

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: July 27, 2020

CASE NO(S): MM160020

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 41(4) of the *Ontario Heritage Act*, R.S.O. 1990, c. O. 18, as amended

Appellant:	1623037 Ontario Limited
Appellant:	Allied Properties REIT
Appellant:	Church-Lombard Developments Inc.
Appellant:	Citipark Inc.
Appellant:	Emerald Valley Developments Inc. Et Al
Appellant:	First Gulf King Street Inc.
Appellant:	First Gulf Ontario Street Corporation
Appellant:	Great West Life Realty Advisors Inc.
Appellant:	Larco Investments Ltd.
Appellant:	Market Street Block Inc.
Appellant:	MTCC 1177 (Imperial Lofts)
Appellant:	Northam Realty Advisors Ltd
Appellant:	NorthWest Value Partners Inc.
Appellant:	Premium Properties Limited
Subject:	By-law 1328-2015 (St. Lawrence Neighbourhood Heritage Conservation District)
Municipality:	City of Toronto
OMB Case No.:	MM160020
OMB File No.:	MM160020
Case Name:	Allied Properties REIT v. Toronto (City)

Heard: November 12-29, 2019 in Toronto, Ontario

APPEARANCES:**Parties**

City of Toronto

Allied Properties REIT, BILD, Great West Life Realty Advisors Inc., The Canadian Opera Company, Lamb Bauhaus Inc., York Heritage Properties

First Gulf King Street Inc.

Premium Properties Limited,

York London Holdings Limited

Counsel

Chris Barnett and Matt Longo

Eileen Costello and Sidonia Tomasella

Max Laskin

Bruce Engell and Kelsey Gordon

Daniel Artenosi

DECISION DELIVERED BY SHARYN VINCENT AND ORDER OF THE TRIBUNAL**INTRODUCTION**

[1] The City of Toronto adopted By-law No. 1328-2015 which created a Heritage Conservation District under Part V of the *Ontario Heritage Act* (“OHA”) within the St. Lawrence Neighbourhood, and adopted a Heritage Conservation District Plan (“HCD Plan”).

[2] The nine Appellants include Allied Properties REIT, York Heritage Properties, Canadian Opera Company, BILD, GWL Realty Advisors Inc., Lamb Bahaus Inc., (hereinafter jointly referred to as “Allied”) First Gulf King Street Inc., Premium Properties Limited, and York London Holdings, the portfolios of each ranging from a single holding in the case of the latter three, to a number of properties, some of which are designated under Part IV of the OHA, and all of which have some potential for future redevelopment.

[3] The executive summary of the HCD Plan reads as follows:

The St. Lawrence Neighbourhood is one of Toronto's oldest neighbourhoods, and contains within its boundaries built, landscape and potential archaeological resources that reflect the evolution of Toronto from the founding of the town of York to the contemporary city of today. Centred on the iconic St. Lawrence market, the neighbourhood is defined by historic landmark buildings, such as St. James Cathedral and the Flatiron Building, as well as numerous educational and theatrical institutions that helped to revitalize the area in the latter half of the 20th century....The overall objective of the HCD Plan is to protect and conserve the historic value of the St. Lawrence neighbourhood. Grounded in an understanding of the district's historic, social and cultural value as well as its physical character, the HCD seeks to guide change within the neighbourhood while maintaining its *heritage attributes*. The policies and guidelines contained within the HCD Plan will assist property owners in ensuring that proposed *alterations* conform to the district objectives and respect the overall neighbourhood context....The St. Lawrence neighbourhood is a significant historic district whose *heritage attributes* and value should be protected and maintained. It is the intention of the study team that this document will assist the City of Toronto and property owners in managing change over time within the St. Lawrence neighbourhood, while ensuring that those features most valued within the district are conserved for the education and enjoyment of current and future generations.

