

## **Kensington Market Restaurant and Bar Study – Final Report**

Date: October 15, 2019

To: Toronto and East York Community Council

From: Director, Community Planning, Toronto and East York District

Wards: Ward 11 - University-Rosedale

**Planning Application Number: 19 121406 STE 11 OZ**

### **SUMMARY**

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At its meeting on February 26, 2019, City Council directed City Planning staff, in consultation with appropriate staff in Municipal Licensing and Standards, Toronto Building, Economic Development and Culture and Legal Services, to conduct an analysis of restaurant and bar uses in Kensington Market and to report back on actions to protect the mix of uses in Kensington Market and control the impacts of restaurant and bar uses.

City staff are recommending a multifaceted approach to protecting the retail mix and mitigating the impact of restaurants and bars that includes a planning intervention and a community-based solution. The planning intervention recommends amending the zoning by-laws to limit the size of restaurants and bars in Kensington Market to 100 square metres. The recommended community solution is the establishment of a steering committee comprised of residents, businesses and relevant City staff, that would meet on a regular basis with the aim of improving communication, co-ordination and incident responses. This report also highlights and summarizes concurrent City initiatives and studies that are related to small scale businesses and the impacts of restaurants and bars in Kensington Market.

Based on the feedback staff received during the consultation process, and as part of further study for the mix of uses, staff are also recommending that a separate study be conducted on strategies to regulate chain store retail in Kensington Market.

### **RECOMMENDATIONS**

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The City Planning Division recommends that:

1. City Council amend Zoning By-law 438-86, as amended, substantially in accordance with the draft Zoning By-law amendment attached as Attachment No. 4 to this report (October 15, 2019) from the Director, Community Planning, Toronto and East York District.

2. City Council amend Zoning By-law 569-2013 substantially in accordance with the draft Zoning By-law amendment attached as Attachment No. 5 to the report (October 15, 2019) from the Director, Community Planning, Toronto and East York District.
3. Within three years of the restaurant size restriction of the attached by-laws coming into force and effect, City Council direct the Director, Community Planning, Toronto and East York District, in collaboration with other relevant divisions, to report back to Toronto and East York Community Council on the effectiveness of the by-laws.
4. City Council support the establishment of a steering committee comprised of residents, businesses, and relevant City staff, including Municipal Licensing and Standards and Toronto Building that would meet regularly to address community concerns regarding the City's by-laws and its enforcement, and to keep an open dialogue between the City and the local community.
5. City Council request the Chief Planner and Executive Director, City Planning Division to study and analyze strategies to regulate chain store retail in Kensington Market and to report back on his findings Q4, 2020.

## **FINANCIAL IMPACT**

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The recommendations in this report have no financial impact.

## **DECISION HISTORY**

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### *July 1991 Council Decision*

At its meeting held on July 8, 1991, City Council amended Zoning By-law 438-86 in Kensington Market between Bellevue Avenue and Spadina Avenue by restricting the size, number and location of bakeshops, caterer's shops, clubs, places of amusement, places of assembly, restaurants, and take-out restaurants in Kensington Market.

### *2015 Study Recommendations*

On July 16, 17, 18, and 19, 2013, City Council adopted a motion directing staff to report to the Toronto and East York Community Council on the feasibility of amending the Zoning By-law with respect to implementing further restrictions on restaurants and bar uses in Kensington Market. In their report, dated August 14, 2015, staff did not recommend further restrictions on restaurant and bar uses. Staff, however, recommended investigating opportunities and tools to support locally-owned, small business enterprises in Kensington Market; and co-ordinating final study recommendations with the Kensington Market Heritage Conservation District Study to help preserve the scale and character of Kensington. A link to the 2015 staff report may be found here:

<https://www.toronto.ca/legdocs/mmis/2015/te/bgrd/backgroundfile-82900.pdf>

## ISSUE BACKGROUND

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On February 26, 2019, City Council directed City Planning staff, in consultation with appropriate staff in Municipal Licensing and Standards, Toronto Building, Economic Development and Culture and Legal Services, to conduct an analysis of restaurant and bar uses in Kensington Market and to report back on the actions to protect the mix of uses in Kensington Market and control the impacts of bar and restaurant uses.

Kensington Market is an area known for its unique character and rich cultural history. The Kensington Market is bounded by four major streets: Dundas Street West to the south; Spadina Avenue to the east; College Street to the north; and Bathurst Street to the west. Kensington Market is a mixed-use area with predominantly residential properties located in the western portion of the study area and a mix of commercial/retail and residential in the eastern portion. The area's unique characteristics include a blending of residential and commercial uses, and a lack of the typical urban distinction between public and private space. Kensington Market is the result of years of small and incremental changes that transformed the area from one of a residential nature to one characterized by a variety of commercial and residential forms and uses. As per the 2011 census data, the population of Kensington Market was approximately 4,000 residents. This figure likely has not changed much since given the relative stability of residential development within the study area.

In recent years there has been a growing concern from local residents about an increase in the number of restaurants and bars within Kensington Market, which have created conflicts with adjacent commercial and residential uses. In particular, it has been raised that an increase in restaurants and bars has contributed to unruly behaviour of patrons that spills out onto residential streets, or noise impacts from back patios on nearby residential properties.

In addition, there has also been concern related to large numbers of restaurants clustered close together as this can result in garbage and traffic nuisances, and can also impact the viability of other commercial activity in the neighbourhood. Residents and businesses are looking to protect the vibrancy of Kensington Market's main streets, which contain a broad mix of uses to meet the daily needs of area residents and visitors to the market.

### Study Area

The council motion requested a focus on bars and restaurants. As such, staff initially focused the study on properties at the eastern portion of Kensington Market that are designated *Mixed Use Areas* in the Official Plan and are zoned Commercial-Residential in the Zoning By-laws. This includes Augusta Avenue, Nassau Street, Kensington Avenue, and St. Andrew Street.

As the study progressed, some of the planning tools that staff studied and considered recommending included the predominantly residential properties located on the western portion Kensington Market, and which are designated *Neighbourhoods* in the Official Plan and zoned Residential in the Zoning By-laws. As such, the study area was

expanded to include all properties bounded by College Street, Spadina Avenue, Dundas Street West and Bathurst Street.

See Attachments 1 and 3 of this report for the Official Plan Land Use Designation map and Zoning By-law map.

### **Provincial Policy Statement and Provincial Plans**

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. The PPS sets the policy foundation for regulating the development and use of land. The key objectives include: building strong communities; wise use and management of resources; and, protecting public health and safety. City Council's planning decisions are required to be consistent with the PPS.

The Growth Plan for the Greater Golden Horseshoe provides a framework for managing growth in the Greater Golden Horseshoe including: directions for where and how to grow; the provision of infrastructure to support growth; and protecting natural systems and cultivating a culture of conservation. City Council's planning decisions are required by the Planning Act, to conform, or not conflict, with the Growth Plan for the Greater Golden Horseshoe.

