

March 20, 2020

AAA Project #1769.00

Planning Department, Community Development
100 Wellington Square
Brantford, Ontario
N3T 2M3

**Attn: Nicole Pettenuzzo, MCIP, RPP
Senior Planner**

**Subject: Addendum to Heritage Impact Statement (HIS)
Market Street Development Inc. (120-138 Market Street & 31-35 Chatham Street)**

Dear Ms. Pettenuzzo

This Addendum Letter is in response to correspondence received 27-Feb-2020, from your office, regarding Planning Department comments outlining the need for an Addendum to the Heritage Impact Statement (HIS), particularly as it relates to Question 1 - Parts a, b, c, d and e.

Questions 2 and 3 have already been addressed, primarily by the consultant undertaking a Stage 1 Archaeological Assessment and through the actions of City Council, on 03-Mar-2020, providing a grant to the Brant Historical Society to assist in relocation of Crystal Cottage building, currently located at 35 Chatham Street.

Relevant background materials, supporting our approach, include Info Sheet #5-*Heritage Impact Assessments and Conservation Plans*, based on Ministry of Culture format, Ontario Regulation 9/06 *Evaluation Criteria to Determine Cultural Heritage Value or Interest*, and Bill 108, referred to as the *More Homes, More Choice Act*, 2019 (the Bill).

The following provides our understanding and responses to questions arising from staff comments in your email:

- A. *Planning Staff disagrees that there is a an "inherent conflict" (HIS Page 98) with heritage conservation policies and intensification policies.*

We concede that "inherent conflict" may not be the most appropriate term. However, between these two policies, there can be competing interests, varying degrees of incompatibility and, perhaps, irreconcilable differences. Council and the community will have to decide which interests best serve the City of Brantford.

35 Chatham Street property, including Crystal Cottage, is designated under Part IV of the OHA. The Municipality requires that a HIS be undertaken when such heritage resources are affected. That requirement was fulfilled, through the HIS for this designated property. The proponent has acknowledged this pre-existing designation and has made efforts to negotiate a satisfactory conservation strategy with the City.

The proponent considered retaining Crystal Cottage in situ but subsequently determined that this could not be achieved without undermining the overall financial viability of the redevelopment project. The proponent then approached the Heritage Committee, early in the process, hoping to proceed with the Heritage Committee's recommendation to save and relocate Crystal Cottage, to a nearby site, as an acceptable mitigation strategy. These discussions involved the Brant Historical Society and the Museum.

The 15-Apr-2019 HIS acknowledged that the City of Brantford has an Inventory of Heritage Resources and that the properties at 31 Chatham, 120 Market, 126 Market, 130 Market, 132 Market, 134 Market, 136 Market and 138 Market Streets are in the Brantford Heritage Inventory. None of these properties are designated under the OHA nor are they listed in the Municipal Heritage Register.

A letter from the proponent's lawyer, Botnick & Botnick, dated 13-Aug-2019 (copy attached), spoke to the recommendation from the Brantford Heritage Committee to designate 134, 136 & 138 Market Street. This letter states *"It is our understanding that the clerk of the City of Brantford does not currently maintain an updated Municipal Heritage Register as required under Section 27 of the Act..."*

A Heritage Inventory is not the same as a Municipal Heritage Register, which is required by the OHA. There is a long-standing distinction between these two terms and Bill 108 provides additional clarification to the differences and the rights of property owners.

Our understanding of the Ontario Heritage Act, as to the distinction between a property listed in a Heritage Inventory vs. listing non-designated cultural heritage properties in a Municipal Heritage Register, is as follows.

Heritage Inventory: A heritage inventory is a list of heritage resources that may have heritage value for a community. Although an inventory is often used as a planning aid, it does not have legal status until it, or a portion of it, is adopted as a heritage register by a resolution of the Municipality. A heritage inventory cannot be used to delay or deny a demolition or alteration permit.