THE ISSUES

[4] There is no disagreement between the Parties with respect to the merit of the stated intent of the HCD Plan to manage change while ensuring the conservation of the cultural heritage value of this neighbourhood. The differences lie in how and in why with respect to the determination of the boundary, Character Sub-Areas, the articulation of the objectives and the heritage attributes, and the incorporation of regulatory tools.

[5] It is the shared position of the witnesses on behalf of the appellants that the HCD Plan has not been properly co-ordinated with the existing Official Plan, The Downtown Plan, the King Parliament Secondary Plan, or the City's zoning by-law, as contemplated by s. 40(2)(d) of the OHA, which in their view,, raises issues as to whether sufficient regard was had to the matters of provincial interest in s. 2, whether the HCD Plan, as adopted by by-law, is consistent with policy statements issued, and conforms to provincial plans required by s. 3, and. conforms to 24 of the *Planning Act*, ("PA").

[6] Section 24 of the PA stipulates as follows:

24(10) Public works and by-laws to conform with plan. Despite any other general or special Act, where an official plan is in effect, no public work shall be undertaken and except as provided in subsection (2) and (4), no by-law shall be passed for any purpose that does not conform therewith.

[7] Section 40(s)(d) of the OHA reads as follows:

40(1) The Council of the Municipality may undertake a study of any area of the municipality for the purpose of designating one or more heritage conservation districts.

Scope of Study

(2) A study under subsection (1) shall []

(d) make recommendations as to any changes that will be required to the municipality's official plan and to any municipal by-laws, including any zoning by-laws.

[8] This central issue is critical for a number of reasons:

(i) The adopted HCD Plan incorporates a suite of three mandatory and prescriptive performance standards within the policies which are comfortably recognized by all practitioners and stakeholders seeking approvals pursuant to the OHA, as effective urban design and zoning tools that are currently in place in existing adopted documents. The inclusion of such requirements in the HCD Plan raises concerns for the Appellants given that there is no process through which a prescriptive or mandatory requirement in an adopted HCD Plan can be varied. This concern is compounded because the experts giving evidence on behalf of the Appellants also question the foundation, or more specifically , the absence thereof, for the uniform application of the suite of three which includes stipulated required step backs for contributing and non contributing buildings, the determination of street wall heights as being either 16 or 20 metres ("m") in the absence of a contributing building in the block frontage, and the application of an angular plane;

(ii) The City takes the position that pursuant to s. 41.2(2) of the OHA, "... in the

event of a conflict between a heritage conservation district plan and a municipal by-law that effects the designated district, the plan [emphasis added] prevails to the extent of the conflict,...”. Opposing Parties argue that the OHA speaks to conflicts with the objectives, the fundamental component of the HCD Plan required by the OHA, and not the plan as a whole, which by virtue of the inclusion of mandatory and prescriptive policies, would, the Appellants witnesses advise, limit the discretion of Council from considering recommended, contextual conservation solutions at variance to stipulated policies, but otherwise meeting the *objectives*, in the HCD Plan in an alternate built form solution. For reference, the section of the OHA is as follows:

41.2(1) Despite any other general or specific Act, if a heritage conservation district plan is in effect in a municipality, the council of the municipality shall not,

(a) carry out any public work in the district that is contrary to the objectives set out in the plan; or

(b) pass a by-law for any purpose that is contrary to the objectives set out in the plan.

Conflict

(2) In the event of a conflict between a heritage conservation district plan and a municipal by-law that affects the designated district, the plan prevails to the extent of the conflict, but in all other respects the by-law remains in full force.

Underlying this fundamental disagreement, the Parties opposed take the position that the City did not properly co-ordinate the HCD Plan with the existing in force planning regime and instead rely upon the prevailing determination of s. 41.2(2) of the OHA. It is argued that the resulting overlay of the HCD Plan as adopted will, as a consequence, conflict with existing Official Plan policies including the relatively recently approved Downtown Plan, as modified by the Minister.