### **Official Plan**

Development in *Mixed Use Areas* that are adjacent to or close to *Neighbourhoods* are required to be compatible with those *Neighbourhoods*. *Neighbourhoods* are considered physically stable areas made up of residential uses in lower scale buildings. Chapter 2.3.1 Healthy Neighbourhoods includes policies requiring development in *Mixed Use Areas*, *Regeneration Areas* and *Apartment Neighbourhoods* that are adjacent or close to *Neighbourhoods* to be compatible with those *Neighbourhoods*. Additionally, in Chapter Four, Neighbourhoods, it is also noted that a key objective of the Plan is that new development respect and reinforce the general physical pattern in a Neighbourhood.

The *Mixed Use Areas* designation also provides for a broad range of commercial, residential and institutional uses subject to a number of development criteria as identified in chapter 4.5. Namely, Policy 2a) requires that in *Mixed Use Areas* development will create a balance of high quality commercial, residential, institutional and open space uses that reduce automobile dependency and meet the needs of the local community.

The Study Area generally follows the boundary of Site and Area Specific Policy 197 in the Official Plan (Attachment 2). This policy requires that any public or private development and works should be consistent with the special characteristics of Kensington Market, including:

- Low scale buildings with retail at grade;
- Minimal setbacks; and
- Open air display of goods on the boulevard.

## **Zoning Exception for Restaurant Uses**

The study area falls under restriction 12(2)240 under Zoning By-law 438-86, that is carried over under the new harmonized City-wide By-law 569-2013. It places a maximum limit of 200 square metres of non-residential gross floor area on the following uses: bakeshop, caterer's shop, club, place of amusement, place of assembly, restaurant, and take-out restaurant. None of these uses may be located above the first story above grade and only one of these uses may be located in any one building. Additionally, these uses must be located on a lot as such lot existed on July 9, 1991.

Under this zoning exception, an application for a *restaurant use* for a lot size which changed after July 9, 1991 would not be permitted. Office, storage rooms, washrooms, and staff rooms located in the basement or on a different storey than the restaurant are not included in the gross floor area calculation.

## **Zoning By-law 438-86**

The *Mixed Used Areas* in the study area are predominantly zoned CR T2.0 C2.0 R1.5 under former City of Toronto Zoning By-law 438-86. The 'CR' zoning classification permits a variety of uses including residential, parks, community services, institutional, commercial, retail (which includes restaurants) and office with a total permitted density of 2.0 times the area of the lot. Of this total density, 2.0 times the area of the lot is permitted to be commercial and 1.5 times residential. The maximum permitted height is 12 metres (approximately 4 storeys).

Zoning By-law 438-86 defines restaurants as a "building or portion of a building used for the preparation and cooking of meals and the sale of food and beverages to the public while they are seated for consumption on the premises" and permits a number of accessory uses. Additionally, patios associated with restaurants are permitted so long as the CR lot on which they are located is at least 10 metres from the nearest Residential (or R zoned) lot. As restaurants in Kensington Market were restricted to the ground floor following the 1991 Kensington Restaurant and Bar Study, patios must also only be located on the ground floor. There is no separate definition of 'bar' in Zoning By-law 438-86. Entertainment facility uses (i.e. nightclubs), are defined in Zoning By-law 438-86 as a building or portion of a building used for dance floors, stages and food and beverage consumption, and are not permitted in the CR zone.

The *Neighbourhoods* designated areas in the study are predominantly zoned Residential (R). This use category permits low-rise residential uses and a range of non-residential uses such as schools, places of worship, community centres and other community facilities. The maximum permitted building height is also 12 metres.

## **Zoning By-law 569-2013**

Under the Harmonized City-wide Zoning By-law 569-2013, the majority of the study area follows the same boundaries and provisions as Zoning By-law 438-86. The

Commercial Residential properties are also located within Development Standard Set 2 (SS2), a designation typically assigned to main streets outside of the immediate downtown.

By-law 569-2013 includes restaurants and bars under the definition of eating establishments with the following definition: "premises where food or beverages are prepared and offered for sale to patrons for immediate consumption on the premises while they are seated, and which may include an incidental take-out service". The By-law exempts areas for associated offices, storage rooms, and staff rooms located in the basement or on a different storey than the eating establishment from the GFA calculation of the eating establishment. Outdoor patios associated with eating establishments are restricted to a maximum size of 30 square metres or 30% of the interior floor area of the premises, whichever is greater, and must be set back at least 30 metres from any Residential lot. Additionally, an outdoor patio located above the first storey must be at least 40 metres from any Residential (or R zoned) lot. Again, this does not apply to Kensington Market, as restaurants and patios are already restricted to the ground level. Zoning By-law 569-2013 also does not include a separate definition for 'bar'. Nightclub uses, which have a similar definition as 'entertainment facilities' in Zoning By-law 438-86, are not permitted in the CR zone.

### **Distinguishing Bars versus Restaurants and Similar Uses**

Neither Zoning By-law 438-86 nor 569-2013 differentiates between restaurants that serve alcohol versus ones that do not. Historically, By-law 438-86 contained a 'Tavern' definition, however, this was deleted from the By-law due to the fact that the alcohol licensing process by the Alcohol and Gaming Commission (AGCO) was linked to the service of food as a specific use requirement and required that a minimum of six menu items be offered. This use requirement made it very difficult to distinguish a bar (or tavern) from a restaurant as every licensed establishment technically had to function as a restaurant. This lack of ability to distinguish between bar and restaurant has, and continues to, create difficulty in attempting to deal with land use conflicts created by late night drinking establishments. The consequence is that any measures taken to mitigate issues created by late night drinking establishments are equally placed on daytime restaurants and cafes, many of which may not necessarily be contributing to the problem.

As well, previous restaurant studies considered all uses related to restaurants, such as bake shops, places of assembly and places of amusement, under the same umbrella and therefore resulting by-laws applied to all such uses equally. To scope the study and address the root of the problem, staff narrowed the focus to restaurants/eating establishments specifically and the by-law provisions attached to this report apply to restaurants/eating establishments only.

