

Appellant's Written Submission

LA23-009

VIA EMAIL

Submitted, October 27, 2023

By Andrea Battison

Table of Contents

INTRODUCTORY COMMENTS.....	3
A. THE CITY OF CHARLOTTETOWN CONTAINS A HERITAGE PRESERVATION AREA.....	5
B. ISSUING A DEMOLITION PERMIT IS CONTRARY TO THE OFFICIAL PLAN	12
C. INSTANCES OF PROCEDURAL ERRORS AND/OR EXAMPLES OF FAILING TO FOLLOW GOOD PLANNING PRINCIPLES REGARDING 231 RICHMOND STREET	18
1. Issuance of 001-DEM-23	18
2. Planning staff accepted and processed an incomplete major variance application for the proposed development at 231 Richmond Street	19
3. Planning staff issued an incomplete letter to property owners when requesting comments on the major variance application for the proposed development at 231 Richmond Street.	20
4. Planning staff’s report on the major variances requested for the proposed development for 231 Richmond Street was incomplete.	20
5. Planning staff and the Planning Board by excluding comments from the Appellant regarding the incompleteness of the application for the Major Variances for 231 Richmond Street and the letter to Property Owners	21
6. In the report prepared for the Heritage Board regarding consideration of temporary heritage designation of the property at 231 Richmond Street	22
7. The use of Mr. Peter Fellows, an unlicensed architect, as a Design Reviewer for the proposed development at 231 Richmond Street (and 199 Grafton Street).....	23
8. A Development permit is required before demolition can occur	23
9. A substantive Heritage Permit was required.....	24
10. Section 6 ‘General Provisions For Development’ of the Heritage Preservation Bylaw was not applied	26
CONCLUSION.....	27
APPENDIX 1.....	29

INTRODUCTORY COMMENTS

The 500 Lots Area is filled with renovated and restored properties that now rejuvenate and beautify streetscapes and enhance the distinctive charm and character of this downtown neighbourhood. This ambiance is enjoyed by all City residents, visitors, and tourists. The distinctiveness and vitality of the 500 Lots contributes to the economic engine of the City and the Province and their tourism industries. The Area has national significance in its role as the birthplace of Confederation.

It is crucial that the Commission recognise that these Heritage Resources (homes, streetscapes etc.) in the City of Charlottetown's 500 Lots Area require, *and most importantly now have, protection* under the City of Charlottetown Heritage Preservation Bylaw. Consequently, demolition is not 'as of right' in the 500 Lots Heritage Preservation Area.

Without this recognition, the demolition of 231 Richmond Street will establish the devastating and destructive precedent that demolition permits can be issued without the oversight of, or review by, the Planning and Heritage Department, the Heritage Board or Council. The 500 Lot Area runs the risk of being irreversibly gutted leaving only those individually recognised buildings standing as a faint reminder of what once was. Every demolition permit that is issued whittles away at this ambiance, breaking up the continuity of the 500 Lots and risks disincentivizing further private investment in similar properties. Charlottetown's historic downtown will forever lose its coherence which provides the sense of place that residents and visitors alike have come to expect.

Already, we are seeing the potential consequences of this approach with the proposed demolition of a similar home located at 10 Prince Street for a new development. The public and neighbourhood pushback against the proposal indicates that this is not desired by the community.

In this time of global environmental sustainability, demolition of structures flies against any sense of environmental responsibility or stewardship. The environmental costs of the destruction and landfill use plus costs for production and transport of new materials added to the loss of the embodied energy in the existing structure is significant.

This submission will show how the city of Charlottetown has built upon and increased heritage protection in the 500 Lot area since 1999 i.e., over 20 years, and continues to protect the Heritage Preservation Area in the 500 Lots through the City of Charlottetown Heritage Preservation Bylaw (the Heritage Preservation Bylaw).

As a result, the demolition permit (001-DEM-23) issued for 231 Richmond Street, and by extension any other demolition permit issued since October 1st, 2018, in the (500 Lot) Heritage Preservation Area under Zoning and Development Bylaw, are invalid and must be revoked.

This submission will also show that were procedural errors and/or demonstration of poor planning principles with respect to:

- 1) the issuance of 001-DEM-23;
- 2) Planning staff accepted and processed an incomplete major variance application for the proposed development at 231 Richmond St;
- 3) Planning staff issued an incomplete letter to property owners when requesting comments on the major variance application for the proposed development at 231 Richmond Street;
- 4) Planning staff's report on the major variances requested for the proposed development for 231 Richmond Street was incomplete;
- 5) Planning staff and the Planning Board failed excluded comments from the Appellant regarding the incompleteness of the application for the major variances for 231 Richmond Street and the letter to property owners;
- 6) the report prepared for the Heritage Board regarding consideration of temporary heritage designation of the property at 231 Richmond Street; and,
- 7) the use of Mr. Peter Fellows, a non-licensed architect, as a Design Reviewer for the proposed development at 231 Richmond Street (and 199 Grafton Street).
- 8) A Development permit is required before demolition can occur
- 9) A substantive Heritage Permit was required
- 10) Section 6 'General Provisions For Development' of the Heritage Preservation Bylaw was not applied

For ease of cross-reference, points identified in parentheses in capitalised and bold font Roman Numerals (**I – XIV**) refer to the numbered points in the Amended Notice of Appeal.

Abbreviations used

CR – City Record

ASR – Appellant's Supplementary Record

A. THE CITY OF CHARLOTTETOWN CONTAINS A HERITAGE PRESERVATION AREA

(II) The entire 500 Lots is part of the Great George Heritage Area per section 3.7 Capitalizing on Heritage Resources, Objective 1 of the Official Plan; therefore, section 4.2.1 of the Heritage Preservation Bylaw and Section 3.5.2, Demolition Permits, of the Zoning and Development Bylaw, which prohibit demolition of any property within a Heritage Preservation Area apply.

The protection of the *Heritage Resources* in the Downtown District of Charlottetown has been evolving and progressively increasing since 1999. In the City's Official Plan from 1999 (ASR, Tab 1), Section 3.7 "Capitalising on Heritage Resources" indicates that "individual buildings, structures, streetscapes, areas, sites, and graveyards" are all considered **Heritage Resources** and that the city's policy "shall be to allow for the designation of additional Heritage properties and areas" (Section 3.7.1). In section 4.2 "A Vibrant Downtown", a Policy to address Objective 5 "to encourage development of the downtown core which is in keeping with its historic character" was to "expand the Great George St, Heritage Area to encompass the original 500 lots." It is interesting to note that other comments included "... its historic buildings. These edifices should be made sound and should be well used" and "... The need to stabilise and rejuvenate the older residential building stock which is an integral component of the Downtown."

In 2005, these changes were enacted by Ministerial approval (APR, Tab 2). Clause 3.7.1 of the Official Plan noted above was deleted and substituted by the following "our policy shall be to expand the Great George Heritage Area to encompass the area known as the 500 lots from the properties facing Euston Street and Brighton Road, South to the Harbour, Hillsborough River and North River and to designate additional properties which qualify as **Heritage Resources**." The Great George Heritage area is clearly indicated as a Heritage Resource. The area is specifically outlined in Schedule A-I of the Official Plan and as **Appendix I** in the Zoning and Development Bylaw and labelled 'Heritage Area'. Section 4.55 Demolition Permits, in the Zoning and Development Bylaw was also revised providing oversight and review by Heritage Board and Council before demolition permits for buildings located on a Heritage resource, in a Heritage Preservation Area or even within the Downtown Growth Area were issued.

In recognition of its efforts towards heritage preservation, the City of Charlottetown was the recipient of the prestigious Prince of Wales Prize by the National Trust for Canada in 2005 (ASR, Tab 3). Continuing the City's efforts in the Heritage Area (Schedule 1-A/Appendix I), the 500 Lot Area Development Standards and Design Guidelines (500 Lot DSDG) study began in August 2010 with the final report submitted to Charlottetown City Council in 2011.