THE EVIDENCE

[9] The Tribunal heard evidence from a total of ten witnesses with expertise in the areas of heritage planning, land use planning and urban design. The City’s complement

included Mary Macdonald, Senior Manager Heritage Preservation Services, Dima Cook, lead consultant of the multidisciplinary professional team responsible for the HCD Study, and whose firm ultimately authored the HCD Plan under the direction of Ms Macdonald with limited input from Alex Tang, the area planner responsible for the processing of many of the development applications within the portion of the study area and beyond which are situated in the King-Parliament area of the City. Alex Corey focused his evidence to area of heritage policy and practices.

[10] Allied proffered the team of Michael McClelland, qualified to assist the Tribunal through opinion evidence as a heritage architect and in areas heritage planning and urban design as they related to heritage. Mark Sterling, qualified to assist the Tribunal with opinion evidence in areas of urban design policies and practises, and Paul Lowes to provide the Tribunal with opinion evidence in areas of land use planning including the requirements of the PA, provincial policy and the in force planning regime applicable and germane to the matters under dispute.

[11] Additional opinion evidence in areas of land use planning was given by Melanie Hare on behalf of First Gulf King Street Inc, the largest consolidated property within the study area, and by Andrew Ferancik on behalf of York London Holdings Inc. proposing to redevelop a site having a frontage of 7.9 m on King and 36.6 m along George Street and currently developed with a four storey designated building on the King Street frontage, and a one storey listed, but altered building on the George Street frontage of the “L” shaped site. Their planning expertise was complemented by urban design and heritage evidence from Mark Sterling, Michael McClelland for First Gulf and Philip Evans on behalf of York London.

[12] Submissions were made on behalf of the St Lawrence Neighbourhood Association (“SLNA”) by Suzanne Kavanagh, who had participated throughout the entire process and supports the HCD Plan, and is Chair and Member of the Planning and Heritage committees respectively, and by Peter Tomlinson, also a Member of the SLNA and resident of the Spire Condominium located opposite St James Cathedral who

specifically addressed shadow impacts on the cathedral and a view corridor.

Preliminary Conclusions

[13] Before setting out the Tribunal's findings, it is imperative to cast the tone for the basis of the Tribunal's direction. Throughout the course of the fourteen day hearing, through a series of admissions, statements and elaborations, the Tribunal became increasingly aware and concerned that the HCD Plan (entered as Exhibit 23) had been advanced for approval without the analysis contemplated by s.40(2)(d) of the OHA which requires 'recommendations to any changes that will be required to the municipality's Official Plan and to any municipal by-laws, including any zoning by-laws to determine conflicts between the recommended HCD Plan and the existing municipal in-force planning policy regime. The statements in evidence by Mr. Tang that he was of the opinion that there was no conflict, did not persuade the Tribunal particularly when contrasted to the rigorous evidence of on behalf of all of the witnesses for the Appellants, that the result of the process and perhaps unintended, but none-the-less consequence is that the HCD Plan seems be oblivious to the operational requirement that it functions as a complementary planning tool to the existing Official Plan.

[14] Of equal concern to the Tribunal is the uncontested fact that HCD Plan, and potentially the most controversial component of it, being the prescriptive and mandatory requirements limiting street wall heights, establishing mandatory step backs for additions to contributing and non contributing buildings and the application of angular planes in some areas in addition to the two other prescriptive performance standards., were elevated from guidelines in the document issued for public consultation to mandatory policies in the HCD Plan subject of the hearing before the Tribunal.

[15] At the conclusion of the hearing, it was apparent to all, and on more than one occasion demonstrated through cross examination or questions from the Chair, that aside from requiring a ruling on the principle disputes there were numerous interpretative challenges in applying the HCD Plan including choice of language and formatting within the HCD Plan. Particularly the use of directive language in guidelines

such as shall and must. These challenges render the HCD Plan in the form entered as Exhibit 23, in many instances, either ambiguous, contradictory or simply difficult to interpret for seasoned practitioners, never mind the general public. There were also references from Ms Cook that the document was not considered to be in its final form and that the intent had been to introduce more or different illustrative visuals to assist in the interpretation of the policies and guidelines.

