

Conservation
Review Board

Commission des
biens culturels

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CRB1101

CONSERVATION REVIEW BOARD

RE: THE CORPORATION OF THE CITY OF OTTAWA – INTENTION TO REPEAL A BYLAW THAT PROTECTS UNDER S.29 OF THE ONTARIO HERITAGE ACT THE PROPERTY KNOWN AS 957 BANK STREET (HORTICULTURE BUILDING, LANSDOWNE PARK), OTTAWA, ONTARIO

Su Murdoch, Chair
Stuart Kidd, Member

This hearing was convened under the Ontario Heritage Act, R.S.O., 1990, Chapter O.18, amended to 2009 (“Act”), for the purpose of reporting to the Council of the City of Ottawa (“Council”) whether, in the opinion of the Conservation Review Board (“Review Board”), on the basis of the evidence it heard, all or part of Bylaw 8-94 protecting the property known municipally as 957 Bank Street under s.29 of the Act should be repealed.

The subject property is owned by the City of Ottawa (“City”) and contains what is known as the 1914 Horticulture Building. It is a separate parcel of land within a larger acreage known as Lansdowne Park. The legal description of the subject property is Lots 4, 5, 35, and 36; parts of Lots 3, 6, 34, and 37; and part of Lansdowne Avenue, Plan 35722, City of Ottawa. The Notice of Intention to Repeal was published by the City of Ottawa on December 3, 2010.

The Review Board held one prehearing conference on this matter on February 18, 2011, which was attended by all Parties or their Representative. There was no signed agreed statement of facts among the Parties at the start of the hearing.

Notice of this Hearing was served by the Review Board in the manner required on the Parties and in the April 7, 2011 issues of the *Ottawa Citizen* and *Le Droit*. The Statement of Service signed by the Review Board’s Case Coordinator with respect to Notice is Exhibit 1.

The hearing commenced at 10:00 a.m. on April 18, 2011, at Ben Franklin Place, 101 Centrepointhe Drive, Nepean, Ontario. It ended April 21, 2011.

A site visit by the presiding members of the Review Board was conducted in the morning preceding the start of the hearing.

Parties in Order of Appearance

Mr. Stuart Huxley, Legal Counsel, City of Ottawa
Ms Linda Hoad, Heritage Ottawa
Mr. Jean-Claude Dubé

Witnesses in Order of Appearance

Mr. John Smit
Mr. John Stewart
Mr. Sean Fraser
Mr. Ken Elder
Ms Leslie Maitland

Members of the Public in Order of Appearance

Mr. David Jeanes
Mr. John Martin
Mr. Gary Sealey

Jurisdiction of the Review Board

The Parties were reminded that the Review Board's jurisdiction under the Act is to consider arguments in the context of the proposed repeal of all or part of a bylaw passed under s.29 of the Act. Although relevant arguments can be broad, a reasonable expectation is that there is reference to Ontario Heritage Act Regulation 9/06, which considers criteria for determining the cultural heritage value or interest of a property; and to the content of the s.29 designating bylaw (City of Ottawa Bylaw 8-94) governing the subject property.

Issues of physical maintenance, repairs, relocation, or any proposed work are to be considered in the context of cultural heritage value or interest (and embedded issues such as heritage integrity and authenticity).

The Review Board does not have the jurisdiction to report on whether the proposed revitalization of Lansdowne Park does or does not have merit, except in the context of the impact on the subject property.

It is outside the Board's jurisdiction to address, for example, any financial partnerships or current planning applications, site plan, issues of zoning, or similar matters that are under the Planning Act. These matters are between the applicants and the municipality, and on appeal, the Ontario Municipal Board.

The Review Board indicated that it would be diligent in adhering to these parameters and reminded all Parties of the practice of limiting evidence and argument considered to be outside of this scope.

Property Description

Founded in 1868 with about eight hectares acquired by the Ottawa Agricultural Society, Lansdowne Park evolved into a publicly owned exhibition and sports venue with an estimated eleven exhibition buildings. Several of these have been demolished. It is now a sixteen hectare parcel of land bound on the west by Bank Street; north by Holmwood Avenue, and south and east by Queen Elizabeth Driveway (a commemorative highway under the jurisdiction of the National Capital Commission) flanking the north bank of the 1832 Rideau Canal (a UNESCO World Heritage Site). The principal access to the Park is from Bank Street; secondary access is from Queen Elizabeth Driveway. Parking is on an asphalt surface covering most of the site. The 1898 Aberdeen Pavilion (a National Historic Site and Ontario Heritage Trust easement property protected under s.22 of the Act); 1914 Horticulture Building (protected under s.29 of the Act); 1966-67 Frank Clair Stadium (property of heritage interest); and 1906/1926 coliseum building are now the principal structures on site. In 2010, the Central Canada Exhibition held its last event at this venue, having purchased land at Albion Road. Except for “limited duration city wide events,” the site is inactive.

Case for the City of Ottawa

The City of Ottawa through its legal counsel Mr. Stuart Huxley submitted a Statutory Declaration confirming the legal owner of the subject property to be the Corporation of the City of Ottawa (Exhibit 2).

The City of Ottawa document binder was entered as Exhibit 3. The content was modified at the close of the hearing by the removal of two Tabs relating to the larger development of Lansdowne Park. The March 2010 report, *Lansdowne Park Heritage Brief*, by Commonwealth Historic Resource Management Ltd. (“Commonwealth”), was added to the binder but entered as Exhibit 12. The actual slides and graphics presented by the City’s witness Mr. John Smit were substituted for those in the binder and entered as Exhibit 4.

Witness – Mr. John Smit

The Witness was sworn. Mr. Smit’s credentials (Ex 3, Tab A) were reviewed. It was explained that as Manager, Development Review (Urban) Planning and Growth Management, City of Ottawa, Mr. Smit is responsible for the City’s heritage planning and is the liaison to the Ottawa Built Heritage Advisory Committee (“OBHAC”), a municipal heritage committee under s.28 of the Act. His involvement with Lansdowne Park started in 2009. Mr. Smit was admitted as an expert in heritage planning as it pertains to the heritage policies and processes of the Corporation of the City of Ottawa. The Chair cautioned Mr. Smit and other witnesses giving opinion evidence that their role is to provide the Review Board with objective, without bias,

information. The Review Board advised that it would be cognizant of the fact that Mr. Smit is a City employee.

Background

Mr. Smit confirmed that Bylaw 8-94 only governs that part of Lansdowne Park that contains the Horticulture Building. The first bylaw protecting the subject property under the Act, Bylaw 208-89, was repealed in June 1991 by Bylaw 216-91 to allow for the demolition of the Horticulture Building. Instead of demolition, the property was redesignated in 1994 (Bylaw 8-94). In September 1995, Julian Smith & Associates, Architects, prepared a *Feasibility Study: Horticulture Building, Lansdowne Park, Ottawa* (Ex 3, Tab 4). No action was taken by Council. A *Demolition Technical Feasibility Assessment* was prepared in December 2008 for the Real Property Asset Management Branch, City of Ottawa, by DST Consulting Engineers (Ex 5, Tab 6, p.6-08).

Lansdowne Park Revitalization

Mr. Smit outlined the chronology of the Lansdowne Park Revitalization Plan Development commencing in April 2009 when Council issued a directive to the City Manager to pursue the potential for a partnership with Ottawa Sports and Entertainment Group (Ex 3, Tab 6, pp.3-4). After public consultation, a conditional partnership was approved in November 2009 and a Design Review Panel was established for the development of an urban park within the larger Park. Guiding principles for revitalization were developed (including a Heritage Code), Master Plan architects retained, and a Park Design competition organized.

Not in Mr. Smit's chronology but later introduced at the hearing is that in March 2010, the City commissioned Commonwealth to prepare a report, *Lansdowne Park Heritage Brief* (Ex 3, Tab 5) that summarizes the history of the Park and analyses its cultural heritage values and significance.

The urban park design team of Phillips Farevaag Smallemberg was selected in May 2010. In June, Council approved the overall revitalization plan and gave direction for "developing an integrated site plan and initiating formal planning approvals." The Master Plan, as illustrated in Ex 4, essentially involves the construction of residential and commercial structures parallel to Holmwood Avenue and fronting on Bank Street; new underground parking across the site and removal of surface parking; new south side stadium stands; demolition of the 1904/1926 coliseum building (with salvaged parts integrated throughout the Park); retention of the Aberdeen Pavilion, Horticulture Building, Frank Clair Stadium, and some cultural landscape features such as the Thomas Ahearn Memorial Drinking Fountain and a monument to the Princess Patricia's Canadian Light Infantry; creation of Aberdeen Square (an open air market); and creation of an urban park on the east side, bound by Queen Elizabeth Driveway (along Rideau Canal).