Municipal Heritage Register: Section 27 of the Ontario Heritage Act requires the clerk of every local Municipality to keep a current, publicly accessible register of properties of cultural heritage value or interest, situated in the Municipality. The municipal register is the official list or record of cultural heritage properties that have been identified as being important to the community. The register must include all properties in the Municipality that are designated under Part IV (individual designation) and Part V (district designation) of the Ontario Heritage Act. Since 2005, the Ontario Heritage Act also allows Municipalities to include, on the municipal register, properties of cultural heritage value that have not been designated. This is commonly known as "listing." See subsection 27 (1.2) of the Ontario Heritage Act. Listing is a means to formally identify properties that may have cultural heritage value or interest to the community. It is an important tool in planning for their conservation and now provides a measure of interim protection.

Bill 108: Municipalities cannot list a property in a Municipal Heritage Register without notification to the property owner. Property owners can now resist an attempt to list a property in the Municipal Heritage Register through an appeal to LPAT.

In summary, The City of Brantford has not included any of these non-designated properties, on the subject site, in the Municipal Heritage Register. As we have said, a listing in an Inventory is not the same as inclusion of a property in a Municipal Heritage Register, demonstrating that the Municipality has pre-identified a property as being significant. Only 35 Chatham Street is designated under the OHA, therefore, the Municipality requires a HIS be undertaken when heritage resources are affected, and that requirement was fulfilled by doing the HIS. "Listed" means a property is included in the Inventory for architectural, cultural or historical reasons. Listing is an administrative process whereas designation confers a **legal status** on the property by a specific city bylaw under the Ontario Heritage Act. It is our understanding there are only three different ways that a property might fall under the Ontario Heritage Act:

- Listed in the Municipal Heritage Register;
- Designated heritage property; and
- Part of a heritage conservation district.

Had the properties been included in the Heritage Register, clearly indicating that the Municipality has pre-determined certain properties to be of significant cultural and heritage value, the proponent may not have purchased the property with the intention of developing it for denser housing creation and intensification, involving removal of existing structures to achieve this goal.

In May 2019, the province introduced new legislation under Bill 108, aimed at improving affordability by eliminating barriers in creating new housing. The Bill includes amendments to Ontario's Development Charges Act 1997, Education Act, Local Planning Appeal Tribunal Act 2017, Planning Act and the Ontario Heritage Act (among others). Ontario's housing supply action plan is intended to address the following:

- Speed: a faster development approvals process;
- Cost: more predictability of costs for permits, government approvals and municipal charges;
- Mix: encouraging a variety of housing types that may be underrepresented in today's new-build housing market, from detached houses to rental apartments to family-sized condo units;
- Rent: protecting tenants and making it easier to build rental housing; and
- Innovation: encouraging creativity in designs and materials, ownership structures and more.

Read together, the Planning Justification Report and the Heritage Impact Statement indicate competing forces between provincial and municipal policies, with respect to redevelopment of the subject site. These competing forces are retention of relatively low value, low density heritage resources and the desire to create desperately needed housing in the Downtown Brantford Urban Growth Centre. In the absence of token “facadism”, it is not practical, economically viable or meaningful to incorporate any of the existing structures, in whole or in part, into a new multi-storey mixed-use redevelopment.

The HIS has made the effort to find a balance between the various policy priorities; not holding the heritage policies in isolation, but in the context of broader City priorities. Bill 108 established changes in Provincial Government priorities with a strong emphasis placed on creation of housing.

The HIS demonstrated the existing properties represent little or no cultural heritage value and all existing buildings are in poor or compromised condition. This type of land assembly effort, with large-scale redevelopment, requires weighing the feasibility, practicality and cost of heritage conservation and the social and economic benefits of housing intensification. It is abundantly clear that retention of the existing buildings will not permit the density targets of 150 jobs/people per hectare, identified in the Downtown Brantford Urban Growth Centre Goal. The existing 1 and 2-storey buildings, on this site, achieve a low density of 12 households in 9 buildings on a half hectare parcel of land. It is simply not meaningful, practical or viable to retain any of the existing structures within the proposed multi-storey development.

