



## REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

### 778 - 788 King Street West - Zoning By-law Amendment - Ontario Land Tribunal Hearing - Request for Directions

**Date:** June 10, 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 for instructions in respect of the proceedings before the Ontario Land Tribunal ("OLT") currently scheduled for July 22, 2024. The applicant appealed the proposed Zoning By-law Amendment Application for 778-788 King Street West 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 778 King 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 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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### Development Application

On April 21, 2022, Toronto and East York Community Council received a Preliminary Report of the Director of Community Planning, Toronto and East York District identifying a set of preliminary issues with respect to the Zoning By-law Amendment application at 778-788 King Street West. The decision of Toronto and East York Community Council can be found here:

<https://secure.toronto.ca/council/agenda-item.do?item=2022.TE32.27>

### Designation of the Property

On April 6 and 7, 2022, Council stated its intention to designate the property at 778 King Street West under Part IV, Section 29 of the *Ontario Heritage Act*.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.PH32.15>

On July 19-22, 2022, City Council considered the owner's objection to the notice of intention to designate the property and reaffirmed its decision in Item PH32.15. The decision of City Council can be found here:

<https://secure.toronto.ca/council/agenda-item.do?item=2022.PH35.13>

City Council passed City of Toronto By-law 945-2022 designating the property on July 22, 2022. The designation by-law can be found here:

<https://www.toronto.ca/legdocs/bylaws/2022/law0945.pdf>

The Owner subsequently appealed Designation By-law 945-2022 to the OLT. Pursuant to subsection 30(2) of the *Ontario Heritage Act*, the designation by-law remains operative on the property despite any appeal.

### Heritage Permit Applications

On June 5, 2024, the Toronto Preservation Board considered a report from the City Solicitor regarding alterations and demolition to Heritage Attributes at a Designated Property municipally known as 778 King Street West under Sections 33 and 34(1)1 of the *Ontario Heritage Act*. The decision of Toronto Preservation Board can be found here:

<https://secure.toronto.ca/council/agenda-item.do?item=2024.PB19.3>

## Appeal to Ontario Land Tribunal

In the summer of 2022, 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 October 27, 2022 and the second was February 28, 2024. Two participants were added by the OLT. The Tribunal had scheduled several Case Management Conferences, which were adjourned to allow the City and Applicant to continue discussions. The Tribunal had originally scheduled a third Case Management Conference on June 17, 2024, which has been adjourned to July 22, 2024 to allow the City Solicitor to obtain instructions on this matter.

## COMMENTS

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The lands municipally known as 778 King Street West are designated under Part IV, Section 29 of the *Ontario Heritage Act* and require an application under Section 33 and 34 of the *Ontario Heritage Act* to address any proposed changes 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 at the same time as this report. The City Solicitor's Report on the Heritage Permit Applications was considered by the Toronto Preservation Board on June 6, 2024 and their confidential advice is appended to that item at this same meeting of Council. The Public Report from the City Solicitor on that Item describes the requested alterations and demolition of specified heritage attributes to the designated heritage property.

On November 17, 2021, the applicant filed a Zoning By-law Amendment to permit an 18 storey mixed-use building comprised of 714 square metres of retail space on the ground floor and 373 residential units above for a total gross floor area of 24,840 square metres. Loading access was proposed from King Street West and vehicular access was proposed from the rear public laneway to the 3 level underground parking garage. The proposed 373 dwelling units included 192 studio units (51 percent), 84 one-bedroom (23 percent), 48 two-bedroom (13 percent), and 49 three-bedroom (13 percent) units. The proposed development proposed a limited stepback from the rear lane at the 1st, 9th and 17th storey, and limited stepbacks from the east and west property lines at the 9th storey (the "Original Application").

This report seeks further direction from City Council on this matter in advance of the OLT Case Management Conference set to commence on July 22, 2024, which occurs in advance of the next Council meeting. On this basis, 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