According to Mr. Smit, the City is committed to Lansdowne Park as a "significant and distinct cultural heritage" that "chronicles the evolution of the City." It is a "regional centrepiece" that played a role in shaping the community and is distinguishable from its surroundings (Ex 3, Tab

6, p.17). The purpose of the revitalization is to “recapture” a “sense of place;” integrate the site into the “city and neighbourhood;” “embrace and reflect history as a significant public place;” “reintegrate with the canal;” and “use heritage buildings to showcase history” (Ex 3, Tab 6, p.18).

Horticulture Building

The Horticulture Building is at the northwest corner of Aberdeen Pavilion. Mr. Smit described the Building as erected in 1914 as a curling rink/exhibition hall with a two storey, brick, front (south) section. The front section is attributed to Ottawa architect Francis “Frank” C. Sullivan. The symmetry, flat roof, overhanging eaves, window sash type and geometric pattern of the muntins (sash bars), artificial stone trim and banding, and columns of the front section are within the design philosophy of American designer Frank Lloyd Wright and the Prairie style of architecture. Dominion Steel fabricated the frame and roof system of the rink/exhibition hall (abutting the rear of the front section), achieving the clear span interior technology that was just coming into vogue. The Horticulture Building is among the eleven exhibition buildings that stood at Lansdowne Park. Today, according to Mr. Smit, it is a “neglected heritage resource” having been used for storage for about thirty years and poorly maintained since its 1994 protection under the Act. Although structurally sound, there is deterioration in the bricks, cement, roof decking, interior finishes, fascia, front roof overhang, and window and door units. It is not open to the public.

Mr. Smit stated that Council considered the options of retaining the Horticulture Building *in situ* (on its as built site); or relocating it as a unit, 120 meters east, to the northeast end of the Aberdeen Pavilion. He described this as a “mirror” relocation whereby the Horticulture Building would maintain its relationship to the Aberdeen Pavilion but be at the northeast corner instead of the existing position at the northwest corner. The Aberdeen has identical entrances on its east and west facades; with the east facade oriented east to Rideau Canal.

In the new location, the Horticulture Building would become the west boundary of the proposed urban park. The urban park would be bound on the east and south by Queen Elizabeth Driveway, which flanks the north bank of the Rideau Canal. Queen Elizabeth Driveway was developed in the early 20th century and is now under the control of the National Capital Commission. It is the ceremonial route used by dignitaries visiting the Parliament Buildings and can be closed for official occasions and for community events such as marathon runs and parades. Mr. Smit considers the 1832 Rideau Canal to be a “defining element of Ottawa.” The proposed urban park would “reintegrate” Lansdowne Park with the Canal. The urban park is to include green spaces; a community demonstration garden; and an open air market (“Aberdeen Square”). The City finds value in clustering the Horticulture Building and the other heritage resources of Aberdeen Pavilion, Queen Elizabeth Driveway, and the Rideau Canal within one urban park setting. Mr. Smit summarized the options of *in situ* vs. relocation (Ex 4, “John Smit PowerPoint” p.20):

In situ

- The building would become part of the commercial development;
- Overshadowed by adjacent larger buildings;
- Loss of opportunity to animate on all sides;
- Loss of opportunity to build on relationship with Urban Park.

Moving eastward

- Building becomes anchor for the new urban park with strong orientation towards Rideau Canal;
- Building retains public function;
- Pavilion character retained;
- No tall neighbours;
- Becomes base for programming.

From a marketing perspective, the City's retail advisors concluded that the *in situ* location of the Horticulture Building will disrupt the flow of pedestrian traffic between the larger, commercial buildings proposed for each side, parallel to Holmwood Avenue. Relocation also is necessary for the construction of underground parking. In Mr. Smit's opinion, moving the Horticulture Building temporarily off site, excavating for underground parking, then repositioning at its original location, "puts the Building at greater risk." It would entail two moves separated by an undetermined holding period. The actual move would be undertaken by CDS movers, an Ottawa firm known for its expertise in moving heritage buildings.

A second report by Commonwealth, *Statement of Cultural Values and Heritage Impact Assessment* ("CHIA" Ex 3, Tab 2) was submitted to the City in September 2010 marked "Revised." Section 5.5 (Ex 3, Tab 2, pp.60-64) states that the "proposal is to move the building as one unit laterally to the east a distance of some 120 metres." (The report analysis of site, context, and integrity values; comparables (i.e., other examples of building relocations); relocation strategy and impact; and planning phases were later delineated at the hearing by the Commonwealth report author Mr. John Stewart.)

On September 27, 2010, the Realty Services Division of the City of Ottawa applied for a permit under the Act "To move the Horticulture Building according to plans submitted" (Ex 6A). At its meeting of November 4, OBHAC rejected the Staff Recommendation for relocation. On November 19 and 22, Council considered the Commonwealth report, as well as public delegations. The relocation was approved subject to terms and conditions which include provisions for a "Conservation Strategy to support future public use" within the urban park; "a detailed plan for works for the proposed relocation;" repeal of Bylaw 8-94; and to "enact a new designation Bylaw under Part IV of the Ontario Heritage Act once the building has been relocated and rehabilitated as set out in the Conservation Strategy to be developed for its new use" (Ex 6B). Ex 3, Tab 3, is the *Draft Conservation Plan, Horticulture Building, Lansdowne Park* prepared for the City by Commonwealth in November 2010 and revised to March 2011.

Mr. Smit explained that the purpose of repealing all of Bylaw 8-94 is to allow the City to remove the Horticulture Building from the s.29 protected property. The relocated Building is to be “rehabilitated” and then re-designated under s.29 of the Act. He explained (as in Ex 3, Tab 1, pp.16-17) that in 2008 the City adopted the Parks Canada *Standards and Guidelines for the Conservation of Historic Places in Canada*, and that these “do not recommend removing or relocating historic buildings on a site, as such actions are generally seen to be a solution of last recourse.” This is reflected in s.4.6.1 of the City’s Official Plan. City Policy 1 requires that when a protected property is proposed for alteration, demolition, or relocation, Council is to consult with OBHAC and a cultural heritage impact assessment is to be conducted by a qualified professional. For relocation proposals, the CHIA must “demonstrate that relocation is the only way to conserve the resource.” Any recommendation for Council’s consideration must provide that:

1. The building is retained on site, but moved to another part of the property for integration into the new development, or, if that is not possible;
2. The building is located to a site appropriate to its cultural heritage value outside the proposed development or property.

In Mr. Smit’s opinion, the decision to relocate the Horticulture Building is consistent with the requirements of Policy 1. Overall, he considers that Council and staff adhered to the heritage policies and processes of the City, and to applicable Standards and Guidelines for heritage conservation, in the following manner:

Regarding Site Value (Ex 3, Tab 6, p.25): “‘Sense of place’ will be restored along with character defining features, including architectural, ongoing use as public assembly space, visible and accessible from all sides and integration into the urban park.”

Regarding Context Value (Ex 3, Tab 6, p.26): “The relocation is a mirror relationship to the Aberdeen Pavilion allowing a re-interpretation of the shared forecourt. Horticulture will remain a public building with uses associated with the urban park and the farmers’ market. The conservation plan allows that the character defining attributes be restored, something that would not be possible if it was left in place.”

Regarding Integrity Value (Ex 3, Tab 6, p.27): (Movement of a structure if not well considered could result in physical endangerment to the resource.) Structural integrity will be maintained, a conservation strategy prepared; CDS Movers are experienced and capable.

In his analysis of Bylaw 8-94, Mr. Smit illustrated that it deals with the Horticulture Building in the context of the historic Lansdowne Park. The features identified in the bylaw would be restored. On inquiry from the Review Board, Mr. Smit’s reading of the bylaw is that it does not include any interior features. In his experience, City of Ottawa designating bylaws govern only the exterior unless specific reference is made to the interior.

Cross Examination- Ms Hoad

Procedural Issue

Ms Hoad raised the issue of the requirement under s.31(4)(b) of the Act that the Contents of Notice for a bylaw repeal is to include “a statement of the reason for the proposed repealing bylaw” (Ex 7). The Review Board concurred that the City’s Notice of Bylaw Repeal does not contain “a statement of the reason.” It was noted that this was not raised at the prehearing conference. The Parties were asked if they wanted to argue this as sufficient grounds for discontinuing the proceeding but all agreed to proceed with the hearing. The Review Board stated that a comment on the matter would be included in the Hearing Report.

The Heritage Ottawa document binder was entered as Exhibit 5.

Ms Hoad referred Mr. Smit to Ex 5, Tab 6, p.6-69, as the 2005 Provincial Policy Statement 2.6, and queried if the City had contemplated the PPS provision for “mitigative measures and/or alternative development approaches.” He responded that the City considered retaining only the front section of the Horticulture Building, and also considered keeping the whole structure *in situ*. As *in situ* was rejected early in the process, it was not offered to the public as an option. Underpinning the Building to allow for underground parking was considered too costly.

Ms Hoad noted the use of the word “permanent” as in “permanent exhibition hall” in Bylaw 8-94 and queried if the Horticulture Building would retain this quality, if relocated. Mr. Smit stated that five buildings already had been removed from Lansdowne Park, so “permanent” is a relative term. Relocation in his opinion would still result in it being a permanent feature of the Park.