*"The primarily purpose of these **Development Standards & Design Guidelines** (Standards & Guidelines) is to direct and shape the ongoing development of the 500 Lot Area in a balanced manner and according to good urban design principles. In particular, protecting and reinforcing the area's distinct history and built characteristics, while enabling investment and revitalization opportunities through appropriate development The primarily purpose of these Development Standards & Design Guidelines (Standards & Guidelines) is to direct and shape the ongoing development of the 500 Lot Area in a balanced manner and according to good urban design principles. In particular, protecting and reinforcing the area's distinct history and built characteristics, while enabling investment and revitalization opportunities through appropriate development."*

Background & Process

In August 2010, The Planning Partnership was retained by the City of Charlottetown to prepare development standards for the 500 Lot Area. A key initial task was to review and build on the tremendous body of work already undertaken. Specifically, these Standards & Guidelines are especially informed by two recent comprehensive studies prepared for the City of Charlottetown:

- *Downtown Charlottetown 500 Lot Strategy (Ekistics, June 2006)*
- *Development Action Plan for Charlottetown's 500 Lot Area (Dalhousie University, April 2010)*" (500 Lot Area study, p1)

The report recommended many actions (ASR, Tab 4) including an amendment to **Appendix I** in the zoning and bylaw to expand the boundaries of the Heritage Area "to include all of the lands within the Downtown Neighbourhood Downtown Mixed Use Neighbourhood Character Areas of the 500 Lot Area (Fig 1.)." Recognizing this would be one step towards implementing section 3.7 of the city's Official Plan which recommended the existing Heritage Area be expanded to encompass the 500 Lot Area. This would ensure that all properties within this key area be eligible for protection. 'Figure 1. Proposed Heritage Area Expansion' (page 64 of the report), clearly shows the new boundaries which include 231 Richmond Street.

The importance of streetscapes as a type of Heritage Resource is clearly stated and that "all resources should be protected and restored" (page 4). Heritage staff's report on 231 Richmond Street, June 14, 2023 (CR, Tab 11) recognised/referred to/cited the contribution of the house to the streetscapes of Richmond and Hensley "It adds to the streetscape in its scale and placement", "addresses the corner and has a traditional gable end façade", "typical of the building stock from this era in the downtown area ", and "speaks to a simple single-family residence." Additionally, " Its main attribute is the role it plays in the scale and ambiance of Richmond Street." And "... it is believed to be possible that this building could potentially be restored and contribute to the authenticity of the character of the area". Of note an image of 231 Richmond St appears on page 50 of the report as part of an existing streetscape demonstrating principles of siting and orientation.

Council passed a resolution January 14, 2013, to use the 500 Lots DSDG report as the framework for a new Zoning and Development Bylaw (ASR, Tab 5)

On August 12, 2013, a **June 14, 2013, amendment to the 2006 City of Charlottetown Zoning and Development Bylaw to implement the 500 Lots Area Development Standards and Design Guidelines** passed third reading (ASR, Tab 6). This amendment included many key points including:

- 1) Expanding the Heritage Area as shown in Map 7 /Appendix I, now including the entire 500 Lots Area excepting the Waterfront, Port, and Downtown Core Zones. The area making up **Appendix I** is contained within **Appendix J** 'Zoning Map for the 500 Lot Area.'
- 2) Identification/Declaration of the **Heritage Preservation Area** as shown in Appendix I

- 3) A new Section 4.55 DEMOLITION PERMITS also refers to the Heritage Preservation Area Appendix I with substantive protections from demolition provided e.g., 4.55.2.a 'prohibited'; 4.55.2.b 'generally not permitted'; and 4.55.2.c 'generally be discouraged'. (This Section is numbered 4.57 in the August 1, 2018, revision.)
- 4) Section 6.3 APPLICATION OF THIS SECTION clearly identifies the Heritage Preservation Area and the 500 Lots Area with associated maps Appendices I and J, respectively. (Appendix J becomes Appendix H in the 2018 Zoning and Development Bylaw)

The Zoning and Development Bylaw, amendments to August 1, 2018, indicates in Section 6 'Heritage Provisions' that it applies to all properties in the 500 Lot Area, **Appendix J 'Zoning Map for the 500 Lot area'**. Appendix J shows the 500 Lot Area as a dashed line outline which expands the area previously defined in Appendix I by including the: Downtown Institutional zone; Institutional (Holland College campus); Park Cultural; Waterfront and Port zones (Joe Ghiz park). (**Note: this version of Appendix J is the same diagram referred to in the Oct 1, 2018, Zoning and Development Bylaw as **Appendix H** and in the Heritage Incentive Program)

6.3 APPLICATION OF THIS SECTION

.1 This section Shall apply to:

- a. individual properties as listed in Appendix "A" as Designated Heritage Resource;
- b. all properties located in the 500 Lot Area, as shown in Appendix "J"

During the September 25, 2023, Heritage Board meeting, staff acknowledged *"It should also be noted that between 2013 and 2018 when this property owner claims to have purchased the property that the 500 Lot Area was considered a Heritage Area.... and all applications for demolition required Heritage Board review."*

The existence and boundaries of a *Heritage Preservation Area* within the 500 Lots in the city of Charlottetown was clearly established in 2013 under the June 14 Zoning and Development Bylaw amendment and expanded through Bylaw amendments to include the entire 500 Lot Area. The City has not provided any evidence to indicate that this status has been revoked or that this *Heritage Preservation Area* has been de-designated. Much like any permit or other designation issued under the power of previous iterations of the Zoning and Development Bylaw, this *Heritage Preservation Area* remains in effect.

On October 1, 2018, separate Heritage Preservation and Zoning and Development Bylaws were created. The report by DV8 Consulting regarding the Bylaw separation is not available to the public (presented in closed session). The City also has a Heritage Incentive Program (ASR, Tab 7). The date of the original document is not provided however, the most recent review is March 14, 2022, per the Revision History in the document.

Per Section 9 of the Heritage Preservation Bylaw 'Definitions', Designate, Designated or Designation are defined as follows:

9.6 Designate, Designated or Designation means a Heritage Resource or Heritage Preservation Area recognized for its heritage value in which the criteria have been applied and evaluated, researched, and validated pursuant to this by-law, and includes those Heritage Resources that were Designated prior to the adoption of this by-law.

Given that 1) it has been clearly shown above that the Great George Street Heritage Preservation Area was expanded to include the 500 Lots excepting the Waterfront and Port Zones; 2) that this expanded area was recognised and referred to multiple times in the June 14, 2013 Zoning and Development Bylaw as a/the *Heritage Preservation Area* and clearly illustrated in the map which was Appendix I; and, 3) the City has not de-designated the Area therefore, the property at 231 Richmond Street, being within the 500 Lots Heritage Preservation Area, falls under the scope of City of Charlottetown Heritage Preservation Bylaw (Section 1.5.1.a and 1.5.1.b). This enhanced, broader protection is in keeping with the City's efforts since 1999 and the Official Plan.

1.5 SCOPE

1.5.1 This by-law applies to all lands, Buildings, Structures and Developments within the City of Charlottetown, and more specifically to:

- a. Designated Heritage Resources; and
- b. All properties located within a Heritage Preservation Area.

Section 4.2.1 of the Heritage Preservation Bylaw applies. A demolition permit should not have been issued for 231 Richmond Street as the designation for that portion of the Heritage Preservation Area has not been revoked. It follows that any demolition permit issued to any other property in the 500 Lots Heritage Preservation Area since October 1, 2018, is also invalid if the property in question has not been de-designated under Section 3.5 of the Heritage Preservation Bylaw and, that such permits must be revoked. Demolition is not 'as of right' in the Heritage Resource identified as the Heritage Preservation Area in the 500 Lots Area.

(XIII) Demolition permits are prohibited in the Heritage Preservation Area per Section 4.2.1.a of the Heritage Preservation Bylaw

4.2 TYPES OF HERITAGE PERMIT APPLICATIONS

4.2.1 Demolition Permits

a. Demolition Permits pursuant to the *Zoning and Development By-law* regulations shall be prohibited for Designated Heritage Resource(s) or for any property(ies) within a Heritage Preservation Area.