[16] The Tribunal therefore issues an Order directing the City, (in consultation with the Appellants) to amend the HCD Plan as set out in the following disposition.

RULINGS

Inclusion of mandatory and prescriptive policies in the HCD Plan

[17] The Tribunal is persuaded by the evidence that the inclusion of the prescriptive step backs, street wall heights and application of an angular plane in the HCD Plan are at variance with the fundamental tenets of heritage conservation established in the Parks Canada Standards and Guidelines for the Conservation of Historic Places in Canada (“S&G”), which guide practitioners to embrace context as the foundation for considering additions, alteration, infill and redevelopment proposals. The S&G were endorsed and relied upon by all witnesses giving conservation evidence and are referenced as the foundation to the City’s own Procedures, Policies and Terms of Reference Heritage Conservation Districts in Toronto.

[18] There was no compelling evidence presented as the basis for the metric of either the 5 or 10 m mandatory building step backs (policies 5.17.5, and 5.1.6), and to the contrary such prescriptive dimensions were not supported by the illustrative examples of developments within the neighbourhood which had been recommended by heritage staff and approved by Council. These examples demonstrated that absent prescriptive policies, the outcomes successfully addressed the principle of Standard 11 of the S&G which states: “make the new work physically and visually compatible with, subordinate to and distinguishable from the historic place..” Upon questioning from the Chair, Ms

Cook confirmed that the resulting built form would for example require a 10 m step back immediately adjacent to a required 5 m step back for additions to contributing and non contributing buildings respectively.

[19] The opinions with respect to the street wall height being determined by referring to a contributing building in the same block frontage or otherwise stipulated as having to be either 16 or 20 m depending upon the Character Sub-Area, was also demonstrated to be arbitrary in the case of the latter, and not always the best built form solution in the case of the former.

[20] Citing the example of the site bounded by King, Berkley, Front and Princess, and commonly referred to as the Sun site, witnesses for this Appellant described for the Tribunal how the 17 m street wall height of the very small contributing building occupying the north east corner of the site at King and Berkley, would, if policy 5.17.4 is approved, dictate the street wall height of any redevelopment of the westerly portion of the site despite the intervening construction of the Globe and Mail headquarters being a 17 storey building with a 15 m street wall height for the King Street frontage, and a 12 m street wall height along Front street. The street wall height on new facades of the Front Street facades would however be required to be 20 m because there is no contributing building in the block frontage. The designated and contributing buildings on the south side of Front Street, opposite, however are described by Ms Hare in her unchallenged evidence on the point as being 'all over the map' with respect to street wall height. (ranging from 12 to 20 m, p. 35 of Exhibit 21)

[21] It was the evidence of McClelland, Evans and Sterling that a one size fits all settings, as contrasted to contextual solutions, will result in the introduction of a foreign and contrived built form harmony that historically did not exist. The Tribunal finds that this characterization most accurately reflects what the outcome of the HCD Plan as before the Tribunal, would be, a result not endorsed by the Standards and Guidelines.

[22] It is this characterization which resonates most persuasively with the Tribunal.

[23] The HCD Study, which preceded the drafting of the HCD Plan, identified four Periods of significance, and the HCD Plan itself subdivides the final study area into six Character Sub-Areas (which have no direct alignment with the periods of significance). These identifications and classifications in themselves illustrate the intricacies of a dynamic, evolving neighbourhood where the buildings of the first period of significance were replaced by those of the second, and have been conserved by the regeneration and reinvestment initiatives of the fourth period of significance.