Mr. Smit explained that the Horticulture Building had been neglected by the City due to the need to set other priorities. Lansdowne Park “is not a revenue generator he noted;” revitalization will improve this situation.

On inquiry from Ms Hoad on the City’s emphasis on the “reintegration with the Canal,” Mr. Smit agreed that access to the Horticulture Building in 1914 was from Bank Street, not Rideau Canal.

Regarding why the City would not consider integrating the Building within the “dynamic urban mixed use precinct (Ex 3, Tab 2, p.75),” Mr. Smit explained that its present location creates a wall between two sections of the proposed retail element. It is better placed away from the mixed commercial/residential sector and within the public use, urban park sector. He described this as “repurposing with true meaning.”

Cross Examination- Mr. Dubé

On inquiry from Mr. Dubé, Mr. Smith stated that the “civic memory” of the Horticulture Building will continue as it is being retained within the context of Lansdowne Park. Its repurposing enhances civic memory.

Witness – Mr. John Stewart

The Witness was sworn. Mr. Stewart's credentials (Ex 3, Tab B) were reviewed and he was admitted to give opinion evidence as a professional heritage planning consultant. Mr. Stewart is the principal in Commonwealth Historic Resource Management Ltd.

Mr. Stewart explained that Commonwealth was given an "undefined assignment" by the City to consider the heritage aspects of Lansdowne Park. The first plan presented to him had the Horticulture Building moved to a diagonal position oriented to the northeast corner of the Aberdeen Pavilion. He rejected this as it blocked the easement protected viewline to the Pavilion. He was then to consider three alternatives, *in situ* with a new use; relocate; retain the front section only. In preparing his report, he applied the City of Toronto template for a cultural heritage impact assessment, which considers heritage and economics.

In referencing his chronology of Lansdowne Park (Ex 3, Tab 2, p.85), Mr. Stewart explained his initial conclusion was that the built (tangible) aspects of the site as a cultural heritage landscape were so eroded (only three of eleven exhibition buildings surviving), that he looked to its intangible qualities as a "community sense of place" and memory. The Aberdeen Pavilion is the icon of the Park and dictates any new site development. It was erected on the eastern end of the original solid ground; to the east is landfill in a former water inlet. The landfill area is unworkable for new construction.

Mr. Stewart acknowledged that his September 2010 Revised *Statement of Cultural Values and Heritage Impact Assessment* defers to the Canadian Register of Historic Places Statement of Significance and list of character defining elements for the Horticulture Building (Ex 3, Tab 2, p.28), rather than the content of designating Bylaw 8-94. In his opinion, the bylaw includes interior and exterior elements of the Prairie (front) section, and exterior only elements of the rink/exhibition hall. Even though an older bylaw, it touches on all the points of Ontario Regulation 9/06: Criteria for Determining Cultural Heritage Value or Interest. After relocation, a new designating bylaw could be written to strengthen the cultural values, such as the technological achievement of Dominion Bridge and the relationship to Aberdeen Pavilion. When applying Regulation 9/06, Mr. Stewart concluded that the Horticulture Building exhibits these values:

Design or Physical Value

The Horticulture Building is a unique and early example of the Prairie style in Canada (front); and as an exhibition hall (rear), an "important step." The brick and clay tile, front section exhibits a sensitivity of scale in its blending with the rear, steel, curling rink/exhibition hall. The front exhibits a high degree of craftsmanship and is a "nice" example of brickwork, if not the best brick. The stepped foundation is interesting. The craftsmanship of the window openings and sashes is unique; each sash featuring a geometric pattern. The clerestory fenestration (windows) has good volume. The curling rink had four natural ice surfaces that were expanded to five when refrigeration was added. The building was designed for year round use.

Historical or Associative Value

The original construction drawings were submitted under the signature of Ottawa architect Allan Keefer. There is a tradition of involvement of another Ottawa architect, Francis Sullivan. His prior association with Frank Lloyd Wright suggests that Sullivan was responsible for the Prairie style front section. The as built structure reveals a remarkable adherence to the construction drawings and a high degree of surviving design integrity.

The Horticulture Building was purpose built in 1914 for Lansdowne Park and was part of the City Beautiful movement (which also brought the Queen Elizabeth Driveway with its sinuous lines). The focus on horticulture/agriculture was to encourage Ottawa to be beautified. Its social history in association with the curling club and the horticultural society, make it part of the fabric of the city and Ottawa Valley.

Contextual

The Horticulture Building is important in maintaining the character of Lansdowne Park, whether or not it is relocated. It is not a landmark but has iconic qualities. It has a relationship with Aberdeen Pavilion as “both share the same forecourt,” even in the proposed mirrored relocation.

Regarding adaptive reuse and relocation, the Horticulture Building has importance in its tradition of providing open exhibition space. Cutting an east west passage through the structure or subdividing it for commercial use would erode this sense of open space and exhibition value. In Mr. Stewart’s opinion, relocation to the northeastern end of the Aberdeen Pavilion will make it part of the public activity on the site. There it can maintain its traditional relationship with Aberdeen and civic memory will return. If the building was to be lifted and below grade parking constructed beneath, it would be disassociated from its original location. If it stays *in situ*, it will be “encrusted” with new commercial buildings, tucked into a streetscape, and lose its sense of place. It will become “a cartoon that no one will understand what it was or why it was there.” Its current context is surrounded by asphalt; relocated it will be within a green landscape.

Mr. Stewart reiterated his arguments in Ex 3, Tab 2, pp.75-76, in favour of relocation.

Retention *in situ* would result in:

- The building being located among the new mixed-use development needed to meet the program objectives for a dynamic urban mixed-use precinct requiring extensive upgrading;
- The building losing its pavilion character and ability to be animated on all sides;
- The building becoming overwhelmed and its prominence diminished as a result of the new development;
- Only the front entrance hall being highly visible as a defining element of the building;
- The building would have to be raised and set aside for the construction of the below grade parking structure;
- The use of the building becoming more focused on supporting the commercial elements of the mixed-use development and losing its function as a public building; and,

- The important character-defining relationship of the building with the Aberdeen pavilion as two public buildings forming a shared forecourt being significantly changed as a result of the new development program.

Mr. Stewart referenced Ex 3, Tab 2, p.76, and the need to be consistent with the City's Heritage Code for the Place (Lansdowne Park) by undertaking a heritage conservation strategy and plan.

Cross Examination – Ms Hoad

On inquiry from Ms Hoad, Mr. Stewart reiterated that the Horticulture Building will be conserved in the new location. If left *in situ*, there would be a “much reduced commercial development.” A retail consultant advised that “people could not be enticed to go around the Building.”

Ms Hoad noted that the first standard of the Parks Canada Standards and Guidelines: General Standard for Preservation, Rehabilitation and Restoration, states:

Conserve the heritage value of an historic place. Do not remove, replace or substantially alter the intact or repairable character-defining element. Do not move a part of an historic place if its current location is a character-defining element.

She suggested that relocation will require significant intervention. To this Mr. Stewart responded that the character defining element of “place” of the Horticulture Building is Lansdowne Park. Even if moved, the mirrored location maintains the relationship to Aberdeen Pavilion. The planning for the move is intended “to minimize loss of original building fabric so that the integrity of the heritage structure is not physically compromised.” Its current deteriorated condition is placing it at risk.

Ms Hoad noted the differences in the heritage attributes identified in Bylaw 8-94; the character defining elements in the CHIA; and the character defining elements in the Draft Conservation Plan (Ex 3, Tab 3, p.21). She stated that Bylaw 8-94 is the only legal document. Mr. Stewart acknowledged the differences and that he is working on revised text for the future designating bylaw.

Cross Examination- Mr. Dubé

Mr. Dubé noted that Dominion Bridge was involved with the Aberdeen Pavilion, coliseum roof, Horticulture Building, and the 1966-67 stadium, giving it a long association with Lansdowne Park. He queried how Mr. Stewart equates the threat of highway widening resulting in the relocation of Ottawa's March House (as mentioned in his evidence) to the circumstance of the Horticulture Building. Mr. Stewart considers the parking requirements of the new development to be a threat requiring the action of relocation for the Horticulture Building, similar to the highway widening that was the basis of the March House relocation.

Cross Examination- Mr. Huxley

Mr. Huxley inquired if keeping the Horticulture Building *in situ* jeopardized the Park revitalization project. Mr. Stewart noted the deteriorated condition of the Building. If there is no revitalization plan, it will further deteriorate as the City will have no reason to invest in maintenance.

Case for the Heritage Ottawa

Heritage Ottawa (a corporation) was represented by Ms Linda Hoad by the authority of CRB Rep Form-1 Representative of a Party – Commencement of Authorization Form. An Affidavit of Service of a Review Board Summons served by Heritage Ottawa on Mr. Sean Fraser was entered as Exhibit 8.