- b.** The applicant must first revoke the Designation status from the property, or revoke the Designation for that portion of the Heritage Preservation Area impacted by the demolition.

Although an Owner can initiate the process to revoke the Designation of a Heritage Resource, Heritage Preservation Area or portion thereof, the revocation request will not be considered if 'the loss of heritage value was caused by neglect, abandonment or other action or inaction of the owner (Heritage Preservation Bylaw 3.5.3.c).

3.5 REVOCATION OF DESIGNATION

3.5.3 The revocation of Designation of a Heritage Resource, Heritage Preservation Area or portion thereof may be considered if:

- a.** The property has been destroyed or damaged by any cause;
- b.** An order has been made under the City's *Dangerous, Hazardous and Unsightly Premises Bylaw* for the demolition of the property in question; or
- c.** The continued Designation of the property appears to be inappropriate as a result of the loss of the property's heritage value, as identified in the property's heritage assessment and as supported by the Heritage Officer, unless the loss of the heritage value was caused by neglect, abandonment or other action or inaction of the owner.

The minutes of the February 7, 2022, Planning and Heritage Board meeting state "*PEI Housing Corporation confirmed that the existing dwelling has been vacant since 2017 and is currently uninhabitable.*" Leaving a building vacant, unheated, and not addressing required repairs meets the requirements for 3.5.3.c of the Heritage Preservation Bylaw. The Heritage Officer's report (CR, Tab 11/Page 56) highlighted "Although basically intact architecturally it clearly lacks in terms of maintenance...."

Failure to maintain the property's exterior can be reasonably assumed to have decreased its Exterior Condition score and its Integrity score (CR, Tab 11/Page 60). Increases in these scores would have placed the building well into the Grade 2 Classification, even higher than 10 Prince Street (see **B.6** below). Integrity is referenced in 'The Standards and Guidelines for the Conservation of Historic Places in Canada' <https://www.historicplaces.ca/media/18072/81468-parks-s+g-eng-web2.pdf> (CR, Tab 11/Page 55) as "The ongoing care of materials, including appropriate maintenance and repair, contributes to the integrity and lifespan of an historic place."

Section 8 of the Heritage Preservation Bylaw clearly outlines the consequences for contravention of the Bylaw.

8.1 PENALTIES

8.1.1 Any individual who contravenes any provisions of this by-law is guilty of an offence and liable on summary conviction to a fine not exceeding \$20,000.

8.1.2 Where a corporation is convicted of an offence under this by-law, the maximum fine that may be imposed is \$100,000.

8.2 INJUNCTIONS

8.2.1 The City may apply to the Supreme Court for an injunction to restrain the unlawful Alteration or demolition of any Designated Heritage Resource site, Structure or area.

The City is also acknowledging the existence of a Heritage Preservation Area in its current Zoning and Development Bylaw.

The **October 1, 2018, Zoning and Development Bylaw** refers to *Heritage Preservation Areas* in Sections 3.3.5.d, 3.5.2, and 7.1.2.

3.3 DEVELOPMENT AND BUILDING PERMITS

3.3.5 Every person proposing to Erect a Building or undertake a Development shall, when applying for a Development and/or Building Permit, submit the following if applicable:

d. An approved Heritage Permit for any Development on a property that is identified as a Designated Heritage Resource or that is located within a Heritage Preservation Area as defined in the *City of Charlottetown Heritage Preservation By-law*.

3.5 DEMOLITION PERMITS

3.5.1 No Building or Structure shall be demolished without obtaining a Demolition Permit.

3.5.2 A Demolition Permit may be issued for a Building or Structure, or a part thereof, unless the property on which the Building or Structure is located is identified as a Designated Heritage Resource or is located within a Heritage Preservation Area, as per the *City of Charlottetown Heritage Preservation By-law*.

7 DESIGN STANDARDS FOR THE 500 LOT AREA

7.1 WHERE THESE REGULATIONS APPLY

7.1.1 The following regulations shall apply to all Building and Development Permit applications for properties located within the 500 Lot Area, as defined and described in Appendix E. (**Note: the Bylaw is likely referring to Appendix H as Appendix E is about the Watercourse and Wetland Environmental Buffer. A similar error is made in Appendix A where the definition of the 500 Lots refers to Appendix E – Appendix H is most likely the intended reference.)

7.1.2 An exemption to the regulations in this Section may be approved by Council, if supported by a recommendation by the Heritage Board for a Designated Heritage Resource or for a property located within a Heritage Preservation Area as defined in the *Heritage Preservation By-law*, when the strict adherence to these regulations may negatively impact the integrity and preservation of the Heritage Resource or Heritage Preservation Area.

Inclusion of 7.1.2 indicates/implies the intention/understanding that a *Heritage Preservation Area* is in the 500 Lot Area. Obviously, this would be the previously expanded Great George Street Heritage Area recognised in Map7/Appendix I of the June 14, 2013, amendment to the Zoning and Development Bylaw and the expanded area defined in Appendix J of the August 1, 2018, revision of the Zoning and Development Bylaw. If there is no Heritage Preservation Area in the city of Charlottetown, or more specifically, the 500 Lots, why bother including section 7.1.2?

The City of Charlottetown is also acknowledging the existence of a Heritage Preservation Area under its Heritage Incentive Program.

The Heritage Incentive Program (ASR, Tab 7, p2) indicates that it is available to “Heritage Resources include individually designated properties listed under **Appendix A** and all properties located in the Heritage Preservation Area identified in **Appendix H** in the City of Charlottetown Zoning and Development Bylaw.”

Appendix H is the ‘500 Lot Area Map ‘previously identified as Appendix J ‘Zoning Map for the 500 Lot Area’ in the August 1, 2018, Zoning and Development Bylaw amendment. (see page 7 of this document).

Appendix A in the October 1, 2018, Zoning and Development Bylaw is a list of definitions – not a list of individually designated properties. The ‘Appendix A’, provided by the City in their response letter of September 21, 2023, as the list of properties which the city recognises as the individually designated properties, is referenced as Appendix A in the May 25, 2005, Zoning and Development Bylaw amendment (ASR, Tab 2, p 9) and appears in the August 1, 2018, Zoning and Development Bylaw (see Appendix 1, this document or Reference Document Zoning and Development Bylaw 2006, Revision August 1, 2018, pp 319 - 334).

As the City is recognizing Appendix A as defined in the August 1, 2018, Zoning and Development Bylaw under the Heritage Incentive Program it must also recognise the 500 Lots Heritage Area from August 1, 2018. Indeed, it appears to be doing so.

In its commendable desire to promote heritage preservation, the city of Charlottetown has passed resolutions for Annual Budgets totalling nearly \$1.26 million (\$1,256,399) and spent \$704,318 to date since 2014 for the Heritage Incentive Program (ASR, Tab 9). The street addresses regarding actual expenditure data received under the Freedom of Information and Privacy Protection Act were redacted and/or not detailed for the Heritage Grant Program and Heritage Tax Freeze Program. However, properties located in the 500 Lot Area (Appendix H) but not on the designated properties list (‘Appendix A’) have received Heritage Grant Program funding in 2023 (Appellant’s personal observation) – presumably, these properties are in a Heritage preservation Area.

Funds for the Heritage Tax Freeze Program (ASR, Tab 9) were allocated in the Annual Budget by Resolution to properties not included in the list of individually designated properties (‘Appendix A’) but located within the 500 Lots Area. Presumably, these properties qualified for the grant funding as they were within the 500 Lots *Heritage Preservation Area*.

2021/22- 2023/24 Annual Budget Statements – Heritage Tax Freeze Program

55 Weymouth Street	not on list (Convent)
32 Queen Street	not on list (Linda’s Coffee)

Despite the City’s insistence that there is no Heritage Preservation Area in Charlottetown, the City is clearly recognising the 500 Lots as a Heritage Preservation Area by budgeting and spending significant funds/taxpayer dollars on properties that do not appear on the individually designated list (‘Appendix A’) after 2018 but are in the 500 Lots.