Bill 108 introduces the ability of a landowner, or other person, who objects to the notice to designate, to appeal the designation to the Local Planning Appeal Tribunal (LPAT), separately and apart from any redevelopment application made pursuant to the Planning Act. It also allows appeals to LPAT for applications to alter a heritage property and for applications to demolish. Bill 108 allows landowners to resist designation, narrow its impact, and to determine, early in the process, whether or not to proceed with redevelopment. The proponent has made it clear that it wishes to avoid the LPAT appeal process.

- B. *The HIS must make recommendations for mitigative measures that would minimize negative impacts to each of the properties with cultural heritage value or interest (31 Chatham, 35 Chatham, 136 Market and 138 Market).*

This HIS and Planning Staff appear to agree that only four buildings, on the subject site, have some cultural heritage value. Where the HIS and Staff findings differ, is that the HIS demonstrates that both 31 Chatham Street and 138 Market Street have very low design or physical value, with each property achieving just 1 of 9 criteria in their respective Regulation 9/06 Evaluations (HIS pages 102 and 117 respectively). In both cases, 2.i. direct associative value criteria is the established value. As mentioned earlier, neither of these properties are designated under the OHA or listed in the Municipal Heritage Register.

Because of the relatively weak associative value for 31 Chatham Street and 138 Market Street, and the lack of design or physical value, it is our opinion that in situ preservation, reuse, incorporation, relocation and commemoration mitigation strategies are not warranted. Rather, it is recommended that exterior and interior building features of interest could be disassembled and salvaged, prior to general demolition. The Museum would be provided first choice to receive these items. Detailed documentation has been provided in the HI.

Relocation of Crystal Cottage from 35 Chatham Street was proposed as the only effective and sensible mitigation strategy for that property. In situ preservation, reuse and incorporation, within the development, are simply not viable options for the proposed development. Relocation of the existing structure, to a nearby site, is the optimal method of preserving the existing structure.

The HIS recommends salvage of the façade of 136 Market Street and incorporation of those components within the development. The proponent has indicated that it is not willing/able to absorb the cost to relocate Crystal Cottage and reincorporate façade components in the development, however, is prepared to absorb the costs for one of those projects.

Further discussion of applicable conservation strategies is addressed in the following section.

C. *To inform the recommendations for mitigative measures, the HIS should examine the full range of strategies on the heritage conservation continuum.*

Firstly, authors of the HIS acknowledge that removal and salvage of architectural features, from existing buildings, will not conserve contextual and historical/associative values of properties, which may be of lesser, equal or greater merit, to design and physical values.

Secondly, we apologize if the HIS incorrectly stated that the City was not interested in salvaging Roman Stone façade components, from 136 Market Street, and reassembling those components within the development. We consider this a viable and effective mitigation strategy to preserve some of the most significant physical elements at the site.

By way of summary, Section 10 of the HIS concluded that 31 Chatham Street and 138 Market Street have associative value related to original owners. Crystal Cottage, at 35 Chatham Street, has design and physical value relative to quality and craftsmanship of construction. 136 Market Street has design and physical values as a strong example of style, unique façade materials and a high degree of craftsmanship, plus associative values related to original owner and the potential to yield information that contributes to an understanding of the community's culture.