Witness – Mr. Sean Fraser

The Witness was sworn. Mr. Fraser's credentials (Ex 9) were reviewed and he was admitted to give opinion evidence as a heritage planner and in his capacity as the Manager, Acquisitions and Conservation Services, for the Ontario Heritage Trust.

Mr. Fraser explained that the Ontario Heritage Trust is a Crown agency and the provincial advocate for the conservation of natural and cultural heritage. The Trust is signatory to a conservation easement agreement governing Aberdeen Pavilion and its viewsapes under s.22 of the Act. The Trust strongly encourages the revitalization of Lansdowne Park and has been in discussion with the City for about a year on this initiative. He referenced a letter dated May 21, 2010, from the Trust to Kent Kirkpatrick, City Manager, City of Ottawa (Ex 5, Tab 4, p.4-01), in particular, points 3 and 4 of page 3 (p.4-03):

3. The Horticulture Building, a rare and important designated heritage property, is integral to the heritage value of the site and any proposals should incorporate this structure into the design *in situ* and *in toto*.

4. To ensure it meets Planning Act requirements the preliminary development proposal needs to be reviewed with attention to the Provincial Policy Statement (PPS 2.6.1, 2.6.2, 2.6.3) which includes the conservation of significant built heritage resources, cultural landscapes, archaeology and the impacts on adjacent protected heritage resources.

He reiterated the May 21, 2010 letter in that:

The Trust cannot support the current approach to the redevelopment and sees some fundamental flaws in process, competition parameters, preliminary designs and heritage review. The partial demolition and relocation of the Horticultural building is contrary to the Trust's mandate, the easement agreement, the Ontario Heritage Act, the Provincial Policy Statement of the Planning Act and can not be considered as heritage conservation. . . . In order to secure the long term protection of the Horticultural building (*in situ* and *in toto*) the Trust will be seeking a conservation easement agreement on this building.

A letter dated September 13, 2010, from the Trust to the Chair and Members of the Planning and Environment Committee, City of Ottawa (Ex 5, Tab 4, 4-06), notes that:

According to internationally recognized conservation principles *conserved* cannot include the relocation of a significant built heritage property . . . The Trust uses the Parks Canada framework, embodied in the *Standards and Guidelines for the Conservation of Historic Places in Canada*, to define interventions that may be considered appropriate conservation of heritage resources. In this framework, conservation includes preservation, rehabilitation, and restoration. It does not include partial retention, demolition, or relocation of buildings/structures.

The letter notes that the City of Ottawa Council adopted the Parks Canada Standards and Guidelines on October 8, 2008.

The Trust's description of the significance of the Horticulture Building and its opposition to "dedesignation and relocation" on conservation principles is stated in a letter dated November 3, 2010, to the Chair and Members of OBHAC (Ex 5, Tab 4, 4-12):

The Horticulture Building is a rare expression of the Prairie Style of architecture. Designed by an important Ottawa architect Francis Sullivan, the building has few remaining comparables of its type and style in Ontario. Its early 20th century construction with brick walls and steel truss supported roof, is representative of systems used for large public pavilions from this era, but is quite different in execution from anything Trust staff have seen in Ontario. As the Horticulture Building possesses cultural heritage value in its current location, the Trust does not support the repeal of the designation by-law.

Regarding relocation, Mr. Fraser explained that the Standards and Guidelines were updated two months ago and that there are fourteen prime standards (Ex 5, Tab 6, 6-55). "If you fall outside of the Standards and Guidelines, you fall outside of conservation." Relocation is not an option in the Standards and Guidelines. The parameters of the proposed development have to be changed, not the heritage resource. The principle of *in situ* retention is based on a building being embedded in its place and that place is significant. "The original place is the authentic place; moving it erodes value. Relocation makes the building an artefact. You cannot increase heritage value in a new location." With all relocation, some authentic heritage fabric will be lost, "especially if it is rooted to the place."

The Trust's letter of November 3, 2010 adds in regard to the City's proposal to relocate the Building (Ex 5, Tab 4, pp.4-12,4-13):

Relocation of a heritage building, even if undertaken without dismantlement results in partial demolition, destroys context, and is extremely costly. Given the large size and low/broad proportions of the building there is considerable risk of loss or major damage associated with relocation. . . . By relocating the Horticulture Building a significant and integral part of its heritage value would be forever destroyed, the building would be at

risk of further loss due to the physical act of relocation and it would set an unfortunate precedent for cultural heritage preservation in Ottawa and the province.

Based on the Trust's role as the recipient of all bylaws under the Act, Mr. Fraser is of the opinion that repealing a bylaw for the purpose of relocation is an "unusual event," as is moving a designated building. Underpinning the building to allow for underground parking is a significant alteration, but less invasive. It could meet Parks Canada Standard 3: "Conserve heritage value by adopting an approach calling for minimal intervention." The Trust cannot support parking as a threat or reason for relocation. "Threats" are generally accepted as natural disasters.

The Act is silent on the use of a property/building; this is the purview of the Planning Act. In his opinion, any use that does not "negatively impact the heritage attributes" is acceptable. Use is transient.

In Mr. Fraser's opinion, the Horticulture Building has provincial significance.

Regarding Bylaw 8-94, Mr. Fraser interprets "permanent exhibit hall" to mean lasting over the seasons. Over its century, the Horticulture Building has accumulated cultural associations. There also is value in its association with Frank Sullivan who was influenced by Frank Lloyd Wright and the Prairie style. The Building is an early expression of modernist architecture in Canada. The property easily meets the test of Regulation 9/06. The only reason to repeal the bylaw would be to enhance the heritage coverage through a new bylaw. Relocation will erode some historical and contextual values and associations it has now. In the new location, it will begin to establish new values, but this is an unknown.

Cross Examination- Mr. Huxley

On inquiry, Mr. Fraser concurred that the Standards and Guidelines are principles and their application is relative to the level of significance of the building. In his career, he has witnessed a "lessening" in the use of relocation as an option and attributes this to the maturing of the practice of heritage conservation. A peril apart from natural is seen as a decision beyond the control of the approval body. In this case, the decision is still within the control of the City. The Standards and Guidelines start with a respect for the values that have been layered on a building over time. It considers such questions as "Is cultural heritage value tied to the place?"

Mr. Huxley noted several examples where a structure had been relocated, such as the St. Mathew's lawn bowling club building in Toronto. This was a designated property where the bylaw was repealed to allow relocation, then redesignated. He also cited the authority of the Ontario Municipal Board under the Act to Order the removal of a structure from a protected property.

Messrs Fraser and Huxley agreed that the Horticulture Building "is in trouble." Mr. Fraser did not agree with Mr. Huxley that relocation will allow the Building to "thrive."

Question – Review Board

The Chair inquired if the Trust had applied Ontario Heritage Act *Regulation 10/06: Criteria for Determining Cultural Heritage Value or Interest of Provincial Significance* to the property. Mr. Fraser replied in the negative but that Trust staff was reviewing the possibility of a conservation easement under the Act.

Witness – Mr. Ken Elder

The Witness was sworn. Mr. Elder's credentials (Ex 5, Tab 3, p.3-2) were reviewed and he was admitted to give opinion evidence as a conservation architect.

Mr. Elder confirmed that the Parks Canada Standards and Guidelines, to which he had some early involvement in the development, are in conformity with international standards. Three levels of conservation are entrenched in the Standard: preservation (do the least); rehabilitation (adapt to a new use); restoration (uncovering original elements and putting elements back into the structure).

In his opinion, if the designating bylaw is repealed, the Horticulture Building would be at risk as there would be no protection compelling adherence to the Standards and Guidelines. In his experience, moving a structure places it at risk, especially one that measures this size (219 ft. X 96 ft.). Removing door and window assemblies involves tagging, repair, and reinstallation. The lifting beams are placed through existing openings and can involve breaking through new openings in the brick walls. This risks damage to the walls and means future repair with compatible (same vintage) brick, which is not always available. The framing system of the rink/exhibition hall is a series of metal trusses supported on steel columns anchored to the foundation/basement, with brick infill forming the exterior walls. Removing the basement removes all the anchors. One side of the front section basement has a coal bunker; the other is excavated space. This feature would be lost if relocated.

Mr. Elder considers the relationship of the Horticulture Building and Aberdeen Pavilion to be a sharing of the public square at the western front of the Aberdeen (southern front of the Horticulture Building). Making the northeastern end of the Aberdeen the new public space could be confusing as this is not the historic square. The west facade of the Aberdeen is framed by the centre window of the second floor dining room of the Horticulture Building.

From his perspective, the word "permanent" in Bylaw 8-94 means reinforced concrete footings below the frost line, and heating for year round uses, as intended from the start for the Horticulture Building.

