

Heritage Ottawa - Rationale for Notice of Application

Can Ottawa's City Council approve a massive addition to an iconic heritage building without ever having seen the final design? Heritage Ottawa believes that Council should not, and legally may not.

The Proposed Addition

The Château Laurier is one of Ottawa's iconic buildings, and is both a designated heritage property under Part IV of the *Ontario Heritage Act* ("OHA"), and a federally designated National Historic Site. The hotel owner, Larco Investments Ltd. ("Larco") proposes to construct a seven storey, architecturally incompatible addition on the northern end of the Château Laurier (the "Proposed Addition").

As a designated property under the OHA, the Château Laurier's heritage attributes may not be altered - in this case, through the construction of the Proposed Addition - without the permission of the City.

Section 33(4) the OHA states that when a City receives an application for permission to alter heritage, it has three options: a) refuse the application; b) approve to the application; or c) approve the application subject to conditions. This application turns on the final scenario.

The Conditional Heritage Permit

On June 27, 2018, City Council adopted a resolution granting Larco *conditional* permission (the "Conditional Heritage Permit") to alter the Château Laurier to construct the Proposed Addition. The three conditions of the permission were incredibly subjective, broad and vague, and required Larco to make significant changes to the design of the Proposed Addition. In the same resolution, the City purported to delegate authority to determine whether the conditions of the Conditional Heritage Permit were satisfied to the General Manager of Planning, Infrastructure and Economic Development (the "Planning GM").

The conditions were significant enough that *they required an entirely new design*, which was not made public until May 23, 2019. In reality, the Conditional Heritage Permit did not approve the 2018 design of the Proposed Addition, subject to a few minor changes. *The Conditional Heritage Permit claimed to provide permission, in advance, for an entirely new design that Council had never seen.*

The Planning GM does not have authority to approve the Proposed Addition

In Ottawa, like in nearly all municipalities, Council has delegated many aspects of its authority to staff, through a Delegation of Authority By-law. Ottawa's Delegation By-law states that the Planning GM is allowed to approve applications for heritage alteration under the OHA, but *only where the proposed addition satisfies two criteria*: 1) the Gross Floor Area ("GFA") of the Proposed Addition must be less than 30% of the GFA of the existing heritage building; and 2) the proposed addition cannot impact the heritage attributes of the existing heritage building.

In the case of the Proposed Addition, *neither condition is satisfied*. The GFA of the Proposed Addition is more than 30% of the Chateau Laurier GFA, and it plainly impacts the heritage attributes. As a result, it falls outside the scope of the Planning GM's authority and *can only be approved by Council*.

As a result, the July 16, 2019 letter from the Planning GM confirming satisfaction of the Conditional Heritage Permit is *of no force and effect*.

In the alternative, Heritage Ottawa is arguing that Council is not allowed to delegate its authority under the *OHA* to determine the satisfaction of the conditions of the Conditional Heritage Permit.

Heritage Ottawa is not suggesting that the City cannot approve the Proposed Addition. Rather, we are only arguing that the final design of Proposed Addition *must be approved by the elected Council, instead of unelected staff*. Council cannot simply approve a design it has never seen, and then hand off its responsibility to staff.

This is the legal standard to which the City is bound, and is in keeping with the level of responsibility expected of Ottawa's Councillors.