retained would provide any value to the community. The Staff Report does not appropriately balance the Province and the City's objectives of preserving cultural heritage while also permitting cities to grow and intensify in contextually appropriate ways.

We thank you for your consideration of this submission, and we ask to be notified of any decision(s) of the TPB and/or City Council regarding this matter.

Yours truly,
DAVIES HOWE LLP



John M. Alati

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copy: Erin Smith, City of Toronto, Senior Heritage Planner, erin.smith@toronto.ca