Regarding Regulation 9/06, the Horticulture Building (structure and property) meets the test under several criteria:

Design or Physical Value

The front section of the Horticulture Building is an early example of Prairie style and references three houses in Chicago designed by Frank Lloyd Wright. The massing is a centre pavilion with

two wings, overhanging eaves, groups of windows, clerestory type fenestration, a continuous sill, and banding at the corner buttresses. Each sash has a distinct geometric muntin, done at great cost. The double windows (inside sash and storm) confirm year round use. The carved or cast motifs at the top of each pilaster have horticultural themes. The roof assembly is unique. The architect seamlessly tied the truncated roof of the rear rink/exhibition hall into the front section. He then suppressed the chimneys into the buttress of the front to create an architectural element below the join with the rear roof.

The interior of the front section has Prairie style symmetry in the floor plan and incorporates a technique of lifting the lintels to create alcoves that flow between each room. There is minimal trim. The dogleg stairway with its newel and balusters with geometric cutouts is a “jewel.” Architect Frank Sullivan began his career as a cabinet maker and carpenter. This likely explains the high degree of craftsmanship in the Building.

The technical achievement of Dominion Bridge was to fashion eighty foot trusses (in the pre welding period) into a column free interior span. The trusses go to ground on steel channels buried in the walls.

Historical Associative Value

Frank Sullivan is significant to Ottawa and Canada as a recognized modernist architect.

Contextual

The second storey dining room of the Horticulture Building was configured for the Directors of the Canada Exhibition. From there, they could view the activities at the heart of the exhibition grounds, the forecourt of the Aberdeen, Horticulture, and other exhibition buildings. The original drawings assign the rooms on the ground floor as offices for members of the Press. This location gave them full coverage of the exhibition site.

Mr. Elder addressed the site, context, and integrity values as stated in Ex 3, Tab 2, p.60, with the comment that with proper mitigation, all of these values could be met *in situ*. Animation could be on all sides of the Building and its integrity could be retained. The Building is structurally sound and could handle the loading of commercial/retail use.

Cross Examination- Mr. Dubé

On inquiry from Mr. Dubé, Mr. Elder confirmed that the poured concrete floor of the rink/exhibition hall and the loading doors make this a strong and useful space that can withstand heavy use. As you remove elements of the Horticulture Building, you remove history.

Cross Examination- Mr. Huxley

Mr. Huxley cited the Christ Church, Montreal, project (Ex 5, Tab 7, 7-02), inquiring if a retail shopping mall is an example of a “natural peril.” Mr. Elder responded that beneath the church building was excavated to create the mall, but the building was not moved. He acknowledged that engineers can handle the move of the Horticulture Building, with risks, but the heritage value would be “tremendously diminished.” It was built for events at the centre of the Park, on

the west side of the Aberdeen, not the east end of the Aberdeen and Park property, as proposed.

Mr. Huxley contended that, if relocated, all the heritage attributes, but contextual, of the Horticulture Building would be retained and that this is a rare opportunity to have a mirror image relationship with the Aberdeen. It would be redesignated in the new location. Mr. Elder stated there would be a loss of historical/associative and contextual values. It would lose the relationship to the centre of the exhibition and the west end of Aberdeen. Relocation would establish a relationship to Rideau Canal and to a green space that it never had.

Re-Examination – Ms Hoad

In reference to Parks Canada Standard 3 (minimal intervention), Mr. Elder stated that creating below grade parking beneath the Horticulture Building is not a minimal approach but it would achieve the commercial ends. The Building lends itself to a full range of uses.

Witness – Ms Leslie Maitland

The Witness was sworn. Ms Maitland's credentials (Ex 5, Tab 3, p.3-04) were reviewed and she was admitted to give opinion evidence in the principles of heritage conservation and in Canadian architecture. She is a member of Heritage Ottawa but is not on a retainer for purposes of this hearing.

As illustrated by the chronology in Ex 5, Tab 5, Heritage Ottawa has been an advocate of the Horticulture Building and the revitalization of Lansdowne Park since at least 1979. A Lansdowne charette held in 1990 is an example of the "considerable public interest" in the site. Letters have been written, the site included in the Doors Open event, and Heritage Ottawa has responded to the City and Commonwealth's several documents on the revitalization plan.

Ms Maitland concurred with Messrs. Fraser and Elder in that the Parks Canada Standards and Guidelines are derived from international thinking. There is no reference in the Standards to dedesignation or relocation as these are not heritage conservation methods. She agreed that "history happens in a place" and removing a structure from a place, removes it from its place of meaning.

Regarding Regulation 9/06, under Design or Physical Value she would add that the Horticulture Building is a rare example of an exhibition building from the early 20th century; a rare example of the Prairie style in Ottawa and Canada; and that it has a high level of craftsmanship and artistic merit. Bylaw 8-94 captures much of this description.

She would add to Historical or Associative Value that the Building is associated with agriculture in Eastern Ontario; it has value to Ottawa; was used for staging military troops; is an example of the work of architects Frank Sullivan and Allan Keefer; and has a tradition of sport as well as botanical exhibition events.

Regarding contextual, it is important to remember that the designating bylaw refers to the property, not just the Horticulture Building. This property is a central circulatory point. The Exhibition Directors had lunch in the dining room every day of the fair and it was used to entertain dignitaries. The Press also needed to be at the core of the activity. This forecourt was the “beating heart of the exhibition grounds.” Historically, there were buildings between the Horticulture Building and Rideau Canal. As a landmark, it is overshadowed by the restored Aberdeen Pavilion but it could regain this status.

In Ms Maitland’s opinion, Commonwealth’s statement of cultural heritage value (the origin of which is the Canadian Register of Historic Places) is good but misses an understanding of the contextual value of the property. Commonwealth’s analysis of Site, Context, and Integrity values retained and/or achieved by relocation also apply to the Building *in situ*.

Ms Maitland believes that when the deciding body has the ability to make a decision (about the disposition of a protected heritage property), this does not constitute a peril such as a natural disaster or order from a higher authority. In this case, the City can decide not to relocate. She is of the opinion that the word “conserved” in the Provincial Policy Statement means conserved according to the Standards and Guidelines, which do not condone relocation. New development needs to be mitigated to leave the Horticulture Building *in situ*. She cited Granville Island, Gooderham and Worts Distillery District, and Byward Market as successful integrations of *in situ* buildings into new development.

Ms Maitland explained that “reorientation to the canal” as proposed by the City is not an historic relationship and that aligning the Horticulture Building with the green space of the proposed urban park is a new relationship. She queried whether the about six metres setback between the Horticulture Building in its new location and the proposed cinema on the west is sufficient to “animate on all four sides,” as claimed by the City.

Based on her experience with the National Historic Sites Directorate, Ms Maitland is of the opinion that the Horticulture Building could be considered for National Historic Site status. That agency’s policy is that a relocated building will not be considered unless significant historical associations have occurred after the move.

Cross Examination- Mr. Huxley

On inquiry from Mr. Huxley, Ms Maitland stated that parking does not constitute a peril. She agreed that a successful move could mean that all the physical elements of the Horticulture Building may be retained, but this would be at considerable expense and risk. There would be a loss of contextual value and the overall heritage value would be “considerably diminished.” The Building never had a relationship with Queen Elizabeth Driveway or Rideau Canal. The City’s intent to align the Building with a new green space/ community demonstration garden as a theme compatible with horticulture was countered by Ms Maitland. This was an exhibition space for horticulture; it was not surrounded by green space and gardens.

Ms Maitland differentiated between the City's emphasis on the value of "public use" and the conservation concept of "public access." Allowing the public to enter the building does not mean it must have a public use. It could be used for commercial purposes that are open to the public.

Case for Mr. Dubé

As Mr. Dubé intended to present his case without calling witnesses, the Parties agreed that he could do so if sworn. This was done. Mr. Dubé considers himself an amateur historian and is a member of several historical, genealogical, archaeological, and cultural organizations in the Ottawa area.

The Dubé document binder was entered as Exhibit 10.

In Mr. Dubé's opinion, nothing has happened to the Horticulture Building since Bylaw 8-94 was passed that would warrant a repeal of the bylaw.

Ex 10 provides an historical background to the site. Mr. Dubé summarized that Lansdowne Park was chosen in 1868 by the Ottawa Agricultural Society (founded in 1832 as the Bathurst Agricultural Society). It was there that the rural societies of eastern Ontario and western Quebec gathered. A water inlet on the property created by the construction of Rideau Canal (1826-1832) has since been infilled (area east of Aberdeen Pavilion). In 1875, Elgin Street was extended south from the canal side (west of inlet), winding its way through the exhibition grounds to Bank Street, making the historic entrances those from Elgin and Bank streets. The Bank Street and canal frontages were fenced, with the possible exception of two docks. There were gates at Bank Street and the south end of Elgin. The entire site was bought by the City of Ottawa in 1898 and subsequently named Lansdowne Park. Aberdeen Pavilion was erected in 1898.

