



## REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

### 33 Maitland Street and 37 Maitland Street - Zoning By-law & Official Plan Amendment - Request for Direction Report

**Date:** September 30, 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 September 14, 2022, Official Plan Amendment and Zoning By-law Amendment applications were submitted with respect to 33 Maitland Street and 37 Maitland Street (the "Site") to permit a new mixed-use building. The applications proposed to demolish 33 Maitland Street and retain a portion of 37 Maitland Street.

On March 31, 2023, the applications were appealed to the Ontario Land Tribunal (OLT) based on City Council's failure to make a decision within legislated timelines.

On July 19 and 20, 2023, City Council stated its intention to designate the properties at 33 Maitland Street and 37 Maitland Street under Part IV, Section 29 of the *Ontario Heritage Act*, and enacted a designation by-law at its meeting of November 8 and 9, 2023, City Council. The applicant applied for permits to alter and demolish heritage attributes on the Site, which was considered by the Toronto Preservation Board on September 20, 2024.

The focus of this report is to seek Council direction on the owner's revised application for a Zoning By-law and Official Plan Amendment to facilitate the development of a tower on the Site.

The City Solicitor requires further direction with respect to upcoming OLT proceedings. This matter is urgent and cannot be deferred.

## RECOMMENDATIONS

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The City Solicitor recommends that:

1. City Council adopt the recommendations contained in Confidential Attachment 1 to this report from the City Solicitor.
2. City Council authorize the public release of the confidential recommendations contained in Confidential Attachment 1 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 contains advice which is 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 March 15, 1974, City Council included the property at 37 Maitland Street on the City of Toronto's Heritage Register.

On February 7 and 8, 2023, City Council included the property at 33 Maitland Street on the City of Toronto's Heritage Register.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.PH1.4>

On July 19 and 20, 2023, City Council stated its intention to designate the properties at 33 Maitland Street and 37 Maitland Street under Part IV, Section 29 of the *Ontario Heritage Act*.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.CC8.28>

At its meeting of November 8 and 9, 2023, City Council enacted a by-law designating the properties at 33 Maitland Street and 37 Maitland Street under Part IV, Section 29 of the *Ontario Heritage Act*.

<https://secure.toronto.ca/nm/api/individual/notice/4643.do>

On November 8 and 9, 2023, City Council adopted the recommendations from an Appeal Report from the Director of Community Planning, Toronto and East York District which directed the City Solicitor to attend the OLT in opposition to the Official Plan and Zoning By-law Amendment applications at 33 and 37 Maitland Street. The decision of City Council can be found here:

<https://secure.toronto.ca/council/agenda-item.do?item=2023.TE8.9>

## COMMENTS

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The Site is located on the south side of Maitland Street, east of Yonge Street and west of Church Street, in Toronto's Church-Wellesley neighbourhood. The Site is currently occupied by a three-storey apartment building designed with a brick exterior and Arts and Crafts influences (33 Maitland Street), which contains 36 rental dwelling units, and an 1858 house in the style of a Georgian-style villa with Italianate influences (37 Maitland Street).

On September 14, 2022, Official Plan Amendment and Zoning By-law Amendment applications were submitted to permit a 49-storey residential building containing 439 dwelling units including 36 rental replacement units and 403 new units. On March 31, 2023, the applicant appealed the application to the OLT due to Council not making a decision within the time frame in the *Planning Act*.

On July 19 and 20, 2023, City Council stated its intention to designate the properties at 33 Maitland Street and 37 Maitland Street under Part IV, Section 29 of the *Ontario Heritage Act*, and enacted a designation by-law at its meeting of November 8 and 9, 2023, City Council. The designation by-law was appealed to the OLT on December 22, 2023, and was subject of considerable litigation between the City and the applicant. In May 2024, the applicant applied for permits to alter and demolish heritage attributes on the Site, which was considered by the Toronto Preservation Board on September 20, 2024, and will be considered by City Council with this report.

Following the appeals of the Zoning By-law and Official Plan Amendment application, and the Designation By-law, the City engaged in extensive mediation with the applicant. Following mediation, the applicant submitted a with prejudice settlement offer dated August 7, 2024 (the "Settlement Offer"), which is attached as Public Attachment 1 and the revised development proposal (the "Revised Proposal"), which is attached as Schedule A to Public Attachment 1 to this report.

The key changes to the original application as reflected in the Settlement Offer and the Revised Proposal are as follows:

- the *in-situ* retention of a portion of the east elevation of 33 Maitland Street, and the rebuilding of the north and partial west elevations, as opposed to complete demolition of 33 Maitland Street;
- the *in-situ* retention of the main building of 37 Maitland Street and commitment to rebuild the east elevation of the rear additions of same. The tower cantilever over 37 Maitland has been increased in height to reduce the visual impact on the heritage resources;
- the building footprint has been reconfigured to ensure a minimum tower separation distance of 20.0 metres from the 17-storey building to the west and 25.0 metres from the 18-storey building to the south. The setbacks were adjusted to provide a minimum of 3.4 metres from the north, 3.8 metres from the east, 6.5 metres from the south, and 9.1 metres from the west;

- the tower floorplate size has been reduced from 703 to 678 square metres and the height of the proposed tower has increased from 49 to 62 storeys; and
- the provision of an in-kind contribution pursuant to Section 37(6) of the *Planning Act* in the form of affordable rental housing units, with the value being equal to 4 percent of the value of the Site, in full satisfaction of the applicable community benefit charges.

The City Solicitor requires further instructions. This report contains advice or communications that are subject to solicitor-client privilege. Confidential Attachment 1 to this report contains confidential advice and it should be considered by Council *in camera*.

## **CONTACT**

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## **SIGNATURE**

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Wendy Walberg  
City Solicitor

## **ATTACHMENTS**

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1. Public Attachment 1 - With Prejudice Settlement Offer from Overland LLP, dated August 7, 2024
2. Confidential Attachment 1 - Confidential Information