### **Community Consultation**

Staff held a community consultation meeting on September 26, 2019 to obtain feedback from area residents regarding the potential conflicts with the adjacent residential neighbourhood created by bars and restaurants. During this meeting, staff updated the public on the progress of the study, reviewed key findings and obtained feedback on

planning related interventions that staff were considering recommending. The meeting was held at the St. Stephen-in-the-Fields Church on College Street and was attended by approximately 40 people. Comments at the meeting were generally focused on the following issues:

- Lack of enforcement - concern over the ability of enforcement agencies such as the AGCO, Municipal Licensing & Standards (MLS), Toronto Building and Toronto Police Services to act quickly and prosecute businesses which demonstrate bad behaviour and are the main source of conflict with residential uses;
- A number of restaurants functioning more like bars later in the evening where tables are cleared to make room for dancing/standing room only;
- Unruly behaviour by intoxicated patrons spilling out onto the street and the surrounding residential streets at closing time with the accompanying noise, garbage, and public urination;
- Noise from both inside venues and on patios outside venues;
- Considerable traffic congestion late at night with cabs and ride-hailing services on Augusta Avenue and surrounding neighbourhood streets; and
- Concerns of gentrification, housing affordability, and lack of preventative measures that residents can take.

During the course of the study, City Planning staff also held multiple meetings with both the Kensington Market Business Improvement Area (BIA) as well as with the following local residents' associations: Friends of Kensington Market, Kensington Residents Association and the Kensington Market Action Committee.

Staff have also received comments from the residents' associations, the Kensington Market BIA and the community regarding the planning related interventions. The feedback that was received on these interventions is discussed in the Comments section of this report.

### **Planning Review Panel**

Staff consulted with the Toronto Planning Review Panel, a 32-member advisory board consisting of randomly selected residents from across Toronto, representing the diversity of the city's population. Following a staff presentation on the study, group discussions revolved around defining Kensington Market as either a destination for both tourists and city residents alike, or as a market meant to meet the needs of its own nearby residents. An analysis of this discussion revealed that the Planning Review Panel considered both to be equally weighted – the Market should act both as a destination, and as a place to meet the daily needs of its local residents. The Panel's feedback on the potential planning intervention options are referred to in the Comments section of this report.

### **Agency Consultation**

The findings of this study were discussed with appropriate City divisions such as Municipal Licensing and Standards (MLS), Toronto Building, Economic Development and Culture and other sections within City Planning. Responses received have been used to assist in the formulation of the attached by-law and recommendations of this report.

While the results of this review should aid in addressing some of the conflicts that exist between businesses in the study area and the adjacent residential neighbourhoods, it is recognized that enforcement and zoning/licence compliance issues will need to be addressed to solve a number of the conflicts that currently exist. City Planning, MLS and Toronto Building will continue to play a significant role beyond the conclusion of this study to ensure appropriate efforts are made through education and enforcement.

## COMMENTS

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### Retail Mix

Kensington Market is a unique cultural and commercial cluster in the City of Toronto. An analysis of the retail mix of Kensington Market was completed by Three Sixty Collective, a group commissioned by the City for the Current and Future State of Toronto's Main Streets Study. Comparative retail data was provided for ten other case study areas throughout the city (e.g. Danforth Mosaic, Historic Queen East, Yonge-Carlton, etc.). The following chart provides retail mix data in Kensington Market from 2007 to 2017:

	2007	2007 % of Total Retail Mix	2017	2017 % of Total Retail Mix	Change 2007-2017
Total # of Retail Units	263		264		0.38%
Food Services Businesses (Restaurants and Bars)	39	15%	87	33%	123%
Food Retail Businesses (Supermarkets, Vegetable Grocers, Meat Markets, etc.)	47	18%	28	11%	-40%
Other Retail (Clothing, Health & Personal Care, Other)	108	41%	82	31%	-24%
Vacancies	21	8%	23	9%	10%

Despite the total number of retail units in Kensington Market remaining constant, there have been 48 new food service related businesses that have opened in the market from 2007-2017. This represents an increase of 123%, markedly greater than the average



increase of food services from the eleven case study areas of 26%. Additionally, the city average of food services as a percentage of the retail mix is 21%, whereas in Kensington, food services make up 33% of all businesses.

In contrast, 19 food retail businesses (such as vegetable grocers and meat markets) have closed since 2007, representing a 40% decrease; far greater than the 10% average decrease of food services from the eleven case study areas.

Additionally, 26 businesses in the other retail category (such as clothing retailers) have closed, representing a 24% decrease since 2007. Vacancies, on the other hand, have remained relatively consistent, with 23 vacant storefronts in 2017, representing 9% of the total retail mix; a relatively healthy proportion for vacancies.

The analysis of the mix of retail uses within Kensington Market confirms the perceived growth of restaurants and bars over the years at a rate greater than the city average. As restaurants and bars increasingly locate their businesses in the market, small independent retailers (both food retailers and non-food retailers), that contribute to the unique character of the market, are at the risk of being pushed out by rent increases and forces of gentrification, while complaints from residents about nuisance, noise, and lack of enforcement related to restaurants and bars may become more frequent.

### **Scale of all Retail Commercial Uses**

The existing buildings are generally built on small lots with narrow frontages, consistent with the older built form fabric of Toronto's original residential neighbourhoods. The Official Plan and the Zoning By-laws require the ground floor in CR zones and Mixed-Use Areas to be non-residential and therefore the size of a business generally corresponds to the footprint of the ground floor and basement.

In 2017, of the 264 businesses recorded, the 28 food retail units (supermarkets, vegetable grocers, etc.) had an average floor space of approximately 72 square metres; non-food (clothing, jewelry, etc.) retailers had an average floor space of 71 square metres, with sizes ranging from 10 to 600 square metres; and services (dentists, barber shops, laundromats, tattoo parlors, etc.) had an average floor space of 60 square metres, with actual sizes ranging from 50 to 200 square metres.

### **Restaurant and Bar Use**

An analysis of the current zoning permissions for restaurant use compared to the actual existing size of restaurants in Kensington revealed that the average size of the 87 restaurants and bars in Kensington Market in 2017 was approximately 66 square metres, whereas the Zoning By-law, as amended as part of the 1991 study, permits a maximum restaurant size of 200 square metres. Staff have also reviewed the results of the following restaurant studies which further limited the maximum size of restaurants:

- Queen Street West between Gladstone Avenue and Dovercourt Road (2009)
- Ossington Avenue between Dundas Street West and Queen Street West (2009)
- Harbord Street between Bathurst Street and Spadina Avenue (1989)

The Queen Street West study resulted in a By-law which similarly placed a maximum of 200 square metres on the size of a restaurant. The Ossington Avenue Study resulted in a By-law that placed a maximum of 175 square metres on the size of a restaurant. The Harbord Street study resulted in a By-law that placed a maximum of 150 square metres on the size of a restaurant.