B. ISSUING A DEMOLITION PERMIT IS CONTRARY TO THE OFFICIAL PLAN

Sections 3.7, 4.2, 4.2.1 of the Official Plan were presented in the original Notice of Appeal (CR Tab 8/pp 31-36), points (II), (III), (IV) and (V) and are discussed further below.

(II) The entire 500 Lots is part of the Great George Heritage Area per section 3.7 Capitalizing on Heritage Resources, Objective 1 of the Official Plan; therefore, section 4.2.1 of the Heritage Preservation Bylaw and Section 3.5.2, Demolition Permits, of the Zoning and Development Bylaw, which prohibit demolition of any property within a Heritage Preservation Area apply.

Section 3.7 Capitalising on Heritage Resources

3.7.1 Starting Point

Charlottetown's historic resources are amongst the community's most valuable assets. Through the concerted efforts of several key individuals, the residents of Charlottetown have come to realize how important their heritage is. But a great deal more must be done if the City's heritage is going to be secure for the enjoyment and benefit of future generations.

The buildings and sites which are the physical manifestation of the City's rich history are valuable not only because they are irreplaceable touchstones with the past, but because they can become a valuable economic springboard to the future. Charlottetown's heritage buildings are one of the most important elements of the City's charm. They are also an under-utilized resource with considerable economic potential.

Over the last few years, a great deal has been done to establish Charlottetown as the Birthplace of Confederation. The City's heritage buildings are not only important as a reflection of Charlottetown's social history, but they are an invaluable backdrop for helping to depict and explain the political evolution of the entire nation. Therefore, it is crucial that a significant portion of this building stock be restored and protected in order to buttress Charlottetown's seminal role in the creation of Canada.

There will be no long lasting foundation for the success of a campaign based upon the municipality's identity as the Birthplace of Confederation unless there is a predominant sense that Charlottetown is an historic city. If done well, this initiative can be parlayed into significant gains for the local economy. In this sub-section, the **CHARLOTTETOWN PLAN** provides comprehensive guidance to protect, rehabilitate, and revitalize the City's heritage resources. By conserving this important physical legacy, and developing a strategy to better utilize these resources, the residents and business people of Charlottetown can create economic, environmental, and cultural benefits for themselves ... and provide a delightful attraction for their visitors.

Defining Our Direction:

Our **goal** is to protect and revitalize the heritage resources of Charlottetown for the benefit of current and future residents and visitors.

1. Our **objective** is to work with the various organizations and agencies in Charlottetown concerned with heritage to forge a strategy which guides the protection and development of the community's heritage resources.

Our **policy** shall be to expand the Great George Heritage Area to encompass the area known as the "500 lots" from the properties facing Euston Street and Brighton Road south to the Harbour, Hillsborough River and North River and to designate additional properties which qualify has heritage resources. Amended May 25, 2005.

The Great George Heritage Area has been extended (Zoning and Development Bylaw (August 1, 2018). Paragraph three is included in reports for 231 Richmond Street (CR, Tab 11/p 55) and 10 Prince Street (ASR, Tabs 11 &12). Per the Prince Edward Island Planning Act Section 15.(2) "The bylaws or regulations made under clause (1)(d) shall conform with the official plan and in the event of any conflict or inconsistency, the official plan prevails. Therefore, there is a Heritage Preservation Area in the City of Charlottetown (Section 3.7) and the Heritage Preservation Bylaw applies to the 500 Lots Area, including 231 Richmond Street.

(III) By issuing a demolition permit for 231 Richmond Street, the City is failing in its duty to "... protect, restore and build upon the heritage resources in the area." and to "... not undermine or destroy" as stated in section 4.2.1 of the Official Plan

- i. There is no distinction between designated and non-designated heritage resources in the Official Plan. This "charming historical neighbourhood" is comprised of more non-designated than designated buildings. They all contribute to the sense of place and it is the City's obligation protect and restore – not destroy (demolish) all of them.*

4.2 A Vibrant Downtown – The 500 Lot Area

4.2.1 A Starting Point – The Vision:

The 500 Lot Area is the City of Charlottetown's historic, cultural, civic and symbolic core and functions as the primary shopping, education, entertainment, recreational, service and employment hub within the City and the larger Region. The area is also a charming historical neighbourhood, home to many residents and visited by thousands of tourists each year. The 500 Lot Area benefits from its waterfront and its inventory of magnificent heritage buildings and features. Through the relevant policies of the CHARLOTTETOWN PLAN, the City should ensure that future planning actions within the 500 Lot Area continue to protect, restore and build upon the heritage resources in the area. New development, redevelopment, intensification and changes in land use should not be discouraged as they can have positive influences and make significant contributions to the evolution of the area. However, any proposed changes need to be carefully considered and managed to ensure that they do not undermine or destroy the very elements and qualities that define this area, but rather continue to create a distinct sense of place and contribute to its success.

Section 4.2.1 is included in the Heritage Officer's assessment reports for 231 Richmond Street (CR, Tab 11/p 55) and 10 Prince Street (ASR, Tab 11; ASR, Tab 12).

Since 1999, the City has been ensuring that 'future planning actions within the 500 Lot Area continue to protect, restore and build upon the heritage resources in the area' by continuing to expand the 500 Lot Heritage Area and has also created a separate Heritage Preservation Bylaw which recognises all designated resources recognised prior to the activation of the Bylaw. The Heritage Preservation Bylaw has, in fact designated every property and streetscape within the 500 Lot Heritage Preservation Area. These properties are in addition to those in 'Appendix A' which includes properties outside of the 500 Lots.

Per the Prince Edward Island Planning Act Section 15. (2) "The bylaws or regulations made under clause (1)(d) shall conform with the official plan and in the event of any conflict or inconsistency, the official plan prevails." Therefore, the City must protect and restore the Heritage Resource at 231 Richmond Street- not issue a permit for its demolition.

(IV) Issuing a demolition permit for 231 Richmond Street is a failure to recognise and so "...protect, restore, respect and leverage..." the heritage aspect of the streetscape within which 231 Richmond Street lies. (Official Plan, section 4.2.1. Objective 4).

- i. The building at 231 Richmond is integral to the local streetscape (Figure 1.)*
- ii. In the immediate area on Richmond Street, between Prince Street and Hillsborough Street, seven of the 12 (7 of 12) buildings are listed as designated resources with others having reasonable potential to be so (Figure 2; Table 1)*
- iii. The stretch of buildings along Richmond Street from Prince Street (eastern edge of Queen's Square) to Cumberland Street, which includes Hillsborough Square, is an extensive and compelling streetscape of century homes, uninterrupted but for 273 Richmond Street.*
- iv. There is precedent for less grand houses to be incorporated into designated streetscapes as they function to support and protect the even more notable buildings near them e.g., 174, 179, and 181 Dorchester Street (Table 1).*

4.2.1 A Starting Point – The Vision:

4.2.2 Defining Our Direction:

4. Our **objective** is to **protect, restore, respect and leverage** all Heritage Resources.

- Our **policy** shall be to recognize that the 500 Lot Area is comprised of an extraordinary concentration of significant heritage buildings, landmarks, and **streetscapes**. These resources play a prominent role in defining its distinct 'sense of place' and should be recognized as the life-blood of the area's civic, cultural and economic well-being and as such **need to be protected and restored**.

Section 4.2.2 is included in the Heritage Officer's reports for 231 Richmond Street (CR, Tab 11/p 55) and 10 Prince Street (ASR, Tab 11; ASR, Tab 12).

The Heritage Officer's assessment report (CR, Tab 11/pp 56) for consideration of granting Temporary Heritage Designation status to 231 Richmond Street made multiple references to the contribution of the home to the streetscape: "Its main attribute is the role it plays in the scale and ambiance of Richmond Street"; "... could potentially be restored and contribute to the authenticity of the character of the area"; and, "It adds to the streetscape in its scale and placement."