[24] The prescriptive standards are largely criticized by the witnesses of the Appellants as being driven by the attributes of the commercial warehouse and industrial building typologies, which do not exist in all of the Character Sub-Areas and which represent only one period of significance. The alternative of a 16 or 20 m street wall height, derived from these typologies, would however still apply to all areas, reinforcing the shared opinion of a resultant, forced built form harmony driven by one of the attributes of one of the periods of significance. The witnesses giving evidence on behalf of the parties opposed unanimously share the opinion that such an approach is too constrained and antithetical in a dynamic area which has experienced waves of regeneration, the planned function of which is to be a primary focus of growth and intensification.

[25] The approach of applying uniform and mandatory finite standards, as opposed to more contextual guidelines, recognizes its own flaws in policy 5.17.5 which allows for a site specific determination of the building step back from a street wall height where supported through the Heritage Impact Assessment (“HIA”). Prior to the enactment of this HCD Plan for the St. Lawrence neighbourhood, the determination of the building articulation would have evolved through the generally iterative process of finalizing the design on the basis of the HIA. That process, while not black and white does allow for input and reflection as contrasted to the stipulation of mandatory build to lines and heights, which may have no relevance in the particular block, but which respect a building typology found elsewhere in the neighbourhood.

[26] The witnesses for the Appellants provided voluminous visual and oral evidence that there is already a suite of proven urban design guidelines which have for years successfully worked in tandem with Official Plan and Secondary Plan polices to manage the conservation of significant heritage resources in conjunction with the built form realization of growth where it is directed in the Official Plan in conformity with the Growth Plan. These guidelines in concert with the existing adjacencies polices of the Official Plan allow for site specific and setting responsive infill and redevelopment.

[27] The imposition of the mandatory 45 degree angular plane was supported by Ms Cook on behalf of the City on the basis of protecting the sky view from the sidewalk, the sky view being identified as a heritage attribute. There was considerable disagreement amongst the expert witnesses as to whether sky view could be a heritage attribute, an assertion that the Tribunal is not persuaded by.

[28] The Tribunal is persuaded and accepts the evidence that the conservation of heritage resources will be better realized without creating a contrived built form and therefore directs that mandatory and prescriptive policies to step backs, street walls heights and angular planes in policies 5.1.5, 5.1.6, 5.1.7, 5.17.4, 5.17.5 and the related figures and maps be deleted from the HCD Plan.

[29] Similarly, the directive language of the guidelines such as must and shall which read as being prescriptive is to be revised to guide and not direct the parties towards solutions which will address the objectives of the HCD Plan.

Determination of the Boundary of the HCD

[30] With respect to the determination of the boundary of the Heritage Conservation District, the experts for the Appellants are of the summary opinion that the boundary as proposed is not rationally defined to reflect cultural heritage values.

[31] Mr. McClelland, whose opinion was endorsed by all of the experts on behalf of the Appellants, instead recommends a boundary premised upon the 10 original blocks

centred on King Street as the spine, extending to incorporate the lands which were originally set aside at the civic reserve which were developed to accommodate the landmark buildings of St. James Cathedral, St. Lawrence Market and St. Lawrence Hall, and the County Court House.

[32] Having heard and considered all of the evidence, the Tribunal finds in favour of the opinions put forward to revise the boundary to more rationally ground the district as having a sense of place, based on the underlying historic organization of the cultural heritage values of the area.

[33] This determination aligns with the directive of the City's Terms of Reference which reads:

the Boundary should be carefully drawn to ensure that it includes only those areas that relate to the cultural heritage values, character and/or geography of the study area. It is not appropriate to include unrelated areas solely for the purpose of making the district larger or to extend control.

and is supported by the following summary of pertinent, but not exhaustive examples brought into evidence:

- (i) The easterly limits of the HCD has been determined so as to include the Consumers Gas building, now 51 Division and the site of the First Parliament, (being the block bounded by Front Street, Berkley Street, The Esplanade and Parliament Street), which are already designated under Part IV and Part VI of the Act respectively. Extruding the boundary to bring in the Consumers Gas building captures two full blocks with no contributing buildings, which non the less would be otherwise subject to the policies of the Plan in an area designated in the Official Plan for regeneration and growth. The Part VI designation of the First Parliament lands provides a process to ensure the conservation of this heritage resource. There is no explicit or additional benefit accruing to the inclusion of these lands in the HCD.