## Employment

The following chart provides employment data for the Kensington Market study area from 2013 through to 2018 collected by the Toronto Employment Survey:

Sector	2013	2014	2015	2016	2017	2018	Change 2013-2018	Growth/Decline 2013 - 2018
Construction	0	0	0	0	3	3	3	N.A
Manufacturing	3	2	2	3	8	13	10	333%
Wholesale Trade	35	40	39	37	55	43	8	23%
Retail Trade	430	466	511	499	461	450	20	5%
Information and Cultural Industries	10	18	18	10	10	12	2	20%
Finance and Insurance	1	1	3	3	0	0	-1	-100%
Real Estate and Rental and Leasing	3	2	2	2	2	2	-1	-33%
Professional, Scientific, and Technical Services	12	25	27	32	54	70	58	483%
Educational Services	25	25	18	13	12	18	-7	-28%
Health Care and Social Assistance	75	77	77	73	76	76	1	1%
Arts, entertainment and recreation	1	0	1	1	20	20	19	1900%
Accommodation and Food Services	352	362	451	509	555	604	252	72%
Other Services (Except Public Administration)	173	161	134	389	284	304	131	76%
Public Administration	3	3	0	0	0	0	-3	-100%
<b>Total</b>	<b>1123</b>	<b>1182</b>	<b>1283</b>	<b>1571</b>	<b>1540</b>	<b>1615</b>	<b>492</b>	<b>44%</b>

The data reveals that between 2013 and 2018, 492 new jobs were created in Kensington Market, representing an increase in 44%. Of the 492 new jobs, most (252) were within the Food Services Sector. Only 20 new jobs were created within the Retail Trade Sector during this same time period. The employment survey indicated that the increase in restaurants and bars has provided the market with a large supply of new employment.

### **Complaints and Convictions**

The following data was received from MLS regarding complaints and convictions on all businesses located within Kensington Market:

Summary	2014	2015	2016	2017	2018
Complaints	37	43	36	33	53
Convictions	14	8	5	1	0

The data reveals that, while complaints and service requests have increased from 37 in 2014 to 53 in 2018, convictions have actually decreased from 14 in 2014 to zero in 2018. Complaints capture public complaints on all by-law infractions. These complaints are not limited to noise complaints, but include all retail related complaints, such as marketing displays that illegally infringe upon the public sidewalk. Conviction numbers for the most recent years may not be accurately reflected here, as they typically take a number of years to work their way through the court system. Following a complaint, by-law enforcement will typically first educate the offending business on why the complaint was made, what by-laws were infringed upon, and what actions to take to be in compliance. Further, it is often the case that a single business can generate multiple complaints per year.

### **Multi-faceted Approach to Restaurants and Bars**

A multi-faceted approach to the Kensington Restaurant and Bar Study is being recommended, with the inclusion of a planning intervention, a community-based solution, as well as recommendations to come out of concurrent City initiatives and studies related to Kensington Market.

#### **Planning Intervention Options**

City Planning Staff have explored a suite of planning options which were presented for input to the Kensington Market community, the local residents' associations, the Kensington Market BIA, the Planning Review Panel, and various City divisions. The following provides an analysis of the planning tools that were considered, along with the feedback that was received, and City Planning staff's ultimate recommendation for each option.

##### *1) Restricting Maximum Size of Restaurants*

As the City-wide standards, Zoning By-laws 438-86 and 569-2013 both contain a maximum permitted non-residential GFA of 400 square metres for any restaurant/eating establishment located on a lot that is closer than 6.1 metres to the nearest Residential

(or R zoned) lot. However, as previously mentioned, the Zoning By-laws further restrict the size of restaurants and entertainment facilities in Kensington Market to a maximum of 200 square metres. During the study, staff considered further restricting the size of restaurants to between 100 and 175 square metres.

Through analysis, staff determined that of the 87 restaurants and bars currently operating in Kensington Market ten are larger than 100 square metres (11% of the total). Of these ten restaurants, nine are larger than 125 square metres (10%), and eight are larger than 150 Square metres (9%). Staff also determined that the average size of restaurants in Kensington Market is 66 square metres.

Implementing a size restriction would allow for controlled and balanced growth, while discouraging new, larger establishments from establishing in the market. The concern with large establishments is that they characteristically generate higher levels of noise, garbage, disruptive behaviour, and traffic. Additionally, larger establishments are more likely to have a regional draw which can change the character of the neighbourhood to a regional entertainment destination. Particularly, when large establishments are located within close proximity to one another, they are more likely to have a regional draw and become a destination as patrons know that if one establishment reaches its capacity for the evening, they can easily move to the next establishment, which helps to further increase the popularity of the area. Size restrictions help to reduce the intensity of use, thus minimizing the impacts on the surrounding community.

To address the issue of size, staff recommend a restaurant GFA maximum of 100 square metres, which would include all useable space, but would exclude areas exclusively used for food preparation, bathrooms, storage and mechanical areas. The proposed size is deemed appropriate as the vast majority of existing restaurants have a useable gross floor area of 100 square metres or less, therefore, a non-residential GFA cap of 100 square metres would allow for the expansion of all but ten restaurants in the Study Area.

For those existing establishments that exceed 100 square metres, they will be deemed legal non-conforming with respect to their size, and can continue as such even if ownership change. If the existing uses are discontinued, then the legal non-conforming protection will cease and the recommended by-law will apply in full.

The City of Toronto has used this restriction several times on previous restaurant studies, including the 1991 Kensington Market Restaurant Study, which restricted floor size to 200 square metres. Other examples include the 2009 Ossington Avenue Restaurant Study, which restricted restaurant size to 175 square metres; the 2009 Queen Street West Restaurant Study (between Dovercourt Road and Gladstone Avenue), which restricted restaurant sizes to 200 square metres; and the 1989 Harbord Street Restaurant Study, which restricted restaurant sizes to 150 square metres.

Feedback from the various stakeholders consulted revealed that there was near unanimous support for imposing size restrictions on restaurants. Members of the community specifically identified a desire to cap the floor space to the average size of restaurants, approximately 70 square metres, while the Kensington Market BIA preferred a limit in the range of 150 square metres.

## *2) Permitting Retail Uses in Residentially Zoned Areas*

City Planning staff considered amending Official Plan policies for *Neighbourhoods* designated lots and zoning by-law provisions for Residentially zoned lots to permit small scale retail stores. The retail stores would have only been permitted on the ground levels of the existing buildings on the lots. The purpose of these amendments was to encourage small scale retailers to open in the neighbourhood by increasing the geographical area in which they would be permitted to operate.

Feedback from the consultation process varied. The community expressed a strong concern that this option may have the unintended consequence of displacing residents and taking away housing stock from an increasingly unaffordable neighbourhood. The community also expressed concerns related to the negative impacts (waste storage and loading) associated with non-residential uses on predominantly residential streets. The Kensington Market BIA and residents' associations held indifferent opinions on this option, while the Toronto Planning Review Panel presented mixed support.

Staff have decided not to recommend this option due to the potential loss of residential units in the neighbourhood, and the possibility of existing retailers moving from the existing mixed-use areas towards the residentially zoned areas of Kensington Market, causing a hollowing out of small scale retailers along the main commercial streets of the neighbourhood, thereby further exacerbating the central issue.