Per the Prince Edward Island Planning Act Section 15. (2) "The bylaws or regulations made under clause (1)(d) shall conform with the official plan and in the event of any conflict or inconsistency, the official plan prevails." Therefore, the protection and restoration of the streetscape which includes previously individually designated properties under 'Appendix A' and to which 231 Richmond Street contributes, needs to be protected and restored. The City must not issue a demolition permit which would alter this streetscape which includes many previously individually designated properties.



Figure 1. 231 Richmond Street as part of the streetscape on Richmond Street (a) looking east; (b) looking west.



Figure 2. Street diagram (Google maps) of the area in downtown Charlottetown surrounding the site of the proposed demolition application. The status of neighbouring properties (recognised designated heritage resources and potential resources) are indicated.




-  Designated heritage resource
-  Potential heritage resource
-  Site of current house and proposed unit after demolition

Table 1. Summary of Designated Heritage resources near 231 Richmond Street as shown in Figure 1 (excerpt from City of Charlottetown Designated Resources)

Resources Designated under the Heritage Preservation Bylaw City of Charlottetown			
Figure Number	Property Address	PID #	Description
1	215 Richmond St.	340471	The early Mission house of the Methodist Church moved from across the street; also, classic design and scale of house.
2	220 Richmond St.	339481	Trinity Church Manse.
3	227 Richmond St. (1 Hensley St.)	340497	Built c 1846. Good, unchanged cottage – interesting association with Davy (Smithwright family) and Davy's Lane.
4	243 Richmond St.	340737	Good symmetrical, mid-19th century house undamaged by renovation; important position at corner of Square.
5	78 Prince St. (Trinity United Church)	339499	The oldest church in town, built in 1864. Architect Thomas Alley.
6	96 Prince St.	340695	Brick house designed by W.C. Harris for Railway Superintendent.
7	100 Prince St.*	340687	Oldest house on block. Henry Smith (contractor for Gov't House) house
8	67 Hillsborough St. 75 Hillsborough St. 79 Hillsborough St.	339416 339424 339432	The importance of these houses is providing a good streetscape. No. 75 was designed by C.B. Chappell.
9	89 Hillsborough St. 97 Hillsborough St. 105 Hillsborough St.	340752 340778 340786	Hillsborough St. is made up of very good streetscape. This is another block which would be hurt by poor renovation.
10	33 Hensley St.	340554	Representatives of an early subdivision, 1846.
11	112-114 Prince St.*	340646	Built before 1862; renovated 1875. Round headed windows set in squares, unusual feature
12	120 Prince St.* 124 Prince St.*	340620 340612	Good representative brick building of 1870 period. John Corbett, Architect. Quirk's bakery, owner.
	171 Dorchester St. 179 Dorchester St. 181 Dorchester St.	338418 338426 338434	These buildings provide good residential housing; however their main significance is as a streetscape and as protection for the most important house at 187 Dorchester Street.
*This is a block of excellent buildings. They need to be preserved both for themselves and the good of the street and the important church opposite.			

(V) Issuing a demolition permit for 231 Richmond Street without conducting a heritage assessment is a failure to adhere to policy regarding heritage assessments and demolition in the Official Plan, Section 4.2.1. Objective 4 to “protect, restore, respect and leverage all Heritage Resources”:

- i. *Each property within the 500 lots requires an assessment of its heritage attributes prior to granting a demolition permit.*
- ii. *A copy of the assessment report for 231 Richmond Street as an individual house and as part of a streetscape was requested but not provided. Per information provided by the Planning and Heritage Department, no report was completed.*
- iii. *Failing to complete a detailed and thorough heritage assessment can result in the significance of properties being overlooked when only cursory evaluations are done. The house at 41 Prince Street, initially dismissed as irrelevant, exemplifies where a thorough review revealed that the house merited, and was granted approval by the Planning and Heritage Department, for Designated Heritage Property status. Ultimately, the process was not finalised due to a change in the property's ownership; however, the point remains that cursory evaluations can be inadequate.*

4.2.1 A Starting Point – The Vision:

4.2.2 Defining Our Direction

4. Our **objective** is to protect, **restore, respect and leverage** all Heritage Resources.

- Our **policy** shall be to identify and recognize the heritage attributes of these buildings, landmarks and streetscapes related to their age, architectural interest and historical interest through **on-going planning, studies, inventories** and other municipal initiatives in order to enable adequate and appropriate protection of these heritage resources.
- Our **policy** shall be to provide direction through the Official Plan and regulation through the Zoning By-law for **each property within the 500 Lot Area** to determine the appropriate degree and design of alterations based upon an evaluation of its heritage attributes. **The ability to demolish properties and buildings and the process and timing of granting demolition permits shall also be dependent upon an assessment of each property's heritage attributes.**

The second bullet point is cited in the Heritage Officer's assessment reports for 231 Richmond Street (CR, Tab 11/p 55) and 10 Prince Street (ASR, Tab 11; ASR, Tab 12). Clearly Planning and Heritage staff recognise the requirement for these reports as the properties are within the 500 Lot Area and are therefore, Heritage Resources under Section 3.7 of the Official Plan. This, in contrast to the City's letter of September 21, 2023.

Per the Prince Edward Island Planning Act Section 15. (2) “The bylaws or regulations made under clause (1)(d) shall conform with the official plan and in the event of any conflict or inconsistency, the official plan prevails.” Therefore, the assessment report was required.

C. INSTANCES OF PROCEDURAL ERRORS AND/OR EXAMPLES OF FAILING TO FOLLOW GOOD PLANNING PRINCIPLES REGARDING 231 RICHMOND STREET

1. Issuance of 001-DEM-23

(I) The demolition permit is not valid because the registered owner of PID# 340703, 231 Richmond Street, the PEI Housing Corporation (confirmed April 14, 2023, PEI Deeds Registry Department), is not the applicant named on the demolition permit.

The demolition permit application provided in the City Record (CR) (TAB 1) incorrectly identifies both the applicant/contractor and property owner as Public Works and Planning Division, DTI. Per the records available at PEI Deeds Registry Department, the owner is the PEI Housing Corporation. The P.E.I. housing Corporation is also listed as the owner in the report prepared for the Heritage Board meeting June 14, 2023 (CR, Tab 11), the application for the major variance (CR, Tab 13), and the February 7, 2022 (CR Tab 15) Planning Board meeting. No agent authorisation letter was submitted with the demolition permit application to allow Public Works and Planning Division, DTI to apply for the permit. Appellant Supplementary Record (ASR) Tab 14 provides an example of a similar letter. The permit is not valid.

(VII) Issuing a demolition permit for 231 Richmond Street is not consistent overall with good planning principles.

- i. The demolition permit was issued to create an 'infill' opportunity even before a new proposed design is assessed by the Design Reviewer, Design Review Board, Planning Board and Council.
- ii. Failure to follow the Official Plan to protect, restore, respect, leverage and build upon the heritage resources in the 500 Lots area.

(IX) A Fire Safety Plan was not submitted to, nor accepted by, the City's Fire Department in support of the demolition application prior to issuing the Demolition Permit.

- iii. Excerpt from Planning Staff's report for the variance requests for the Frontage and Setback for the development proposed for 231 Richmond (PID#340703) dated Feb 07, 2022, reads "As per Regulation 3.5 (Demolition Permits) of the Zoning By-law, the existing dwelling cannot be demolished without the property owner first obtaining a Demolition Permit. The City's Fire Department has reviewed the proposal and indicated that Fire Safety Plan **must be submitted in support of the Demolition Permit application** for review and acceptance by the Fire Department."

By stating that the Fire Safety Plan must be submitted in support of the application for review and acceptance, implies submission at the time of application for the demolition permit. It would be incorrect to issue the demolition permit without having had the Fire Safety Plan approved.