- (ii) The westerly limit extends to capture 33 Yonge Street, a 13-storey glass curtain wall building occupying the entire site area of the block bounded by Yonge Street, Wellington Street, Scott Street, and The Esplanade which is located within the Financial District. It was the evidence of Ms Cook that the building is included in the HCD solely on the basis of its relationship with Berzcy Park, which, however is not designated as a contributing property, and which witnesses McClelland and Sterling demonstrated would be protected through existing Official Plan policies dealing with development around park edges. The westerly limit of the HCD should not be based on providing a backdrop to a park particularly when doing so would result in the imposition of the policies which bear no relevance, and in fact are contrary to the planned function of a site being located within the Financial District.
- (iii) The Courthouse Character Sub-Area contains no examples of commercial warehouse or industrial buildings but non the less any development or redevelopment would be subject to the policies substantially developed to reflect the attributes of those two building typologies.
- (iv) The undulating northerly boundary capturing properties on the north side of Adelaide Street in the King, James and Adelaide Street Character Sub-Areas also appears to be drawn for the sole purpose of including several contributing properties which would already be protected by existing Official Plan policies 3.1.5.5 dealing with development adjacent to contributing properties, consistent with s. 2.6.3 of the Provincial Policy Statement (“PPS”).

Conflicts between the HCD Plan and the in-force Planning Policy Regime

[34] It is the opinion of the Appellants’ Planning witness, Mr. Lowes that failure to identify and make necessary recommendations having identified the conflicts invokes s. 24(1) of the PA, which states that:

Despite any other general or special Act, where an Official Plan is in effect, no public work shall be undertaken and [...] no by-law shall be passed that does not conform therewith.

[35] It is his opinion policy 3.1.5.31(c) of the Official Plan stipulates that the heritage Conservation District studies and plans will:

c) include provisions addressing the relationship between the Heritage Conservation District Plan and the Official Plan and Provincial Policy within the context of the Heritage Conservation District Plan's directions for conserving the cultural heritage values and character of the Heritage Conservation District, its attributes, and the properties within it, including but not limited to identifying any required changes to the Official Plan and zoning by-law.

and the failure to do so, leaves conflicts identified in the HCD study unaddressed, contrary to s. 24. of the PA.

[36] There was however no jurisprudence argued to support the primacy of the PA or by-laws adopted pursuant to it, over the OHA, or that s. 24 of the PA can be used as to the determination to an appeal under the OHA on the issue of conflicts.in s. 41.2(1).

[37] In fact, to the contrary, the OHA HCD study process requires recommendations to any changes that will be required to the municipality's Official Plan and to any by-laws including zoning by-laws.

[38] While the Tribunal is cognizant of the balance which is to be struck between heritage conservation and accommodating growth, the Tribunal has no PA instruments before it for consideration and cannot, (as has been asserted by the Appellants' witness Mr. Lowes in particular) import the conformity and consistency tests required under the PA as the tests against which to make determinations with respect to the OHA appeal before it other than to look to s. 41(1) of the OHA which requires:

41(1) Where there is in effect in a municipality an official plan that contains provisions relating to the establishment of heritage conservation districts, the

council of the municipality may by by-law designate the municipality or any defined area or areas thereof as a heritage conservation district.

[39] The Toronto Official Plan satisfies this requirement of the OHA, and therefore, the adoption of the HCD Plan, by by-law, conforms to s 24 of the PA.

[40] In the authorities submitted by Counsel for the Appellants, in *Ottawa (City) v. Ottawa (City)*, [1998] O.M.B.D. No. 1035, was referenced and there the Board found as follows:

23 ...It is argued that the guidelines will be applied as policy and frustrate the intent of the Official Plan.