## *3) Restricting Accessory Uses*

Accessory Uses are defined as areas within a restaurant or eating establishment that are allocated towards a stage, dance floor, disc jockey, teletheatre gambling and sound room. Currently, Zoning By-law 438-86 permits up to 47 square metres or 6% of the non-residential gross floor area, whichever is lesser, to be occupied by such uses, while Zoning By-law 569-2013 permits up to 50 square metres or 6% of the non-residential gross floor area, whichever is lesser. Staff considered further limiting the permitted size of the accessory uses to reduce the potential of a restaurant from functioning more as a bar/entertainment facility than a traditional restaurant.

Feedback from the consultation process acknowledged the rich history of live music and the need to balance the negative impacts of accessory uses, with the desire to provide ample opportunity for live music to continue to operate in Kensington Market. Feedback from MLS staff also acknowledged the difficulty in the enforcement of accessory use restrictions, while the community also raised concerns regarding the effectiveness of further restrictions based on the difficulty in enforcing such restrictions.

If staff's recommendation in Option 1 regarding limiting the size of restaurants to 100 square metres is adopted, the current provisions for accessory uses would permit 6% of the 100 square metres to be allocated towards accessory uses, equating to 6 square metres. Staff are of the opinion that restricting the size of the restaurants sufficiently limits the size of accessory uses, and as such, do not recommend any changes to this provision. Staff note that the issue raised by the community, related to the enforcement of such provisions, is best addressed through the establishment of a steering committee

that would meet on a regular basis and involve relevant City staff and the residents and businesses of Kensington Market. The steering committee is elaborated on later in this report.

#### *4) Limiting Building Frontages*

Imposing a maximum width on building frontage width would help maintain the fine grain retail character of Kensington Market. It would ensure that single businesses don't take up large blocks of space along the commercial streets of Kensington Market, which contribute to the Market's vibrancy and street life.

Feedback from the consultations indicated support for this option. However, there were unanswered questions related to the precise limit on the width and the how it will be applied.

This option is being explored as part of the Kensington Market Heritage Conservation District (HCD) Plan, and as such, may be included in the guidelines and policies of the final HCD Plan. More information on that plan can be found later in this report.

#### *5) Further Restricting Commercial Patio Sizes*

Commercial patios contribute to vibrancy and eyes on the street, but they can also create unintended consequences by being a nuisance to the neighbourhood and creating conflict between residential and restaurant/bar uses. Current zoning under By-law 569-2013 allows for a maximum patio size of the greatest of 30 square metres or 30% of the interior floor area of the premises it is associated with. Staff considered further restricting maximum size of patios to 20 square metres to mitigate the nuisance issue.

Feedback from the consultation process revealed that the community had few remarks on the restricting of patio sizes, but noted that enforcement of the City's by-laws, particularly the Noise By-law, needed to be strengthened for patios within Kensington Market.

Analysis of existing patios indicated that there are only two commercial patios currently larger than 20 square metres. Staff were of the opinion that the positive attributes associated with commercial patios in Kensington Market should be maintained, and as such, did not recommend further restrictions. Staff note that the main issue from the community, related to the enforcement of the Noise By-law provisions, is best addressed by the creation of the aforementioned steering committee.

#### *6) Implementing a Separation Distance Requirement between Restaurants*

Staff considered implementing a minimum separation distance requirement between restaurants in the study area. The purpose of this approach would have been to reduce the number of restaurants permitted on each street, while also spreading out the impacts of such restaurants more evenly across the study area.

the feedback from the majority of stakeholders revealed that there was little support for this option given the potential unintended consequences of driving up demand and cost for the limited number of retail spaces that would be available for restaurants, and thereby attracting larger, chain restaurants to move into Kensington Market. The Kensington Market community, on the other hand, were in favour of such limits.

Staff decided not to recommend this option due to the aforementioned unintended consequences. Staff also feared that this option, over time, may cause restaurants to migrate away from their current locations at the edge of the study area near Dundas Street West and College Street, and closer to the centre of Kensington Market, causing even greater nuisance.

### *7) Implementing a Concentration Cap on Restaurant Uses*

Staff considered enacting a concentration by-law to limit the number of restaurants in the study area. Such an approach would have resulted in limiting a maximum number of restaurants for each commercial street within Kensington Market based upon the principle that restaurants should occupy no more than 25% of the properties on a main street.

A similar concentration provision was applied in 2013 as part of the Queen Street West Restaurant and Bar Study (between Lansdowne Avenue and Roncesvalles Avenue). After a five year review, the concentration cap was removed in 2018. The review indicated that there was an overall decline in eating establishments along this stretch of Queen Street West during this period, likely due to changing market forces within the city as a whole. Additionally, there were difficulties related to the logistics of administering the concentration provision of the By-laws. The review also found that there were concerns from the community that the limited number of business licences allocated towards restaurants and eating establishments would artificially increase their value, thereby attracting chain restaurants to these units. The 2018 follow-up to the 2013 Queen Street West Restaurant and Bar Study can be viewed here: <https://www.toronto.ca/legdocs/mmis/2018/te/bgrrd/backgroundfile-114274.pdf>

Similar to Option 6, the feedback from the majority of stakeholders revealed that there was little support for this option given the potential unintended consequences of driving up demand and cost for the limited number of retail spaces that would be available for restaurants. The Kensington Market community, on the other hand, were in favour of such limits.

Staff decided not to recommend this option due to the unintended consequences and the general lack of effectiveness as elaborated on in the Queen Street West 2018 report.

### **Community Based Solution**

*Establishment of a Kensington Market Restaurant and Bar Steering Committee with relevant City Divisions*

Staff recommend forming a steering committee with relevant City divisions, including City Planning, MLS and Toronto Building, to meet regularly with the Kensington Market community, BIA and residents' associations. The intent of these meetings is to improve communication between the City, and the residents and businesses of Kensington Market, creating opportunities to express concerns and ask questions directly to the appropriate City staff. The Steering Committee would prove particularly useful in addressing the residents' questions and concerns related to the new Noise By-law and its enforcement.

## **Concurrent Initiatives and Studies**

### *1) Heritage Conservation District Plan (Active)*

The Heritage Conservation District (HCD) Plan looks to maintain the heritage attributes defined by the HCD study. These include maintaining the low-rise nature of the market, the narrow façades of buildings, and the open air quality of marketing displays. Restaurants and patios were not specified as a heritage attribute. Learn more about the plan here:

<https://www.toronto.ca/city-government/planning-development/planning-studies-initiatives/kensington-market-heritage-conservation-district-plan/>

### *2) Current and Future State of Toronto's Main Streets (Active)*

Staff from the Economic Development and Culture Division are currently conducting a study of the current and future state of retail on Toronto's main streets. The study recognizes the importance of small, independent businesses to Toronto's economy and neighbourhood structure and will identify the challenges being faced by small independent retail in areas like Kensington Market where high rents and other issues make it difficult to operate a small business. The intent of the study is to develop programs and supports that will encourage the continued viability of small, independent retail in Toronto.

