



## REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

# 353 - 355 Adelaide Street West, 46 Charlotte Street and 16 Oxley Street - Zoning By-law Amendment - Ontario Land Tribunal Hearing and Applications to alter and demolish a heritage attribute of a Designated Heritage Property under Section 33 and 34(1)1 of Ontario Heritage Act - Request for Directions

**Date:** March 7, 2024

**To:** City Council

**From:** City Solicitor

**Wards:** Ward 10 – Spadina - Fort York

### REASON FOR CONFIDENTIAL INFORMATION

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This report contains advice or communications that are subject to solicitor-client privilege. This report contains information regarding potential litigation.

### SUMMARY

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The purpose of this report is to request further instructions in respect of the hearing before the Ontario Land Tribunal ("OLT") currently scheduled to commence on May 27, 2024, for a period of 2 weeks. The applicant appealed the proposed Zoning By-law Amendment Application for 353 - 355 Adelaide Street West, 46 Charlotte Street and 16 Oxley Street to the OLT due to Council's failure to make a decision on the application within the time prescribed by the *Planning Act*.

The property municipally known as 355 Adelaide Street West is designated under Part IV, Section 29 of the *Ontario Heritage Act*.

### RECOMMENDATIONS

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The City Solicitor recommends that:

1. City Council adopt the confidential instructions to staff contained in the Confidential Attachment 1 to this report from the City Solicitor.

2. City Council authorize the public release of the confidential instructions to staff contained in Confidential Attachment 1, Confidential Appendix "A" and Confidential Appendix "B" to this report from the City Solicitor, if adopted by City Council.
3. City Council direct that all other information contained in Confidential Attachment 1 to this report from the City Solicitor is to remain confidential at the discretion of the City Solicitor, as it is about litigation before the Ontario Land Tribunal and contains advice or communications that are subject to solicitor-client privilege.

## **FINANCIAL IMPACT**

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There is no financial impact arising from the adoption of the Confidential Recommendations beyond what has already been approved in the current year's budget.

## **DECISION HISTORY**

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On December 5, 2017, City Council listed the property at 355 Adelaide Street West on the City's Heritage Register. The decision can be found here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.TE28.12>

On October 10, 2018, the Local Planning Appeal Tribunal (the "LPAT") refused a Zoning By-law Amendment application for a 41-storey mixed-use building at 46 Charlotte Street. The decision can be found here:

<https://www.omb.gov.on.ca/ecs/CaseDetail.aspx?n=PL161030>

On October 15, 2020, Toronto and East York Community Council adopted the recommendations of a Preliminary Report directing staff to schedule a community consultation meeting on the proposed development at 353-355 Adelaide Street West, 46 Charlotte Street and 16 Oxley Street, and to give notice of the community consultation meeting to landowners and residents within 120 metres of the site. The decision of Toronto and East York Community Council can be found here:

<https://secure.toronto.ca/council/agenda-item.do?item=2020.TE19.22>

On October 1, 2021, City Council stated its intention to designate the property at 355 Adelaide Street West under Part IV, Section 29 of the *Ontario Heritage Act*. The decision of City Council can be found here:

<https://secure.toronto.ca/council/agenda-item.do?item=2021.PH26.10>

Designation By-law 1083-2021 which designates the property municipally known as 355 Adelaide Street West may be found here:

<https://www.toronto.ca/legdocs/bylaws/2021/law1083.pdf>

No appeal was made of the designation to the Ontario Land Tribunal.

On June 14 and 15, 2023, City Council directed the City Solicitor and appropriate staff to oppose the Zoning By-law Amendment application in its current form and continue working with the applicant to resolve issues outlined in the report from the Director, Community Planning, Toronto and East York District. City Council's decision can be found here:

<https://secure.toronto.ca/council/agenda-item.do?item=2023.TE5.12>

## **Appeal to Ontario Land Tribunal**

In the fall of 2023, the applicant filed an appeal to the OLT citing the City's failure to make a decision on the requested Zoning By-law Amendment within the statutory timeframes set out in the *Planning Act*. The OLT conducted two Case Management Conferences on the appeal the first was on February 10, 2023 and the second was on June 28, 2023. One party and three participants were added by the OLT. A two-week OLT hearing is scheduled to commence on May 27, 2024.

## **COMMENTS**

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The lands municipally known as 355 Adelaide Street West is designated under Part IV, Section 29 of the *Ontario Heritage Act* and requires an application under Section 33 of the *Ontario Heritage Act* to address any proposed alterations to the heritage property. An Application to Alter a Designated Heritage Property and an Application to Demolish a Heritage Attribute of a Designated Property was submitted to Heritage Planning staff and is being considered as part of this report.

The original application, submitted in June 2020, was for a 50-storey mixed-use building with frontage on Adelaide Street West and Charlotte Street and a 12-storey component fronting onto Oxley Street. The existing heritage building located at 355 Adelaide Street West was proposed to be incorporated into the development. This proposal did not include any setbacks from the property lines, maintaining the existing sidewalk widths.

In February 2023, the applicants made a revised submission for a 58-storey mixed-use building with frontage on Adelaide Street West and Charlotte Street and a 6-storey component fronting onto Oxley Street. The heritage building was proposed to be incorporated into the development. Building setbacks for the new portion of the development from Adelaide Street West and Charlotte Street were proposed, resulting in 6 metre wide sidewalks. A further revised submission in December 2023, increased the height of the Oxley Street component by 6 storeys for a total of 12 storeys.

This report seeks further direction from City Council on this matter in advance of the OLT hearing set to commence on May 24, 2024, with procedural order deadlines commencing in advance of the next Council meeting. On the basis of these deadlines, this matter is urgent.

## **CONTACT**

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## **SIGNATURE**

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Wendy Walberg  
City Solicitor

## **ATTACHMENTS**

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1. Confidential Attachment 1 – Confidential Information
2. Confidential Appendix "A" – Confidential Information
3. Confidential Appendix "B" – Confidential Information