



## REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

### **396-398 Church Street, 73-77 McGill Street and 50 Gerrard Street East – Official Plan Amendment and Zoning By-law Amendment - Ontario Land Tribunal Hearing - Request for Directions**

**Date:** July 2, 2024

**To:** City Council

**From:** City Solicitor

**Wards:** Ward 13 – Toronto Centre

#### **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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On December 1, 2022, the applicant filed an Official Plan Amendment and Zoning By-law Amendment to permit a 43-storey mixed-use building at 396-398 Church Street, 73-77 McGill Street and 50 Gerrard Street East (the "Site"), proposing 216 square metres of retail space on the ground floor and 463 residential units above for a total gross floor area of 28,782 square metres. The purpose of this report is to request instructions in respect of a hearing before the Ontario Land Tribunal ("OLT") scheduled to commence on December 2, 2024. The applicant appealed the proposed Official Plan Amendment and Zoning By-law Amendment Application to the OLT due to Council's failure to make a decision on the application within the time prescribed by the *Planning 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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### **Development Application**

On December 13, 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.TE9.25>

### **Ministerial Zoning Order**

Through City of Toronto By-law 1432-2017, the air ambulance flight paths in the vicinity of St. Michael's Hospital and the Hospital for Sick Children are regulated to ensure that the use of land is not incompatible with the safe operation of hospital heliports or aircrafts in the protected airspace. The Obstacle Limitation Surfaces, as defined in By-law 1432-2017 were the height limits established where no building, structure or naturally growing object, for any purposes, was permitted to project into those Obstacle Limitation Surfaces. City of Toronto By-law 1432-2017 may be found here:

<https://www.toronto.ca/legdocs/bylaws/2017/law1432.pdf>

On January 26, 2024, the Minister of Municipal Affairs and Housing issued a Ministerial Zoning Order through Ontario Regulation 10/24 which established a lower Obstacle Limitation Surface than By-law 1432-2017. The Ministerial Zoning Order may be found here:

<https://www.ontario.ca/laws/regulation/r24010>

### **Appeal to Ontario Land Tribunal**

On July 7, 2023, the applicant filed an appeal to the OLT citing the City's failure to make a decision on the requested Official Plan Amendment and 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 20, 2023 and the second was January 18, 2024. Three participants were added to the OLT proceedings. The McGill-Granby Village Residents' Association and St. Michael's Hospital were granted party status by the OLT. A two-week OLT hearing is scheduled to commence on December 2, 2024.

## COMMENTS

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On December 1, 2022, the applicant filed an Official Plan Amendment and Zoning By-law Amendment to permit a 43-storey mixed-use building (132.0 metres plus 9.0 mechanical penthouse) comprised of 216 square metres of retail space on the ground floor and 463 residential units above for a total gross floor area of 28,782 square metres. The existing 8 and 12 storey building would be retained on the Site, and only the northern-most bay of the 8-storey building would be demolished to accommodate the new development. Vehicular and loading access was proposed to enter the Site from Gerrard Street East and exit from McGill Street. The proposed 463 dwelling units included 47 studio units (10 percent), 229 one-bedroom (49 percent), 147 two-bedroom (32 percent), and 40 three-bedroom (9 percent) units.

The Official Plan Amendment proposed to permit the mixed use development in the Original Application to extend into the portion of the site at 73-77 McGill Street which is designated *Neighbourhoods* in the Official Plan.

This report seeks further direction from City Council on this matter in advance of the OLT hearing set to commence on December 2, 2024, with procedural order deadlines commencing 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