Phase 1 of the study, which was research driven, identified the following City wide trends:

- Non-food retail is decreasing as a percentage of the business mix;
- Services, especially food services (restaurants) are increasing;
- Both the number and percentage of micro-businesses (1-5 employees) is decreasing in the sector; and
- Cost of floor space has increased quite significantly from 2013 to 2018, in many areas of the City.

Phase 2 of the Study will report on practical policy, program and advocacy recommendations which the City could implement to better ensure the sustainability of small and independent main street businesses in the future. The General Manager of Economic Development and Culture will be reporting to Committee on the results of the study in Q1 of 2020.



Learn more about the study here: <https://www.toronto.ca/community-people/get-involved/public-consultations/retail-main-streets-study/>

### *3) Toronto Nighttime Action Plan (Implementation Phase)*

The Toronto Nighttime Action Plan provides a coordinated approach to the nighttime economy. The purpose of the plan is to consider the opportunities of proactively planning the city at night, with recommendations relevant to independent businesses operating at night and the local community as a whole. Some key recommendations include:

- Development of a safer venue industry guide that incorporates safer space best practices, information on responsible consumption and safe working environments;
- Development of a list of good neighbour policies for late-night businesses based on best practices around the world; and
- Providing access to adequate late-night transit options.

The report can be viewed here:

<https://www.toronto.ca/legdocs/mmis/2019/ec/bqrd/backgroundfile-134446.pdf>

### *4) Noise By-law Updates (Complete)*

In 2019, Municipal Licensing and Standards updated the Noise By-law. The Noise By-law amendments, which came into effect on October 1, 2019, include:

- A dedicated noise team;
- Updated definitions to improve clarity/consistency of by-law (e.g. ambient sound level, amplified sound, etc.);
- Quantified noise level limits for amplified sound to enhance objectivity;
- Introduction of "unreasonable and persistent noise" provision to be applied only when noise is not captured by a specific provision; and
- A more streamlined exemption permit process, with the ability to revoke permits and impose conditions when necessary, including submission of a noise mitigation plan.

It should also be noted that the Noise By-law regulates episodic noise, including amplified sound and noise from construction. Toronto Police Services continues to respond to noise complaints from parties or events where there is a risk to public safety (for example, disorderly conduct). Updates to the Noise By-law can be viewed here: <https://www.toronto.ca/city-government/public-notices-bylaws/bylaw-enforcement/noise/>

### *5) Sidewalk Cafes and Marketing Displays By-law (Complete)*

The new harmonized by-law for Sidewalk Cafes, Parklets and Marketing Displays came into effect on September 1, 2019. Encroachments by marketing and product displays onto City property are permitted for free if they are equal to or less than 0.8 meters from the building wall and 5.5 meters wide, and provide sufficient space for pedestrian movement (minimum of a 1.8 metres clearway). This applies to most properties along Baldwin Street, and some properties on Augusta Avenue and Kensington Avenue. The free marketing displays will help bring down marketing costs for small, independent

businesses. Additional information on the by-law can be found here: <https://www.toronto.ca/services-payments/streets-parking-transportation/enhancing-our-streets-and-public-realm/sidewalk-cafes-and-marketing-displays-bylaw/>

#### *6) Review of Licensing for Bars, Restaurants and Nightclubs (Active)*

Municipal Licensing and Standards, in consultation with other relevant divisions, is undertaking a review of licensing for bars, restaurants and nightclubs. The review will recommend changes to licensing categories, to provide clarity on requirements for bars and entertainment venues, restaurants, and nightclubs. Recommendations will aim to mitigate community nuisance and limit the impact of restaurants and nightclubs on residents through a risk-based licensing approach. A report to General Government and Licensing Committee is expected in 2020.

#### *7) Removal of Vacant Commercial Unit Tax Rebate Program (Complete)*

The Vacant Commercial Unit Tax Rebate Program ended in 2018. Previously, it allowed landowners to apply for a 30% rebate if their commercial properties were fully or partially vacant for 90 days. The original intent of this was to reduce pressure on landlords who were not earning any income on their rental properties due to vacancy. Critics argued that the program incentivized landlords to keep their storefronts vacant, reduced the supply of available retail space and contributed to increased rents. More details are available here: <https://www.toronto.ca/services-payments/property-taxes-utilities/property-tax/property-tax-rebates-and-relief-programs/vacancy-rebate-program/>

#### *8) Kensington Market BIA Streetscaping Master Plan (Active)*

The Kensington Market BIA is preparing a comprehensive streetscape Master Plan to guide future streetscape improvements. The goal of the Master Plan is to help the BIA identify a long term vision for streetscape improvements. Draft interventions include:

- Implementing an urban tree system to provide trees in strategic locations while keeping patios and store functions;
- Enhancing the existing lighting system to improve pedestrian comfort and safety;
- Improving the public waste bin disposal strategy; and
- Preserving and enhancing laneways, inner-blocks and private spaces.

#### **Chain Restaurants and Retail (Further Study)**

During the consultation process, stakeholders unanimously expressed a strong desire to maintain the independent, small scale nature of the area's businesses by restricting chain stores and restaurants. Although developing a chain store retail strategy was beyond the scope of this particular City Planning study, which was scoped to focus on mitigating the impacts of restaurants and bars on the neighbourhood, staff were of the opinion that such concerns did merit further study. As such, City Planning staff are recommending that a separate study be conducted on strategies to regulate chain store retail in Kensington Market. The separate study could be completed as part of the three year review of the proposed zoning by-law amendments, as recommended in Recommendation #3 of this report.

## **Conclusion**

A multi-faceted approach to the Kensington Market Restaurant and Bar Study is being recommended, with the inclusion of one planning intervention, a community-based solution, as well as recommendations to come out of concurrent city initiatives and studies impacting the future of Kensington Market. The planning intervention recommends amending the zoning by-laws to limit the size of restaurants and bars in Kensington Market to 100 square metres. The recommended community-based solution is the establishment of a steering committee comprised of residents, businesses and relevant City staff, that would meet on a regular basis with the aim of improving communication and enforcement. Next steps would include a follow-up on this report and a study on strategies to regulate chain store retail in Kensington Market.