2. Planning staff accepted and processed an incomplete major variance application for the proposed development at 231 Richmond Street

(X) ~~The Letter to Residents~~ [correct to Major Variance Application] regarding the Frontage and Setback for the development proposed for 231 Richmond (PID#340703) did not include "drawings to illustrate any proposed development for the Lot in a detailed concept plan as per section 3.9.2.d of the Zoning and Development Bylaw

Relevance:

The process to request the demolition permit for 231 Richmond Street began as a requirement for obtaining approval of the two Major Variance requests for the proposed new development. Approval was subject to two conditions: 1) the Design Review Board reviews and supports the proposed exterior building design; and, 2) Prior to demolishing the existing dwelling, the owner shall (a) obtain a Demolition Permit and (b) submit a Fire Safety Plan for review and acceptance by the City's Fire Department [in support of the Demolition Permit application] (CR, Tab 15/p.78 - 79). As such any procedural errors or examples of failing to follow good planning principles related to the Major Variance request application process and its conditions are relevant to the issuance of the demolition permit. Section 4 'Detailed Project Description' of the Moving & Demolition Permit Application (CR, Tab1/p1) states "Demolition of a 2 story house in order to construct a 3-unit affordable housing complex", clearly connecting the demolition permit application with the subsequent two major variance requests. This argument also applies to points C.3, C.4, C.5, C.7, and C.8.

The Planning Staff report (CR, Tab 15/Page 71) for the Frontage and Setback (Major) variances for 231 Richmond Street contained only a survey plan, a site plan and floor plan drawings to describe the proposed development. Under Section 3.9.2.d of the Zoning and Development Bylaw for Major Variance applications drawings to illustrate the proposed Development in a detailed concept plan are required. No drawings were included in the report so it must be concluded that none were provided with the application. In contrast, The Design Review report, April 17, 2023 (ASR, Tab 14 REV 1 Oct 23 2023, pp 79, 84, 85) include drawings that illustrate, if only from one angle, as well as some architectural line drawings of elevations and building outlines.

- 3.9.2** An application for a Major Variance shall be submitted with sufficient information as may be required by the Development Officer for the purpose of adequately assessing the proposal, including:
- a. A legal description and a plot plan, or a survey plan, accurately showing the location of the property and Building(s) or Structure(s) on the property in question;
 - b. The name and address of the Owner(s) of the property and, if the applicant is not the Owner, a statement as to the applicant's interest in the property;
 - c. A drawing or statement to explain under which criteria as stated above for application for a Major Variance the application is being sought;
 - d. Drawings to illustrate any proposed Development for the Lot in a detailed concept plan; and
 - e. Such other information as deemed necessary by the Development Officer to evaluate the proposal.

3. Planning staff issued an incomplete letter to property owners when requesting comments on the major variance application for the proposed development at 231 Richmond Street.

(X) The Letter to Residents regarding the Frontage and Setback for the development proposed for 231 Richmond (PID#340703) did not include "describe the Major Variance application" as per section 3.9.2.d [correct to 3.9.3.c] of the Zoning and Development Bylaw

See paragraph one, 'Relevance' in C.2 for relevance to this demolition permit appeal.

The letter to Affected Property Owners (CR, Tab 14) contained the same aerial views, site plan, survey plan and floor plan drawings only. As the letter lacked any drawings to illustrate the proposed Development in a detailed concept plan, the Major Variance application could not be considered to have been described as required in the Zoning and Development Bylaw, Section 3.9.3.c.

3.9.3 Before a Major Variance may be approved, the Development Officer shall:

- a. Receive from the applicant a completed Variance application and sufficient funds to cover the cost associated with processing the application;
- b. Provide written notice by ordinary mail explaining the purpose of the proposed Major Variance to all Affected Property Owners within 100 m (328.1 ft) of the boundaries of the subject Lot; and
- c. Ensure that the notice identifies the subject Lot and describes the Major Variance application and the date by which written objections must be received.

Not providing an adequate description of the development proposal in the letter to Property Owner represents failure to follow good planning principles.

4. Planning staff's report on the major variances requested for the proposed development for 231 Richmond Street was incomplete.

(VII) Issuing a demolition permit for 231 Richmond Street is not consistent overall with good planning principles.

- iv. The demolition permit was issued to create an 'infill' opportunity even before a new proposed design is assessed by the Design Reviewer, Design Review Board, Planning Board and Council.
- v. Failure to follow the Official Plan to protect, restore, respect, leverage and build upon the heritage resources in the 500 Lots area.
- vi. Planning Staff's report for the variance requests for the Frontage and Setback for the development proposed for 231 Richmond (PID#340703) dated Feb 07, 2022, failed to include any mention any part of Section 4.2 A Vibrant Downtown – The 500 Lot Area of the Official Plan which is specific to the 500 Lots area.

See paragraph one 'Relevance' in C.2, 'Relevance', to this demolition permit appeal.

Exclusion and lack of any consideration of Section 4.2 – A Vibrant Downtown in the February 7, 2022, report created an unbalanced presentation of the impacts of the demolition and the subsequent

development on the 500 Lot area. Planning Board members were not adequately informed as to which policies of the Official Plan were satisfied and which were not. This is an example of poor planning principles.

5. Planning staff and the Planning Board by excluding comments from the Appellant regarding the incompleteness of the application for the Major Variances for 231 Richmond Street and the letter to Property Owners

(X) The Letter to Residents [correct to Major Variance Application] regarding the Frontage and Setback for the development proposed for 231 Richmond (PID#340703) did not include "drawings to illustrate any proposed development for the Lot in a detailed concept plan as per section 3.9.2.d [correct to 3.9.3.c] of the Zoning and Development Bylaw

i. Council members of the Planning Board denied inclusion of concerns from a Property Owner within 100 m of the proposed changes into the minutes of the meeting. There is no time limit in the Zoning & Development Bylaw regarding submission of comments to the Board prior to the meeting. In fact, the letter to Property Owners provides the option to participate directly in the Planning Board meeting.

See paragraph one 'Relevance' in C.2 for relevance to this demolition permit appeal.

The Appellant, a Property Owner within 100 m of 231 Richmond Street, raised concerns with their Councillor, A. Jankov, a member of the Planning and Heritage Board regarding the lack of receipt of the letter to Property Owners within 100m, lack of any useful visual information in the letter to assess (See C.3 above), lack of detailed concept plan per Zoning and Development Bylaw 3.9.2.d, (see C.2 above) and errors in the package (ASR, Tab 10). The meeting package is available online for viewing prior to the meeting. These concerns were sent to all members of the Planning Board to alert them prior to the meeting. Email addresses for Resident Members of the Board are not available to the Public so Resident Members could not be contacted directly.

The letter sent to Property Owners (CR, Tab 14/p 66) indicates that recipients of the letter may participate in the Planning Board meeting (no deadline stated). The meeting was held via videoconference. Attendance via videoconference was not an option for the Appellant. The Appellant chose to participate in the meeting by expressing concerns to all Councillors on the Planning and Heritage Board and staff and receiving confirmation from their Councillor, A. Jankov, that these concerns would be provided to the Board on their behalf. At no point was the Appellant advised by Councillor Jankov or the Manager of Planning (copied on the email) that these comments and concerns would, or could, not be shared.

Failure to include solicited comments provided by Property Owners in the record of the meeting represents failure to follow good planning principles.

6. In the report prepared for the Heritage Board regarding consideration of temporary heritage designation of the property at 231 Richmond Street

(XII) Proper process was not followed when deciding on a Temporary [Heritage] Designation Status for 231 Richmond Street at Heritage Board meeting (June 14, 2023) per Section 3.4.1 of the Heritage Preservation Bylaw.

- i. No request was made by the Heritage Officer or Planning Staff in their report.

No recommendation from staff to request, or not to request, the temporary heritage designation appears in the Recommendation section of the report (CR, Tab 11/p 51). The result of the vote by Heritage Board on June 14, 2023, should be held in abeyance until a report with a recommendation is prepared as occurred for 10 Prince Street. The report (ASR, Tab 11) for consideration of Temporary Heritage Designation prepared for 10 Prince Street for Heritage Board on Aug 28, 2023, did not include a recommendation and was held in abeyance until a new report was prepared for September 25, 2023, (ASR, Tab 12). The procedural error is discussed in the September 25, 2023, report (Background).

