

March 21, 2022

Our File No.: 139017

BY EMAIL

Toronto Preservation Board
Email: hertpb@toronto.ca

Attention: Ellen Devlin

Dear Chair and Members of the Board:

Re: PB32.1 – Objection to Notice of Intention to Designate a Property under Part IV, Section 29 of the Ontario Heritage Act – 778 King Street West

Aird & Berlis LLP represents the owners of 778-788 King Street West in the City of Toronto (the “Site”), which includes 778 King Street West (the “Subject Property”).

The purpose of this correspondence is to advise the City, and the Toronto Preservation Board, that Council has failed to give notice of its Intention to Designate the Subject Property within the statutory timeframes set out in the Ontario Heritage Act and accordingly, is precluded from doing so now. Our reasons are set out below.

Our clients filed an application for a zoning by-law amendment to permit the construction of an 18-storey mixed-use building on the Site on November 17, 2021. A Notice of Complete Application was provided to our clients on January 5, 2022, confirming that our clients’ rezoning application was deemed complete as of **November 17, 2021**. A copy of the Notice of Complete Application is attached to this correspondence.

Council is required to give notice of intention to designate a property under s. 29(1) of the *Ontario Heritage Act* (the “OHA”) within 90 days of the statutory notice of a complete planning application pursuant to s. 29(1.2) of the OHA. The “prescribed event” contemplated in s. 29(1.2) of the OHA is defined in s. 1(1)2 of O. Reg. 385/21:

1. (1) For the purposes of subsection 29 (1.2) of the Act, the following events that occur on or after July 1, 2021 are prescribed in respect of a property in a municipality:

...

2. A council has completed giving notice in accordance with clause 34 (10.7) (a) of the Planning Act of an application for an amendment to a by-law referred to in that clause, if the subject land to which the proposed amendment applies includes the property.

March 21, 2022

Page 2

Clause 34(10.7)(a) of the *Planning Act* provides that within 15 days after an application is deemed complete, Council must give notice of the application for an amendment to a by-law. Notice of the application was not delivered by the Clerk within 15 days of the date the application was deemed complete; it was delivered on January 14, 2022, 58 days after the date the application was deemed complete. As noted below, delay on the part of the City to fulfil its statutory obligations does not absolve it of those obligations, nor change the date upon which the application was deemed to be complete.

On December 7, 2021, our clients received correspondence from Ms. MacDonald which acknowledged the requirement for Council “to issue a Notice of Intention to Designate within 90 days of the Prescribed Event (i.e. the Notice of a Complete application under the Planning Act).” **Ms. MacDonald advised that City Planning was required to bring a Notice of Intention to Designate report to the February 2/3, 2022 meeting of Council**, and asked our clients to consent to an extension of the statutory timeline. **Our clients did not consent to an extension of the statutory timeline.**

The City’s failure to adhere to the statutory timeline requirements for notice under the *Planning Act* does not exempt it from the statutory timeline requirements under the OHA, nor provide an opportunity for the City to grant itself a unilateral extension on the required timelines, particularly after our clients refused to agree to a requested extension.

On this basis, we respectfully request that item PB32.1 be removed from the agenda for consideration by the Toronto Preservation Board as Council does not have the authority to issue such a notice in accordance with s. 29(1.2) of the OHA.

Yours truly,

AIRD & BERLIS LLP



Eileen P.K. Costello
EPKC/MTB
Encl.

47997236.3

AIRD BERLIS