## **CONTACT**

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## **SIGNATURE**

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Lynda H. Macdonald, MCIP, RPP, OALA, FCSLA  
Director, Community Planning, Toronto and East York District

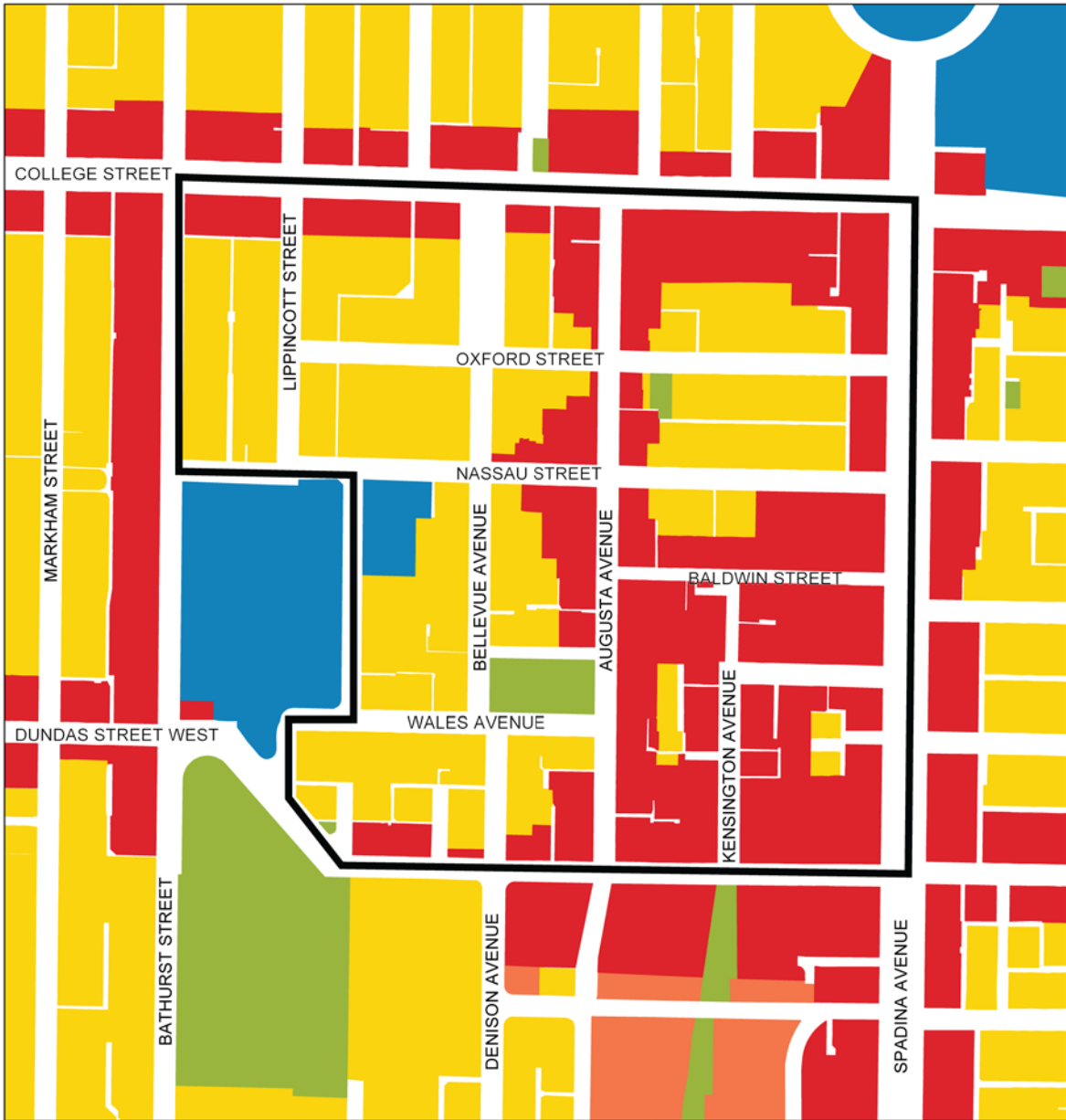
## **ATTACHMENTS**

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### **City of Toronto Data/Drawings**

- Attachment 1: Official Plan Land Use Map
- Attachment 2: Boundary of Site and Area Specific Policy 197
- Attachment 3: Zoning By-law 569-2013
- Attachment 4: Draft Zoning By-law 438-86 Amendment
- Attachment 5: Draft Zoning By-law 569-2013 Amendment

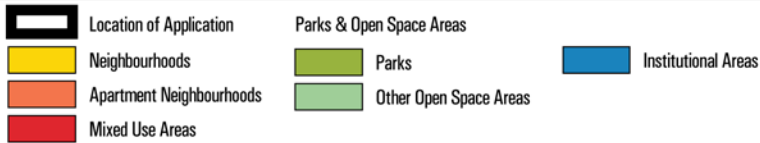
Attachment 1: Official Plan Land Use Map