In the City's letter of September 21, 2023, response Category (2), stated that a rating of Grade 3 (range 40- 59 points; property score was 56) made the property ineligible for designation. This is incorrect. Properties with a classification of Grade 1, Grade 2 and Grade 3 are eligible.

The City also stated that the review for temporary heritage designation status was not required. The Appellant is maintaining that under the Official Plan, 4.2.1 A Starting Point – The Vision, Objective 4 applies. This is supported as this section is cited in the June 14, 2023, report prepared by the Heritage Officer for the property (CR, Tab 11). That the Heritage Board again cited this section of the Official Plan in the Potential Temporary Designation Inquiry for 10 Prince Street on August 28, 2023 (ASR, Tab 11) and September 25, 2023 (ASR, Tab 12) indicates that Planning staff agree that Objective 4 applies. The reports for 10 Prince Street specifically mention 231 Richmond Street. Neither property is on the list of individually designated properties ('Appendix A') but both are in the 500 Lots.

Notably, the Analysis segment of the June 14, 2023, report for 231 Richmond Street while similar in detail to that for 10 Prince Street August 25, 2023 (ASR, Tab 11) it was much less detailed than the revised report for 10 Prince Street on September 25, 2023 (ASR, Tab 12). It is possible that the report for 231 Richmond Street was less thorough than it might have been. The report for 231 Richmond Street only went back to 1900 stating that the style of the house is consistent that of a typical home built around 1900. The exterior appearance of a house can be misleading with respect to age and structure of the original house, as evident with 41 Prince Street (CR, Tab 8/Page 36 point V.iii).

Further history on 231 Richmond Street (ASR, Tab 16) shows that a more in-depth review may be warranted. The lot was part of the subdivision by Charles Hensley in 1843. Patrick B(o)urke, Painter, purchases the property for \$900 in 1886 (eventually sold in 1907 to Murdoch MacLeod, Accountant PEI Railway). The 1887 MacAlpine's Charlottetown City Directory indicates a P. Burke, Painter, living at the home (then identified as 89 Richmond Street) with a vacant lot beside. Could this house (231 Richmond) be, or be an extension of, the foundation of house shown in the 1878 Panorama view map (is the perspective skewed)? The Goad Fire Insurance Map, (1884 with revisions to 1897) shows a 2 ½ storey

house at 277 Richmond (later 231 Richmond) with a Paint Shop (likely in place until the 1940's based on property deed descriptions) at the back. The vacant lot is now filled in by a house with an outline consistent with the current home at 233 Richmond St. If the report is deemed in complete, this would be an example of failing to follow good planning principles.

7. The use of Mr. Peter Fellows, an unlicensed architect, as a Design Reviewer for the proposed development at 231 Richmond Street (and 199 Grafton Street)

(XI) The Design Reviewer assigned to the proposed Development at 231 Richmond Street (PID#340703) did not meet the qualifications for a Design Reviewer under Section 2.3.3.b of the Zoning and Development Bylaw:

Section 2.3 Design Review Roster

2.3.3 Individual Design Reviewers shall be appointed by Council in accordance with the following:

a. At least one member of the roster shall be a locally (PEI) based design professional.

b. Design Reviewers shall be professions with expertise in the fields of architecture, landscape architecture, urban design, city planning, structural engineering, or a similar profession and **must be licensed to practice their respective profession in at least one of the four Atlantic Provinces.**

See paragraph one 'Relevance' in C.2 for relevance to this demolition permit appeal.

Mr. Fellows has not been a member of an Architectural Association nor held a valid certificate of practice since December 31, 2020 (ASR, Tab14 REV 1 Oct23 2023, pp 1-7). The City was made aware of this April 29, 2023. (ASR, Tab, pp 8 - 14). The City has acknowledged that Mr. Fellows is not qualified under Section 2.3.3.b and chosen not to correct this procedural error regarding Design Reviews completed for 231 Richmond Street on April 12, 2023 (ASR, Tab 14 REV 1 Oct23 2023, pp 92-94) and 199 Grafton Street on March 19, 2021, (ASR, Tab 14 REV 1 Oct23 2023, pp 56 - 61) or, apparently, any other Design Reviews that may have been completed by Mr. Fellows since Jan 1, 2021. Failure to correct an acknowledged error under the Zoning and Development Bylaw must be considered a grievous example of failure to follow good planning principles.

8. A Development permit is required before demolition can occur

(VIII) The city is in violation of Section 3.3.2 Development and Building Permits in the Zoning and Development Bylaw as a development permit is required before demolition can occur, or a demolition permit be issued

i. The Zoning and Development Bylaw indicates that 'Development' shall have the same meaning as defined in the Planning Act.

- ii. *The Planning Act (1.d.ii) indicates the a 'development' includes "...adding to or demolishing structures in, under, on or over the land"*
- iii. *Section 3.3.2 states "No Development shall be undertaken without a Development Permit"*
- iv. *As there is no development permit in place, the demolition permit can not be issued.*

See paragraph one 'Relevance' in C.2 for relevance to this demolition permit appeal.

Regarding the City's response (Category 3) that no development permit was needed, the Appellant maintains the argument set out in the original (CR, Tab 8/Page 38, Point VIII) and Amended Notice of Appeal. Regardless of the 'ordinary practices' of the City, the City's Zoning and Development Bylaw defines a Development as per the Planning Act which includes demolishing structures. The major variance application states that the approval of the two major variances is subject to obtaining a demolition permit (CR, TAB 15/Page 79; point 2(a)). Demolition was clearly part of the variance request.

Surely, the City would want to have a new development approved and all the required permits in place before demolishing a standing structure. In this case, a structure which could be supplying subsidised housing to city residents under the PEI Housing Corporation in the current housing shortage.

Additionally, as the 231 Richmond is in the Heritage Preservation Area, per section 3.3.5.d of the Zoning and Development Bylaw, an approved Heritage Permit was also required.

3.3.5.d. An **approved Heritage Permit** for any Development on a property that is identified as a Designated Heritage Resource or that is located within a Heritage Preservation Area as defined in the *City of Charlottetown Heritage Preservation By-law*

9. A substantive Heritage Permit was required

(VI) A substantive Heritage Permit application was required under the Heritage Preservation Bylaw for a demolition.

- i. *The property is within the expanded Great George Heritage Area (see point II re Official Plan Section 3.7)*
- ii. *Section 1.5 (Scope) of the Heritage Preservation Bylaw indicates that the Bylaw applies to "**all** lands, Buildings, Structures and Developments within the City of Charlottetown, specifically to designated heritage resources and all properties within a Heritage Preservation Area".*
 - a. *While specific to designated heritage resources and properties within Heritage Preservation Areas, the Bylaw does not apply exclusively to designated heritage resources and all properties within a Heritage Preservation Area, i.e., '**all**' buildings etc. in the City are within its scope.*
 - b. *The house at 231 Richmond Street would therefore be within the scope of the Heritage Preservation Bylaw given that it is a building within the City of Charlottetown. It is also within the expanded Great George Street Heritage Area.*
- iii. *The Heritage Preservation Bylaw defines (section 9.1) an 'alteration' as "any change in a structural or architectural component, or any increase or decrease in the volume of a Building or Structure."*

- a. *Demolition of a building is the most extreme decrease in volume of a building possible and as such, must be considered a 'significant alteration'.*
- b. *A substantive Heritage permit was therefore required under section 4.2.5.a.ii*

Heritage Preservation Bylaw

4. HERITAGE PERMITS

4.1 HERITAGE PERMITS

- 4.1.1 No Person shall carry out or cause to be carried out any exterior Alteration, Development or demolition of a Designated Heritage Resource, or of any property within a Heritage Preservation Area with the exception of Ordinary Maintenance, without first obtaining a Heritage Permit.

4.2 TYPES OF HERITAGE PERMIT APPLICATIONS

4.2.5 Substantive Applications:

- a. A Heritage Permit application is considered a substantive application if it involves:
 - i. An addition of more than 20 m² or ten percent (10%) of the Building's original footprint.
 - ii. A significant Alteration to the Building's original style, design or materials.

