

July 8, 2019

Via E-Mail

City of Ottawa
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Attention: His Worship Mayor Jim Watson

Dear Mayor Watson:

Re: Chateau Laurier, 1 Rideau Street (the “Property”) – ASC2019-PIE-0005

We have been retained on behalf of the Friends of the Chateau Laurier, a coalition of citizens concerned about the proposed renovations to the Property. A motion concerning the Alteration Permit for the Property is due to go before Council on July 10th, and this letter is written to you regarding that motion.

In preparation for writing this letter, we have reviewed the memorandum dated July 5, 2019, and delivered to you and members of Council on this matter from Messrs. Willis, Curry and O’Connor. We have also reviewed the proposed motion to be considered.

In short, we think that paragraph 3 of the motion is unnecessary, since appropriate delegation to the General Manager has never taken place, and as such, Council is required to make its determination under paragraphs 1 and 2 of the motion, and is free to determine that the conditions of the conditional permit have not been satisfied.

We have reviewed the recommendation of the Built Heritage Subcommittee on June 18, 2018, and the ensuing Council approval of same. We acknowledge that the recommendation seeks to delegate the determination of the satisfaction of conditions to the General Manager. However, we note that in Council’s consideration of the recommendation, no by-law was adopted approving the delegation of authority.

We have looked to the City’s Procedure Bylaw and its Delegation of Authority Bylaw. Neither contain authority to delegate decision-making under the *Ontario Heritage Act*.

We also note that if there had been a successful delegation of authority (which we specifically deny), there has been an intervening election, and the term of the Council which would have delegated the authority has come to an end. We have therefore considered what Council’s policy is on such things.

In November 2007, Council approved the following policy on delegation of its authority. To our knowledge, that policy is still in place. It provides:

Principles of Delegation

In preparing a policy on delegation of powers and duties, staff has developed a number of over-arching principles reflective of current delegation of authority as well as recent positions Council has taken on delegation through its Strategic Priority Setting process.

City Council supports the delegation of powers and duties to provide efficient management of municipal operations and to respond to matters in a timely fashion according to the following principles:

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1. *All delegation of powers and duties shall be set out in the Delegation of Authority By-law and reviewed every term of Council.*
2. **Unless expressly delegated by Council through the Delegation of Authority by-law, all powers and duties of Council remain with Council.**
3. **All delegation of powers and duties may be revoked at any time without notice.**
4. **No delegation of powers and duties shall exceed the term of Council.**
5. *Every delegation of a power or duty of Council shall be accompanied by a corresponding accountability and transparency mechanism.*
6. *A delegation of a power or duty under any by-law to any member of staff is also a delegation to a person appointed as the City Manager to act in the capacity of the delegate in their absence.*

In exercising any delegated authority, the delegate shall ensure the following:

- *Any expenditure related to the matter shall have been provided for in the current year's budget;*
- *The scope of the delegated authority shall not be exceeded by the delegate;*
- *The consistent and equitable application of Council policies and procedures; and*
- *Where required by the specific delegated authority, reports shall be submitted to Council advising of the exercise of a delegated authority and confirming compliance with the delegated authority and this policy. (emphasis ours)*

It is our opinion that the Council approved policy makes it clear that the authority for this decision has always, and continues to rest with Council. We also note that it does not lie in the mouth of the owner to assert any right arising out of a matter where Council's jurisdiction is in issue.

Having reviewed the options available to the owner in the staff memo referred to above therefore:

1. We agree with option 1. A fresh application can be brought at any time;
2. We disagree with option 2. Given our opinion that authority has always rested with Council, and given that there is no mechanism in the *Act* to ask a Court to interfere with the determination of whether conditions have been satisfied (and as an aside, it does not seem to us that imposing conditions to be determined at a later date is permitted under the *Act*). We therefore do not view an application on this matter to have any substantial merit. However, out of an abundance of caution, we would strongly recommend that Council give reasons for the refusal; and,
3. We disagree with option 3. Given that the conditions of the Permit would have been determined to be unsatisfied, and given the cost to the owner of developing construction drawings necessary to the application for a building permit, we think this to be extremely unlikely.

With respect to the cost implications, we think that the costs are vastly overstated in the memo, given the opinions rendered above.

We are further of the view that consideration of Heritage matters by the Courts, up to and including the Supreme Court of Canada, substantiate the rights of Council in this matter.

Our client is of the view that the conditions of the Heritage Permit that remain unsatisfied, are as follows:

1. the condition that staff be directed to work with the applicant to make the proposed addition more visually compatible with the existing Château Laurier;

2. modifying the addition by sculpting, recessing, and breaking up the unrelieved uniformity of the north façade using elements and forms that are specifically drawn from, and relate to, the existing Château Laurier's rich palette of forms; and,
3. altering the architectural expression on the north, west and east façades to introduce fenestration patterns, details and geometric proportions that are specifically drawn from, and relate to, the existing Château Laurier's elements.

We therefore ask that Council move to approve the motion, indicating that these conditions have not been satisfied.

We are copying this letter to staff, and to Ms. Salter MacDonald, and ask that it be distributed to Council in advance of the July 10th Council meeting.

Yours very truly,



Michael S. Polowin

MSP:abh

cc: Kaitlin Salter-MacDonald
Tim Marc
Court Curry
Steve Willis
Client