Official Plan Land Use Map #18

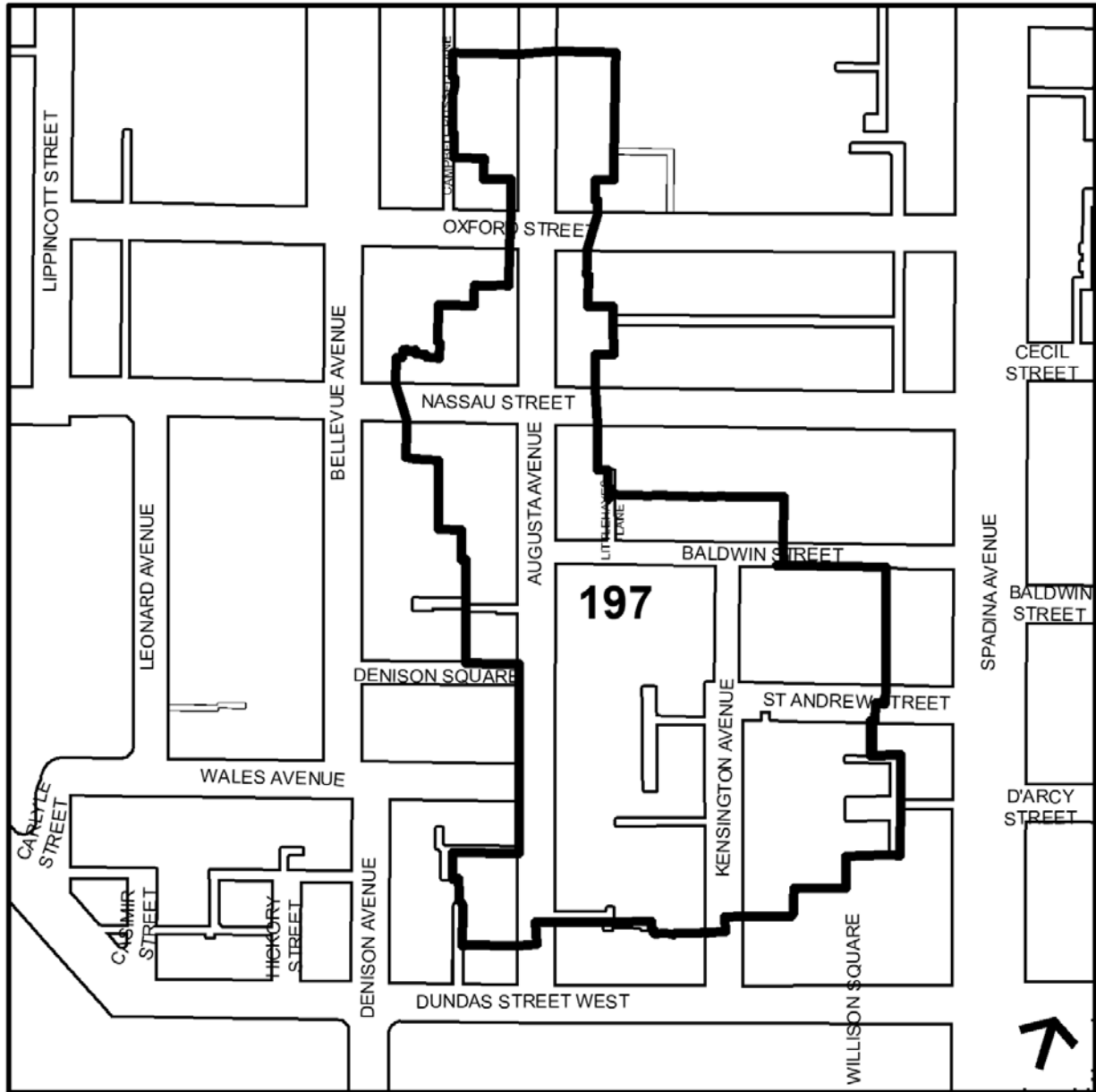
Kensington Market

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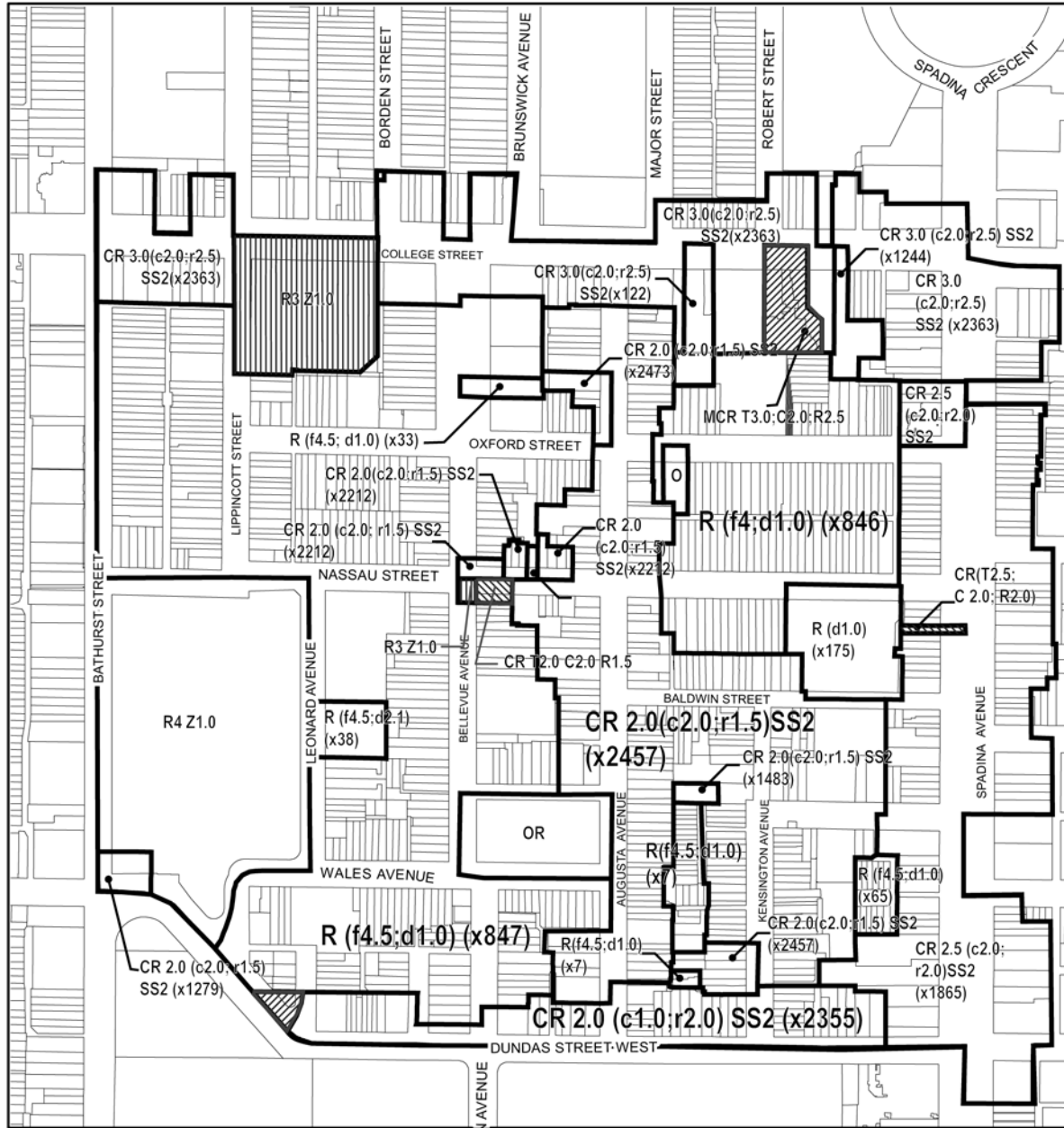


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Attachment 2: Boundary of Site and Area Specific Policy 197



Attachment 3: Zoning By-law 569-2013



Zoning By-law 569-2013

Kensington Market

File # 19 121406 STE 11 0Z

Location of Application

R Residential  
CR Commercial Residential  
O Open Space  
OR Open Space Recreation

See Former City of Toronto By-law No. 438-86

R3 Residential District  
R4 Residential District  
R4A Residential District  
CR Mixed-Use District  
MCR Mixed-Use District  
Q Mixed-Use District  
G Parks District

Not to Scale  
Extracted: 09/24/2019

## Attachment 4: Draft Zoning By-law 438-86 Amendment

Draft Zoning By-law Amendment will be made available prior to November 5, 2019  
Toronto and East York Community Council.

## Attachment 5: Draft Zoning By-law 569-2013 Amendment

Draft Zoning By-law Amendment will be made available prior to November 5, 2019  
Toronto and East York Community Council.