24 However, the Board does not accept this argument. The effect of the designation cannot ultimately frustrate the implementation of the Official Plan. While there may be delay and negotiations as to the best means to achieve both the heritage conservation objectives and the High Profile residential objectives, failure to agree will result in a delay, but not to the denial of the right to development in accordance with the Official Plan and zoning requirements. The delay might result from the attempts by a municipality to implement its historic design and development guidelines is not sufficient reason to refuse a designation under the *Ontario Heritage Act*.

25 Furthermore, the Board does not regard the fact that this designation may form the basis for a review of current zoning which could result in a redesignation of the area in the Official Plan and a reduced density or height in the zoning by-law, as sufficient reason to refuse the designation. If the review of the zoning results in a reduction in permitted density or height, and that justification can be justified on planning grounds [emphasis added], then the review is a legitimate planning exercise.

[41] This case, is directly on point with the dispute before the Tribunal, and the Tribunal finds in accord with this ruling.

[42] The Tribunal, under s. 41(7), having heard the appeal, has the authority to

- (a) dismiss the appeal; or
- (b) allow the appeal in whole or in part and,
 - (i) repeal the by-law,
 - (ii) amend the by-law in such manner as the Tribunal may determine,

- (iii) direct the Council of the municipality to repeal the by-law, or
- (iv) direct the council of the municipality to amend the by-law in accordance with the Tribunal's order.

[43] While much was made of the argument about the lack of co-ordination with the existing PA instruments, the flaw in the process was not advanced as grounds to repeal, or direct the repeal the by-law. It has therefore been inferred by the Tribunal that this concern underlies the dispute about the determinations of conflicts under s. 41.2(2) as could arise with the prescriptive and mandatory policies adopted as part of the plan under appeal, which the Order to this decision will has stricken from By-law No.1328-2015 as being contrary to best practices in heritage conservation.

[44] With respect to consistency with the PPS, the Tribunal finds that the HCD Plan is consistent the policies set out in s. 2.6, which guide the conservation of *significant built heritage and significant cultural landscapes*, which in turn, defer to the authority of the OHA.

Determining conflicts pursuant to the OHA

[45] With respect to the dispute between the Parties on the interpretation of s 41.2(2) and the resolution of conflicts, it is clear to the Tribunal that the OHA, the facts of this appeal aside, as enacted contemplates that the municipal council, when adopting the HCD Plan in the first instance would have been informed by the analysis required by the OHA to identify conflicts, and make recommendations in the study preceding the adoption of the HCD Plan. The legislation must be read in this larger context. It is not a genuine interpretive approach to do otherwise or to read the statute except on the plain face of the language and therefore it is the finding of this Panel that it is the plan that prevails, and in this instance, the HCD Plan as amended in accordance with this Order.

Creation of Character Sub-Areas

[46] The HCD Study which preceded the Plan identified six Character Sub-Areas and

separately defined four periods of significance in the evolution of the neighbourhood. Having considered all of the evidence and Exhibit 23, the Tribunal does not find the Character Sub-Areas to be instructive or helpful in meeting the objectives of the HCD Plan and represent an organizing attempt as contrived as the forced harmony of the prescriptive policies.

[47] The Character Sub-Areas do not align with the four periods of significance chronicled, and the detailed descriptions of each sub area serve only to best illustrate the diversity and character of the area, but not specifically the heritage character of the particular sub area.

[48] The Tribunal therefore finds that there is no discernible benefit or clarification afforded by the inclusion of the Character Sub-Areas. In fact the contrary is the case.

[49] The introduction of four periods of significance is also confusing given that many of the policies are directed to and reflect the attributes of just one period. Given that the Official Plan designates the area as a focus of significant growth and regeneration, and given the amount of infill anticipated to continue to occur in the area as directed by provincial and municipal policy, the Tribunal adopts the evidence of Mr. McClelland that the purpose of the plan to conserve heritage values would be better addressed if the fourth period, characterized as the Regrowth and redevelopment (1970-today) was acknowledged through examples of contemporary infill which exemplify and respect the objectives of the HCD Plan. The Statement of Cultural Heritage and Interest is therefore to be revised to add and reflect the fourth period of significance.