The following discussion reviews a range of typical mitigation strategies that could apply to 31 Chatham, 35 Chatham, 136 Market and 138 Market Streets:

- Full, in situ preservation and adaptive reuse of existing buildings are not considered appropriate for any of the buildings located on these properties. The existing buildings are of sizes and scale that are significantly different from the proposed 10-storey, block-sized development. These buildings were determined to be in poor to fair condition and are unlikely to survive renovation trauma, without expensive, initial stabilization. The Chatham Street buildings have setbacks from the street boundary line that would limit use of yard areas for development. It is unreasonable to expect that existing exterior masonry claddings could be incorporated as exterior elements, of the new development, and provide durability, due to changes in heat loss and exposure.
- Incorporation of existing building façade fabric within the development is considered appropriate only for 136 Market Street. None of the building structures or fabric from any of the other buildings have adequate value to warrant salvage and reuse.
- Relocation of Crystal Cottage (35 Chatham Street) is a feasible mitigative strategy, although, the cost is significant. No associative or contextual values were assigned to this building. None of the other structures have adequate value to warrant relocation.
- Commemoration of original owners of 35 Chatham Street would be appropriate. A plaque with photographs of Crystal Cottage could be placed on the site to mark the location of 35 Market Street. A coordinating plaque, at the new site for Crystal Cottage, would redirect persons back to the original site.
- The HIS included basic building and site documentation. Additional documentation, including catalogued photographs, LiDAR scans and drawings could be commissioned. However, it is our opinion that this effort may only be warranted for 35 Chatham Street.
- Demolition is an unfortunate but appropriate mitigation strategy in this case. It has been demonstrated that the existing structures are of little or no cultural or heritage value.
- Salvage of Roman Stone façade, at 136 Market Street, has previously been identified as an appropriate mitigation strategy. In addition, some interior and exterior architectural features, at the other properties, may be of interest to the Museum, local historians and members of the general public; these could also be removed in advance of general demolition.

- D. The fourth comment relates to the legibility of the emails included in Section 11 of the HIS. We apologize for the lack of legibility and have provided better resolution reprints as an attachment.
- E. The final comments relate to a comment in the HIS (Page 98), regarding additional available records. This comment relates primarily to nearly 400+ uncatalogued photographs taken for the purposes of analysis and documentation of the subject site. Please advise if staff wishes to have digital files of these photographs.

We trust this Addendum to the HIS satisfactorily addresses your questions and comments.

Yours Truly,



Allan Avis

Mark Gladysz

B Arch, OAA, MRAIC, CAHP



RPP, OPPI, CAHP

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Attachments:

Botnick & Botnick, Barristers and Solicitors letter, dated 13-Aug-2019.

Improved resolution reprints of HIS 11. Appendix:

- Estimate to Move Crystal Cottage from #35 Chatham Street.
- Estimate to Salvage Cast Stone Façade at #136 Market Street.

BOTNICK & BOTNICK Barristers and Solicitors

James B. Botnick
Reuben S. Botnick
Preya Singh
Hon Counsel
Harry P. Botnick (1915-2008)

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August 13, 2019

Delivered by E-Mail
To: vcoates@brantford.ca

Brantford Community Development

Building Department
City Hall
100 Wellington Square
Brantford, Ontario
N3T 2M2

Attention: Victoria Coates
Intermediate Planner, Long Range Planning, Community Development

Dear Ms. Coates,

Re: 134 and 136 – 138 Market Street, Brantford (the “Property”)

We are solicitors for Market Street Development Inc., the registered owner of the Property, and your letter dated August 6, 2019 has been referred to us for reply, which reply we ask be provided to the Brantford Heritage Committee for their August 19, 2019 Committee Meeting.

The property owner will not agree to the designation under the Ontario Heritage Act (the “**Act**”) of any building on the subject site, including 134, 136, and 138 Market Street.

The property owner undertook the preparation of a Heritage Impact Statement (HIS) in fulfillment of the City’s requirements. The HIS found that the cultural heritage resources on the subject site were of little or no significance. The HIS found that 136 Market Street had some cultural heritage significance regarding the architectural design of the front façade, and a mitigative solution was offered in the draft HIS, however the Brantford Heritage Committee did not fully consider this option with the owner’s planning representative at the May 13, 2019 pre-consultation Committee Meeting, choosing to instead focus exclusively on retaining and potentially moving 35 Chatham Street which is designated under Part IV of the Act. The property owner is currently fully cooperating with the municipality to find a solution to the relocation of this building, and this is all the property owner is prepared to undertake regarding heritage conservation on the subject site.