The Horticultural Society was founded in 1892 and its first building on the grounds burned in 1907. On June 15, 1914, tenders for the subject Horticulture Building were received by the Central Canada Exhibition Association from architect Allan Keefer. The tradition of architect Frank Sullivan's involvement with the design is not clearly established. Sullivan was self taught, worked for the Department of Public Works, then entered private practice (1911-1915). From 1918 to 1921, he was architect for the City of Ottawa, but left following a financial investigation. He died in Chicago in 1929. The 1912 Carnegie Library building in Pembroke, Ontario, was designed by Sullivan in the North American Prairie style. The similarity to the Pembroke Library suggests Sullivan designed the front Prairie style section of the Horticulture Building.

Construction of the Horticulture Building was completed in August 1914 and there was an immediate request for training and billeting troops serving in the First World War. It was used again for military purposes in the Second World War. For fifty five years, the Glebe Curling Club leased the rink/exhibition hall. The dining room hosted innumerable events attended by significant politicians and dignitaries, notably during fair week. The exhibition hall hosted events and demonstrations of national significance.

Mr. Dubé described an aerial image (Ex 10, p.8 and p.15) taken from the second floor of the Horticulture Building between 1961 and 1966:

Facing benches underneath shady trees about 10 yards from the Aberdeen Pavilion, one would have seen on the immediate left a water fountain dedicated to Ottawa's native son and benefactor, Thomas Ahearn. In a clockwise fashion around this cordial hub, one would have then recognized the red-bricked prairie-style Horticultural Building with typical fenestration and projecting roof. Immediately in front was the Aberdeen Pavilion, a Victorian-era exhibition hall and an Ottawa landmark. To the right, was the Grandstand which has now been replaced with a stadium of the modern expressionist style. This structure, as well as its two predecessors has been witness to many civic, social, religious and political gatherings as well as entertainment and sports events.

From this vital hub, the encircling road would have bifurcated around the Aberdeen Pavilion. To the right were grassy areas, playing fields and larger buildings housing curling rinks. The Rideau Canal was beyond but not visible because of trees encircling the grounds. On the left side, the road went past the Horticulture Building and a few other long-gone buildings on its way to a gated exit to the Driveway.

The Horticulture Building was erected at the "established beaten path." The buildings on the grounds are/were where they are because of the road system.

Member of the Public – David Jeanes

Mr. Jeanes was sworn.

Mr. Jeanes is a member of Heritage Ottawa. He experienced Lansdowne Park in the summers and his family moved and occupied a model home on exhibit at the Park in 1957. He reiterated previous witness statements that the Horticulture Building is not "adjacent" to Aberdeen Pavilion, but at the heart or crossroads of the exhibition. All that occurred in that central area "went by under the eyes of the Directors at the Horticulture Building." The Building showcased new seed types, exhibits of the Ottawa Experimental Farm, etc., not just flowers. In 1917, it was the venue for the fourth Good Roads Conference. The downstairs rooms were Press rooms. The windows had the purpose of allowing the public to report directly to reporters about exhibition and sports news. Mr. Jeanes finds it a remarkable engineering feat that Dominion Bridge Company could construct the Building between June and August, and open in time for the September exhibition.

Regarding the proposal for relocation, Mr. Jeanes is of the opinion that one should not have to go elsewhere on a site to experience "all its heritage" in one enclave. The proposed urban park segregates between the old and new elements. Heritage can be integrated into new development and will add "remarkable character." The designating bylaw should be revised, not repealed.

Member of the Public – John Martin

Mr. Martin was sworn. The Review Board and Parties agreed to scope Mr. Martin's intended statements as they related to his (alternative) vision for the revitalization of Lansdowne Park.

Mr. Martin stated that the design process should be fluid. Relocation is more of a "want" of the City, than a "need" of the revitalization. His research indicates that Frank Sullivan apprenticed to Moses Eady who designed Aberdeen Pavilion. He pointed out the relationship of the Aberdeen to Horticulture Building is also one of teacher and student.

Mr. Martin referred to the existence of an art glass window in the north facade of the Horticulture Building. He will provide the Parties with further information at a later date.

Member of the Public – Gary Sealey

Mr. Sealey was sworn. He advised that he is a member of Friends of Lansdowne but was appearing at this Review Board proceeding as an individual.

Mr. Sealey disagreed with the City's analysis of the Horticulture Building and conclusion to relocate. He explained that Aberdeen Pavilion and the Horticulture Building are from different periods of architecture, one inspired by the 19th century Crystal Palace, the other the American Plain School. Each deserves space as representatives of different architectural periods and styles. There should be less emphasis on the relationship of these two buildings and more recognition on the role each played in the function of Lansdowne Park. The Horticulture Building should be used as a contextual motif, *in situ*, for any new development. He disagrees with the concept of collecting heritage assets into one setting, such as Black Creek Pioneer Village. He considers the new development to be a "peril". Now is when the designating bylaw is most needed to protect the building. There is importance in continuity.

Summations

Mr. Dubé summarized that there has been no change to the Horticulture Building since the designating bylaw was passed in 1994 and therefore there is no justification to de-designate or relocate. The Horticulture Building and Aberdeen Pavilion still shape an historic public square and serve as a gathering and meeting place. If de-designated, the Building would lose the minimal intervention and preserving heritage values approach of the Standards and Guidelines that it would be afforded as a designated property.

Ms Hoad concluded that based on the criteria of Regulation 9/06, the Horticulture Building property is worthy of continued protection under the Act. The City's reasons of parking and retail requirements of the Lansdowne Park revitalization plan are "not justifiable within the spirit and intent of the Act." These are not in keeping with Provincial Policy Statement 2.6. New development must mitigate against negative impacts on a protected heritage property.

It is Heritage Ottawa's opinion that the City intentionally altered the design process for the Lansdowne Park revitalization and the urban park by omitting the option of retaining the Horticulture Building *in situ*. The City failed to apply the *Standards and Guidelines for the Conservation of Historic Places in Canada*, which it adopted. These Standards "do not support relocation of heritage buildings, particularly where location is one of the character defining elements." The Building is not in an uncontrolled peril situation; the City has a choice of whether or not to relocate. "History happens in a place. To remove a building from its place is to remove a significant element of its meaning. When you move a building, it becomes an artefact, it is no longer a building in its place of meaning."

Ms Hoad concluded that there are many options for keeping the Horticulture Building "in its rightful place, sharing the forecourt of the Aberdeen Pavilion." "Public use" should be interpreted as any use that allows "the public to have access to the building without endangering its character defining elements." Relocation is not a conservation strategy.

Mr. Huxley confirmed that the relocation of the Horticulture Building would be done based on a conservation strategy and a detailed plan for the physical move. Once relocated and "rehabilitated," the City will re-designate the property under the Act. This course of action has precedence in other relocation projects where uncontrollable perils were not a factor. The objections to this approach are grounded in a philosophical position that heritage buildings should not be moved. This "absolute position" eliminates professional judgment and makes heritage conservation a system of checkboxes. This is not the current state of the law or the purpose of heritage evaluation.

Relocation of the Horticulture Building is important to the revitalization of Lansdowne Park. The City's objective is to create a "restored sense of place." The Building will continue to have a public focus and will maintain its principal heritage elements and values, including a relationship with Aberdeen Pavilion. The City's analysis is within the context of the Provincial Policy Statement (and its definitions for conserved and heritage attributes), Parks Canada Standards and Guidelines, and the Act.

Findings of the Review Board

Several topics were addressed during the course of this proceeding. Some warrant explanation before being assembled into a discussion and recommendations.

1. Procedural Matter – Determination of applicable section of the Act regarding bylaw repeal

Mr. Dubé noted in Ex 10, p.4, that s.31(4)(b) of the Act requires that the content of a Notice of Intention to Repeal a Bylaw or Part Thereof include "a statement of the reason for the proposed repealing bylaw." This issue was not raised at the prehearing conference held on February 18, 2011, which was attended by all Parties or their Representative. Ms Hoad raised this issue during the hearing. Mr. Huxley was prepared in his summation to outline the process undertaken by the City. As all Parties had agreed to continue with the hearing, the Review

Board did not consider this necessary and advised that the issue would be addressed in the Findings.

Two sections of the Act provide for the repeal of all or part of a designating bylaw: s.31(1), Council (municipality) initiated; and s.32(1) owner initiated. One difference between the sections is at what stage members of the public can appeal the Notice of Intention to Repeal a Bylaw or Part Thereof. Under s.31(1) anyone can appeal the Notice. Under s.32(1) only the owner can appeal if the municipality refuses to repeal all or part of the bylaw. The public cannot appeal but, at the Review Board's discretion, can make a statement at the hearing. If the municipality grants the application to repeal all or part of the bylaw, the Notice of Intention to Repeal is published and anyone can appeal (s.32(14)). Objections are referred to the Review Board (s.32(17)). Essentially, s.31(1) has a one step and s.32(1) has a two step process to reach the public appeal stage.

Another difference between the two sections of the Act is the prescribed Contents of Notice of Intention to Repeal. Under s.31(4)(b), there is a requirement for "a statement of the reason for the proposed repealing by-law." Under s.32(11), there is no such requirement.