The City has not provided any evidence against the scope of the Heritage Preservation Bylaw applying to all buildings in the City of Charlottetown.

10. Section 6 'General Provisions For Development' of the Heritage Preservation Bylaw was not applied

(XIV) Section 6 [General provisions for Development] of the Heritage Preservation Bylaw was not considered by Planning Staff in their report on the new development proposed for 231 Richmond Street (PID#340703).

6.1 HERITAGE DEVELOPMENT REGULATIONS

6.1.1 The following Development Regulations apply to Alterations, additions, or new Development on a Designated Heritage Resource property, or on any property within a Heritage Preservation Area.

See paragraph one 'Relevance' in C.2 for relevance to this demolition permit appeal.

As the proposed three storey development at 231 Richmond Street is within the Heritage Preservation Area, Section 6 applies. These points were not considered in the February 7, 2022, report prepared for Planning Board (CR, Tab 15/pp. 71-91) nor in the Design Review (ASR, Tab 14 REV 1 Oct 23 2023, pp 92-94).

CONCLUSION

It has been shown that a Heritage Preservation Area still exists in Charlottetown i.e., the 500 Lot Area as described in Appendix I of the Zoning and Development Bylaw (June 14, 2013). As the City has not provided evidence that the Heritage Preservation Area designation for the 500 Lots Area has been revoked, the Heritage Preservation Bylaw applies to the property located at 231 Richmond Street under Section 1.5. Sections 3, 4, 6, 8, and 9 specifically, but not exclusively, also apply. A demolition permit should not have been issued. Neglect of the property by its owner to lower its heritage assessment, a form of 'demolition by neglect', is not permitted under the Heritage Preservation Bylaw Section 3.5.3.

The City of Charlottetown's Official Plan recognises the 500 Lot Heritage Area (Section 3.7). Demolition of the Heritage Resource at 231 Richmond Street contravenes Section 4.2 of the Official Plan. By continuing to budget for and allocate Heritage Incentive Program grant funding to the 500 Lot Heritage Preservation Area the City is acknowledging this Heritage Preservation Area. Per the Prince Edward Island Planning Act Section 15. (2) "The bylaws or regulations made under clause (1)(d) shall conform with the official plan and in the event of any conflict or inconsistency, the official plan prevails."

Furthermore, as indicated in the Amended Appeal there were numerous procedural errors and examples where staff did not follow good planning principles:

1. Demolition permit 001-23-DEM is invalid as the applicant was neither the Property Owner nor the Authorized Agent.
2. Demolition permit 001-23-DEM was incorrectly issued before the required Fire Safety Plan was approved.
3. Planning staff accepted and processed an incomplete Major Variance application for the proposed development at 231 Richmond Street as a detailed concept plan was not provided.
4. Planning staff issued an incomplete letter to property owners when requesting comments on the major variance application for the proposed development at 231 Richmond Street as no detailed concept plan or elevations were provided for review.
5. Planning staff failed to follow good planning principles by excluding any reference to Section 4.2 of the Official Plan 'A Vibrant Downtown' which deals exclusively with the 500 Lots in the February 7, 2022, report for the major variance requests for 231 Richmond Street.
6. Planning staff and the Planning Board failed to follow good planning principles by excluding comments from the Appellant regarding the incompleteness of the application for the major variances for 231 Richmond Street and the letter to Property Owners.
7. Proper procedure was not followed during the determination of Temporary Designation Status for 231 Richmond Street as no recommendation was provided to Heritage Board in their report. Additionally, the report presented by the Heritage Officer may be incomplete in that it provided no information prior to about 1900.

8. Planning staff, Design Review Board, Planning Board and Council failed to follow good planning principles and/or made procedural errors by allowing Mr. Peter Fellows, a non-licensed architect to act as a Design Reviewer for 231 Richmond Street when he was not qualified under Section 2.3.3. of the Zoning and Development Bylaw since January 1, 2021, in the first instance and failing to correct the error in the second instance. Note that the same applies to 199 Grafton Street (LA21-013) and any other Design Reviews completed by Mr. Fellows for the City since January 1, 2021.
9. A development permit was clearly required for the proposed development for the demolition component of the development.
10. A substantive heritage Permit was required.
11. A procedural error and/or an example of failure to follow good planning principles occurred when no report nor comments addressing Section 6 'General Provisions for Development' of the Heritage Preservation Bylaw were provided.

With the success of this Appeal, precedence for demolition 'as of right' in the 500 Lot Heritage Preservation Area will be averted. This would result in revocation of the demolition permit issued for 231 Richmond Street and, by extension, any other demolition permits issued to properties in the 500 Lot Heritage Preservation Area that have not been de-designated under the Heritage Preservation Bylaw. This will ensure losses of the City's Heritage Resources, such as the recent demolition of other properties in the 500 Lots such as the Irwin Print Shop (Richmond Street) and the home at 24 Grafton Street, will not be repeated.

APPENDIX 1

**Screenshot of City of Charlottetown Zoning and Development Bylaw October 17, 2006
(Amended August 01, 2018)**

[https://cdns5-hosted.civiclive.com/UserFiles/Servers/Server_10500298/File/Resident%20Services/Bylaws%20and%20Regulations/Bylaw%20Index/Zoning%20and%20Development%20Bylaw%20\(Amended%20January%202024,%202017\)/Zoning%20%20Development%20Bylaw%2024%20September%202018.pdf](https://cdns5-hosted.civiclive.com/UserFiles/Servers/Server_10500298/File/Resident%20Services/Bylaws%20and%20Regulations/Bylaw%20Index/Zoning%20and%20Development%20Bylaw%20(Amended%20January%202024,%202017)/Zoning%20%20Development%20Bylaw%2024%20September%202018.pdf)

APPENDIX A - RESOURCES DESIGNATED UNDER HERITAGE PROVISIONS

PROPERTY ADDRESS	ASSESSMENT NO.	DESCRIPTION
7 All Souls Lane (All Souls Chapel)	343517	St. Peters Chapel, which is a gem both inside and out, is certainly a heritage building.
20 All Souls Lane	343921	Rochford Square
4 Ambrose Street	352062	
34 Ambrose St.	353318	Chappell House c. 1930.
Brackley Pt. Rd./ Arterial Hwy NW cnr		An exceptional collection of beech trees which formed part of the grove leading up to the farm of Colonel Dogherty
5 Brighton Road	365957	Originally part of the Lieutenant Governor's Farm set aside in 1789. The designation refers to the site only.
12 Brighton Rd.	351841	Designed by Architect W.C. Harris c 1905. As Harris was one of our prominent Architects it is fitting that as many of his buildings as possible be saved so that a progression in his style can be seen.
20 Brighton Rd.	351817	Good example of 1880 Mansard roofed brick residence. In history it commemorates the Tannery that for many years occupied the space between what is now Ambrose and Spring Streets as it was the owner's home.
22 Brighton Rd.	351916	Designed by W.C. Harris.
24 Brighton Rd. 26 Brighton Road 28-30 Brighton Rd.	351767 351759 351742	Formerly two halves of Revere House, foot of Great George Street. Important because of the history connected with them as well as being good residential housing.
36 Brighton Rd.	351726	Harris designed cottage, 1903.
90 Brighton Rd. 94 Brighton Rd.	347807 347799	At a period when cement and stucco houses were being built in great numbers throughout Canada, these were two of a minimal number (under 5) being built in Charlottetown (1915).
102 Brighton Rd.	347757	Important both for historical and architectural reasons. The house is an excellent example of Gothic revival cottage c. 1858.
112 Brighton Rd., Magazine (Dept. of Defence)	347740	Commemorates early military history of Province.
Brighton Shore	347609	Range light; only traditional lighthouse design within the City limits.
73 Chestnut St.	361568	Relocated from 95 Fitzroy Street and designated in 2001. Very good example of gable roofed house built in earlier Georgian style - good doorway with transom & side lights; example of 9 over 6 window sashes.
1 Churchill Ave.	352948	Harris designed.