It is our understanding that the clerk of the City of Brantford does not currently maintain an updated Municipal Heritage Register as required under Section 27 of the Act containing all property designated under Part IV of the Act, as well as all property that has not been designated, but that the municipal council believes to be of cultural heritage, value or interest, and that the municipality has not delivered notice to property owners whose property has not been designated, but which council has included in the register because it believes the property to be of cultural heritage, value or interest.

The property owner will not agree to the inclusion of any of the buildings on the subject site in a Municipal Heritage Register, or to the unilateral designation of any buildings under Parts IV or V of the Ontario Heritage Act without its consent, and any decision to so designate the Market Street properties will be appealed to the Local Planning Appeals Tribunal.

Yours very truly,

BOTNICK & BOTNICK
Barristers & Solicitors
Per:

James B. Botnick

James B. Botnick
JBB/e

Reprint of 20190415 HIS Section 11.1 Estimate

Allan Avis

From: Chris Willie <chris.willie@pow.ca>
Sent: April-11-19 8:51 AM
To: Allan Avis
Subject: RE: Crystal Cottage, Brantford
Attachments: Est_188_from_Continental_Building_Movers_Ltd._14840.pdf

Follow Up Flag: Follow up
Flag Status: Completed

April 11, 2019
Reference: 18-05-0087

Allan:

Per our review and meeting on site, Continental has prepared a preliminary budget for relocating the Crystal Cottage building.
In reviewing the building, there will definitely be some items that will need to be addressed to finalize how the moving is to occur.
Site location, travel route, service interruptions, tree removals, etc.
It would be recommended that the porches and the rear entry additions be removed and salvaged prior to transport. Chimneys will also require stabilization and possible partial removals for height restriction.
There are some masonry items that will need to be addressed prior to relocation to stabilize the exterior wythe.

Interior finishes will more than likely be affected in some way and will require repairs. These costs are not included in the budget estimate.

Thanks

Chris Willie, M.A.A.T.O., CAHP, APTI
Senior Project Coordinator

Pow Peterman
Consulting Engineers
50 Samnah Crescent
Ingersoll, Ontario N5C 3J7

P: 519 425 5000 ext 251
F: 519 425 5001
E: chris.willie@pow.ca
W: www.pow.ca

Continental Building Movers Ltd.

1995 Kilgorman Key
London, ON N6K 0G6
519-289-5733

Estimate

Date	Estimate #
2019-04-11	188

Name / Address
Pow Peterman Consulting Engineers 50 Samnah Crescent Ingersoll, ON N5L 3J7

Project

Description	Qty	Rate	Total
Supply all equipment and labour to move the Crystal Cottage double brick Heritage building located at 35 Chatham Street, Brantford, Ontario. Relocate the structure a short distance within the City of Brantford. Budget price until all details are finalized. HST (ON) on sales		225,000.00	225,000.00
		13.00%	29,250.00

Signature of Acceptance _____

Total	\$254,250.00
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Allan Avis

From: blair@rooftilemanagement.com
Sent: April-11-19 10:52 AM
To: Allan Avis
Subject: RE: Heritage Impact Assessment, Market Street Development, Brantford

Allan,

As per our discussion please see below for pricing and details.

The budget cost to complete the Façade removing and reinstallation within the new condominium.

Budget: \$295,000.00

Budget Pricing Includes:

1. Scaffold access at both locations, current façade location and interior façade location
2. Removal of façade
3. Palletization/storage
4. Repair of pieces broken during removal
5. Fabrication of new Roman stone, allow for 20%
6. Cleaning of all removed and salvage roman stone
7. Installation of Façade in new location(assume inside new Condo building)
8. Demobilization

I would suggest a small contingency.

If you have any questions or concerns, please feel free to contact me.

Thanks

Blair