In a review of the referral materials submitted by the City at the start of this proceeding, neither section of the Act providing for bylaw repeal is cited, nor is any section cited in the Notice of Intention to Repeal. The Notice states the intent to repeal the bylaw specific to the Horticulture Building property but does not further elaborate or provide a "statement of the reason for the proposed repealing bylaw."

In this proceeding, the Corporation of the City of Ottawa is both the legal owner of the property, and, through Council, the approval authority for both sections of the Act. On September 27, 2010, the Manager, Realty Services Division of the City of Ottawa applied for a permit under the Act "To move the Horticulture Building according to plans submitted" (Ex 6A). No section of the Act is cited on this "Application for Permit under Ontario Heritage Act." In his testimony, Mr. Smit stated that the application was treated as a s.32(1) owner initiated process. The Review Board could not substantiate this claim with the documentation provided.

If Council applied under s.31(1), then the failure to include "a statement of the reason for the proposed repealing by-law" is in violation of the Act. If applying under s.32(1), there is no requirement for this statement of reason.

In terms of this proceeding, the Review Board finds it inconsequential which section of the Act providing for bylaw repeal was invoked. The City of Ottawa is the legal owner; the applicant is a division of the City. The outcome of both sections of the Act is a public Notice providing an appeal period and referral to the Review Board. The Notice sufficiently identified the City's intent to repeal all or part of the s.29 bylaw protecting the Horticulture Building property. The Notice resulted in two valid objections. In the Review Board's opinion, no procedural error under the Act has invalidated this proceeding. It may be an oversight in the drafting of s.32(11) not to include

the requirement for the statement of reason in the Notice. The Act also lacks clarity on which process is invoked when a municipality is both owner and approval authority.

2. Procedural Matter – Determination of applicable section of the Act regarding “relocation”

Another procedural question arises from the wording of the September 27, 2010 Application for Permit under Ontario Heritage Act “to move the Horticulture Building according to plans submitted.” Although not attached to the copy of the application provided to the Review Board, presumably the “plans submitted” show a new location for the Building off the property protected by Bylaw 8-94.

In the City’s “Legal/Risk Management Implications” (Ex 5, Tab 1, p.21) there is an analysis of the application of the Act, should this initiative be approached as an alteration, noting correctly that only the owner can appeal the denial of an application under s.33 to alter a protected property. This document also states that a Council decision to repeal a bylaw requires public notice and is subject to an open appeal process.

Council Inquiry 27-10 (Ex 5, Tab 1, pp.30-31) into its obligation to the Ontario Heritage Trust under the Aberdeen Pavilion Heritage Conservation Easement Agreement also references (p.32), s.33(1) Alteration of Property, stating that “Since the City is the owner of the Horticulture Building, pursuant to Section 33 of the Ontario Heritage Act, it has the sole authority to consider and approve its alteration, including its relocation.”

This matter is referenced by the Ontario Heritage Trust in its November 3, 2010 letter to OBHAC (Ex 5, Tab 4, 4-12):

In addition to the proposal to repeal the designation by-law, the City of Ottawa has proposed to move the Horticulture Building off of its original site (957 Bank Street and defined more precisely in the by-law) to a new location and onto the lands subject to the Part 2 covenants of the Trust’s conservation easement approximately 140 metres to the east. This approval is not an alteration but a removal as defined under Section 34.1 of the Ontario Heritage Act. It is worth noting that the action of removing a designated heritage building from its designated site as set out in the by-law is deemed to be the same legal process as that of demolition due to the detrimental impact that this has on the integrity, cultural heritage value and significance of the building or structure affected.

The Commonwealth *Draft Conservation Plan Horticulture Building Lansdowne Park, Ottawa, Ontario, November 2010, Revised March 2011* (Ex 3, Tab 3) states in *1.1 Heritage Values*:

As part of the redevelopment of Lansdowne Park a decision has been made to move the building laterally to the east adjacent to the urban park. The Ontario Heritage Act does not have any provisions for moving a designated building. The process within the OHA is

to amend or rescind the current designation, issue a notice of demolition, move the building, rehabilitate the building and then designate the building in its new location.

The Review Board acknowledges that this is a draft report, but nonetheless, Commonwealth's explanation of the provisions in the Act for "moving a designated building" is misleading and, in part, erroneous.

The essential question for purposes of the Act is what is intended by "relocation." Although not defined, the Act has been interpreted to consider relocation of a heritage attribute (in this case, the Horticulture Building) within a protected property to be an Alteration, making s.33 applicable. If by "relocation" the action is the removal of a heritage attribute from a protected property, s.34 Demolition or Removal is applicable.

As this matter was referred as a s.29 bylaw repeal, with "relocation" being a reason for repeal, it is correctly before the Review Board. If the City decides to repeal the designating bylaw, it must do so before the Horticulture Building is moved off the protected property. If the City decides not to repeal the bylaw, but now or in the future decides to demolish or remove the Building, it needs to apply the provisions of s.34 of the Act (Demolition or Removal).

3. Application of the Provincial Policy Statement, 2005

The Act as a provincial statute flows from the Provincial Policy Statement. As such, the Review Board must be cognizant of the PPS in its deliberations. Heritage Ottawa placed considerable emphasis on PPS Policy 2.6 Cultural Heritage and Archaeology Resources and the need for compliance to 2.6.1, 2.6.2, and 2.6.3.

Regarding the discussion of the meaning of the term "conserved" in the PPS, Heritage Ottawa interpreted "conserved" to mean in accordance with the Parks Canada *Standards and Guidelines for the Conservation of Historic Places in Canada*. As correctly noted by the City, the PPS defines "conserved" as "the identification, protection, use and/or management of cultural heritage and archaeological resources in such a way that their heritage values, attributes and integrity are retained." The PPS does not reference the Parks Canada Standards and Guidelines or have a policy for compliance with a specified set of heritage conservation standards; nor does the Act.

It is acknowledged that in 2008, the City adopted the Parks Canada Standards and Guidelines as the overlay of guiding principles for its in-house heritage conservation strategy.

4. Status of Bylaw 8-94

For purposes of this proceeding, only the content of Bylaw 8-94 is applicable to the property. The Commonwealth CHIA substitutes the wording of Bylaw 8-94 with that of the Statement of Significance and Character Defining Elements language of the Canadian Register of Historic Places. The Register has no legal status or governance over the subject property. It also incorrectly evolved from the repealed Bylaw 208-89 (Ex 5, Tab 2, report p.94).

It was evident to the Review Board that the early substitution of the wording in the Register for that of the governing bylaw, somewhat altered the ensuing analysis of the property. For example, the Register does not reference the interior of the Horticulture Building, the bylaw includes certain interior features; the Register references the relationship to Aberdeen Pavilion, the bylaw does not; etc. Only the wording of the bylaw is relevant to this Review Board proceeding.

Discussion

Consideration of Cultural Heritage Value or Interest

In a s.29 bylaw repeal proceeding, the Review Board typically anticipates at least one Party to argue that a property no longer holds sufficient cultural heritage value or interest to warrant continuing protection under the Act. In this proceeding, all Parties agreed that the values or interests delineated in Bylaw 8-94 continue to be valid as written and when re-evaluated using the criteria of Regulation 9/06. The Objectors advocated for amending the bylaw to broaden the scope of cultural heritage value or interest, *in situ*. The City's draft of the proposed next s.29 bylaw also broadens the scope, but for the relocated site of the Horticulture Building. This agreement that the cultural heritage value or interest of the property continues, albeit with some adjustments, whether *in situ* or relocated, leads to the conclusion that loss of cultural heritage value or interest is not a reason for the repeal of Bylaw 8-94.

Cultural Heritage Landscape Concept

It was apparent that the Parties agree to the considerable significance of Lansdowne Park to the people of Ottawa and find merit in its revitalization.

Commonwealth's *Statement of Cultural Values and Heritage Impact Assessment* (Ex 3, Tab 2) unfolds the concept of a cultural heritage landscape as it is defined internationally, by the PPS, and by the City. (There is no definition for cultural heritage landscape in the Act, but such an area can be protected by the Act.) The CHIA concludes that the Park as a whole meets the definition of a type of cultural heritage landscape and lists the character defining features of the grounds and buildings that should be respected (pp.24-25). Among the features within the "Lansdowne Park Cultural Landscape" is the Horticulture Building. The CHIA does acknowledge that "Lansdowne Park in its entirety does not have formal heritage status" (p.32).

It is perhaps this early defining of Lansdowne Park as a cultural heritage landscape that led to the City's position that the Horticulture Building can be "relocated" as long as it continued to be a contributing character defining feature within the Lansdowne Park Cultural Landscape. There was no indication during this proceeding that the City will be protecting the whole Park under the Act as a cultural heritage landscape. This undermines the City's emphasis on how the Horticulture Building contributes to the Park as a whole, and therefore, how it can be broadly treated as part of the larger revitalization context.