Demolition and Relocation of Buildings

[50] In the course of the hearing, it was brought to the attention of the Tribunal through evidence of both Ms Cook and Mr. McClelland that policies that 5.1.16 and 5.1.17 narrow the circumstances dealing with the demolition or relocation of buildings or structures on contributing properties and already addressed through the criteria and processes established through Parts IV and V of the OHA.

[51] It was however demonstrated to the Tribunal through evidence of Mr. McClelland in particular, that the Statements of Contribution for many of the contributing properties did not sufficiently address the siting of individual buildings to guide in an assessment of altering the siting of the structure. The policy would therefore have the effect of an outright prohibition contrary to the rights entrenched in Parts IV and V of the OHA and are therefore to be deleted from the HCD Plan.

[52] Policies 5.1.16 and 5.1.17 are found to be over reaching as it has been demonstrated that there is not generally sufficient supporting material in the Statement of Contribution to conduct the assessment necessary to understand whether the original location on the property materially contributes to heritage value.

Transition provisions of the HCD Plan

[53] Appendix D to By-law No. 1328-2015, the HCD Plan, incorporates a chart of the approvals, which in November 2019, included approvals in principle either by decision of Council or the Tribunal and to which the HCD Plan would not apply. The list must be revised to reflect any approvals which have occurred since the Appendix was compiled in November 2019.

Commercial Signage

[54] The HCD Plan includes policies regulating commercial signage in s. 5.12 for contributing buildings and s. 5.22 for non-contributing businesses. These policies also incorporate mandatory and prescriptive language and prohibitions which further limit provisions beyond existing regulations, with no avenue or right to appeal.

[55] The Tribunal accepts the evidence of Michael McClelland, that the policies duplicate existing effective regulations and processes. The Tribunal accepts this evidence and finds that the policies would better fit specific contexts and the heritage objectives if applied as guidelines as opposed to stipulations or out right prohibitions.

ORDER

[56] The Tribunal therefore allows the appeal in part against By-law No. 1328-2015 of the City of Toronto and pursuant to s. 41(7) of the *Ontario Heritage Act*, the Tribunal directs the municipality to amend the by-law in the following manner:

- (1) Revise the boundaries of the HCD Plan to capture the 10 original blocks, to the District, together with the portions of the civic reserve lands that speak to the original intended use of these lands, such that the westerly boundary is formed by the easterly limits of Victoria Street to the west, Berkley Street to the east, Adelaide Street to the north, and the Esplanade to the south from Scott Street extending along the Esplanade to Jarvis Street and then continuing along Front Street to Berkley Street;
- (2) Delete section 3.4 dealing with Character Sub-Areas;
- (3) Delete policies prescribing step backs, street wall heights and angular planes in 5.1.5, 5.1.6, 5.1.7, 5.1.17, 5.17.4, and 5.15.5;

together with all associated mapping and illustrations
- (4) Revise the mandatory and directive language of the guidelines to more appropriately reflect suggested direction in the guidelines;
- (5) Revise the Transition policies in Appendix D to the By-law to capture the revised list of properties to which transition shall apply when the Final Order issues;
- (6) Revise Objective 5 to clarify the reference to street wall height, as opposed to traditional height;
- (7) Revise Section 4 - Implementation to guide the understanding as to which

policies are mandatory as opposed to non-mandatory;

- (8) Revise all policies having to do with signage to be guidelines as opposed to mandatory policies;
- (9) Revise the Statement of Cultural Heritage Value and Interest to include and reflect the contribution of the Fourth Period of Significance to the District.

“Sharyn Vincent”

SHARYN VINCENT
VICE-CHAIR

If there is an attachment referred to in this document,
please visit www.olt.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Ontario Land Tribunals

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