Given the construct of the Act, the governance of the Horticulture Building is that it is a heritage attribute within the property defined by the s.29 bylaw. The protected (designated) property has contextual value within its environs, i.e., the Park, but only as “Contextual Value” is defined by Regulation 9/06. The parklands are adjacent lands. PPS Policy 2.6.3 establishes that “Development and site alteration may be permitted on adjacent lands to designated heritage properties where it has been demonstrated through evaluation that the heritage attributes of the designated heritage properties will be conserved.”

Relationship to Aberdeen Pavilion

The City considers the proposed mirrored relationship with Aberdeen Pavilion as a “one in a million” opportunity to relocate *and* retain the contextual value of the Horticulture Building. The Objectors argued that the emphasis on the relationship of the Horticulture Building to Aberdeen Pavilion is a misinterpretation of the site’s history. The location was chosen because the west “forecourt” of the Aberdeen was/is the central circulatory point of the Park. This site afforded the Exhibition Directors and members of the Press a presence within the hub of exhibition and sports activity on the grounds.

The viewing of one structure to the other, notably the framing of the west facade of Aberdeen Pavilion through the south dining room window of the Horticulture Building, seems to be a consequence of the choice of location, not a purpose built element. The architect evidently capitalized on this aesthetic opportunity. (Presumably the same was true of the view to and from other demolished and extant exhibition buildings.) Being relocated to the east end of Aberdeen Pavilion (where it can still view and relate to it), does not substitute for being at the centre hub of the Park.

Relationship to the Urban Park

The City finds merit in the proposed “reintegration” of the Horticulture Building with Rideau Canal. There was no evidence to substantiate that this integration was ever intended. By 1914, primary access to the site and the internal transport network was by road, not water. The statement that the “views of the building from the QED and canal will be dramatic and will reinforce the sense of place as a character defining element set out in the reasons for designation” was not substantiated in historical fact (Ex 3 Tab 1, p.19).

The City argued that the context of the Horticulture Building has been eroded by the asphalt pavement and that its heritage values would be better served within the green space and community garden proposed for the urban park. This seems a genuine gesture to establish a compatible and more aesthetic environment for a building that presumably was dedicated to horticultural matters. As stated by Heritage Ottawa, the building was an exhibition space for *innovations* in horticulture. It did not need to be within a garden setting.

The City’s position that there is merit in clustering the Horticulture Building with the other heritage elements of Lansdowne Park (Aberdeen Pavilion, Rideau Canal, and Queen Elizabeth Driveway) seems an artificial strategy with no basis in the history of the site.

Summary

Overall, it appears to the Review Board that the City, which bears a financial and fiscal responsibility for the Horticulture Building (and Lansdowne Park), was both conscientious and pragmatic in its approach to revitalization. Its retail consultant advised that the success of the revitalization project depends on the provision of sufficient parking and a commercial space that will attract long term investment. The Horticulture Building was found to “interrupt the “flow” of the proposed commercial sector. Commonwealth, as a leading heritage consulting firm, endorsed the relocation of the Horticulture Building. Experienced movers (CDS Movers) assured the City that the physical move could be achieved at minimal risk to the Building. The City established a Heritage Code, commissioned a Cultural Heritage Impact Assessment, and a Conservation Strategy, etc., and is proposing re-designation. The City’s position is that without the successful revitalization of the Park, no monies can or will be spent on the Horticulture Building. The success of the Park depends, in part, on the relocation of the Horticulture Building.

Much of the argument by Heritage Ottawa was that relocation of a heritage building is not a heritage conservation strategy that meets the intent of the PPS or the principles of the Standards and Guidelines. The primary reason is that “history happens in a place.” Relocation should only be instigated if a structure is threatened by a peril that is beyond the control of the approval authority. Within this discussion, the Review Board agrees with the City that heritage conservation legislation in Ontario does not dictate absolutes. The Act has provisions for the actions of alteration, demolition, and removal of a heritage attribute from a protected property. The Review Board recognizes that outside of the Act there are accepted standards and guidelines with which to implement these actions. Currently in Ontario, this is an evaluative process done by those with relevant expertise, as in the case of the Horticulture Building.

It is the opinion of the Review Board that there are two deciding questions in this matter of bylaw repeal: What is the authentic environment of the Horticulture Building? When is it reasonable to repeal a designating bylaw on the grounds of a need for relocation of a heritage attribute? Based on the evidence heard, it is the *in situ* location of the Horticulture Building at the traditional hub of exhibition and sports activity within Lansdowne Park that is its authentic environment. This is apart from its proximity to Aberdeen Pavilion. Its cultural heritage values or interests, notably contextual, are best protected in its original site. Relocation to a site farther east will lessen, and in the case of contextual will remove, these values or interests. The reason of “repurposing with true meaning” given by the City for relocation and bylaw repeal appear to the Review Board to be transient, project specific, and insufficient grounds for repealing Bylaw 8-94.

Recommendation

Based on the evidence heard, the recommendation of the Review Board is not to repeal all or part of Bylaw 8-94, which protects the property known as 957 Bank Street (Horticulture Building) under s.29 of the Ontario Heritage Act. The cultural heritage values or interests delineated in Bylaw 8-94 are still valid and are best protected *in situ*.

It is further recommended that:

1. Council of the City of Ottawa amend Bylaw 8-94 using s.30.1(2)(a) and (c) to include those cultural heritage values or interests made evident during this bylaw repeal proceeding, as well as any others that can be substantiated. This section of the Act is applicable when there is no change proposed to the parameters of the protected property.

2. If Council discounts the recommendation of the Review Board and proceeds with the repeal of Bylaw 8-94, it must do so under the Act before the Horticulture Building is moved off the property. The result is that the property (and Building) will not be protected by the Act during a critical period of impact on its agreed to cultural heritage values or interests. This presents a legitimate concern for the disposition of the Horticulture Building in the hiatus period between bylaw repeal, relocation, rehabilitation, and re-designation. It will not be subject to any of the provisions of the Act and presumably any of the heritage conservation policies of the City.

In this scenario, an alternate strategy would be to leave Bylaw 8-94 in force and apply under s.34 of the Act for the removal of the heritage attribute (Horticulture Building) from the protected property. This section of the Act contains a protocol, the last stage of which is bylaw repeal. Only once the action of removal is completed, should Bylaw 8-94 be repealed.

The Review Board recognizes that the final decision in this matter rests with the Council of the City of Ottawa.

The Review Board appreciated the efforts of all Parties and participants in this proceeding.



Su Murdoch, Hearing Chair
May 24, 2011



Stuart Kidd, Member
May 24, 2011

SCHEDULE 1

EXHIBITS LIST

- Exhibit 1: Affidavit of Notice of Hearing being served, as required under the Ontario Heritage Act, 4 pages, tabled by the Review Board.
- Exhibit 2: Statutory Declaration of legal ownership of the subject property, 4 pages, tabled by Mr. Huxley, City of Ottawa.
- Exhibit 3: Document Binder of the City of Ottawa, 10 tabbed sections, tabled by Mr. Huxley, City of Ottawa.
- Exhibit 4: USB flash drive with electronic storage of site plans, images, and presentation of City Witness Mr. John Smit, tabled by Mr. Huxley, City of Ottawa.
- Exhibit 5: Document Binder of Heritage Ottawa, 8 tabbed sections, tabled by Ms. Hoad, Heritage Ottawa.
- Exhibit 6 A: Application for Permit to Ottawa City Council, under Ontario Heritage Act, to relocate the Horticulture Building, 1 page, tabled by Mr. Huxley, City of Ottawa.
- Exhibit 6 B: Letter dated December 3, 2010 to Mr. Robin Souchen, Real Estate Partnership and Development Office, City of Ottawa, from Mr. Rick O'Connor, City Clerk, City of Ottawa as notice of Council's approval to repeal By-law 8-94, designating the subject property, and to relocate the Horticulture Building, 2 pages, tabled by Mr. Huxley, City of Ottawa.
- Exhibit 7: Ontario Heritage Act Section 31, 1 page, tabled by Ms. Hoad, Heritage Ottawa.
- Exhibit 8: Affidavit of Service of Summons to Witness served on Sean Fraser, Ontario Heritage Trust, signed by Louie Boutzios, City of Toronto, 1 page, tabled by Ms. Hoad, Heritage Ottawa.
- Exhibit 9: Curriculum Vitae of Sean Fraser, 9 pages, tabled by Ms. Hoad, Heritage Ottawa.
- Exhibit 10: Document Binder of Mr. Jean-Claude Dubé dated April 1, 2011, 32 pages, tabled by Mr. Dubé.
- Exhibit 11: Cover page photograph in black and white of document titled "Lansdowne Park Heritage Brief" showing a public event in front of the Horticulture Building, 1 page, tabled by Ms. Hoad, Heritage Ottawa.

Exhibit 12 *Lansdowne Park Heritage Brief*, tabled by Mr. Huxley, City of Ottawa.