



## REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

### 38 Walmer Road and 188 Lowther Avenue – Ontario Land Tribunal Hearing – Request for Directions

**Date:** October 31, 2024

**To:** City Council

**From:** City Solicitor

**Wards:** Ward 11 - University-Rosedale

#### 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 August 4, 2022, Zoning By-law Amendment and Site Plan Control applications were submitted to permit an 80-metre (20-storey excluding mechanical penthouse) mixed-use building, containing 162 dwelling units and 1,950 square metres of non-residential gross floor area. The application proposes the alteration of the Walmer Road Baptist Church at 38 Walmer Road and the demolition of the Sunday School building at 188 Lowther Avenue.

On May 31, 2023, the applicant appealed the Zoning By-law Amendment application and referred the Site Plan Control application to the Ontario Land Tribunal (OLT) due to Council not making a decision within the time frame in the *Planning Act*.

At its meeting of July 24, 2024, City Council refused the issuance of demolition and alteration permits for various portions of the site pursuant to the *Ontario Heritage Act*. The applicant similarly appealed that refusal to the OLT.

This report should be considered along with a confidential report from the City Solicitor to the November 7, 2024 Toronto Preservation Board that will be forwarded to City Council for consideration at its meeting of November 13, 2024.

The City Solicitor requires further directions for an upcoming OLT hearing scheduled for 15 days beginning January 13, 2025. As a result this matter is urgent and should not 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, 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 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 May 31, 2023, the applicant appealed City Council's neglect or failure to make a decision on the Zoning By-law Amendment to the OLT. The OLT held Case Management Conferences on September 15 and December 14, 2023. A hearing is scheduled to begin January 13, 2025.

On July 19, 2023, City Council stated its intention to designate the property at 38 Walmer Road and 188 Lowther Avenue under Part IV, Section 29 of the *Ontario Heritage Act*. The City has 120 days from that decision to issue the designation by-law, which may subsequently be appealed to the Ontario Land Tribunal. Council's decision on the intention to designate may be found here:

<https://secure.toronto.ca/council/agenda-item.do?item=2023.PB7.1>

A Request for Direction Report on the application was adopted by City Council on October 11, 2023, directing the City Solicitor and appropriate City staff to attend the OLT hearing to oppose the Zoning By-law Amendment application, and to continue discussions with the applicant in an attempt to resolve outstanding issues. The Request for Direction Report can be found at:

<https://secure.toronto.ca/council/agenda-item.do?item=2023.TE7.12>

## **COMMENTS**

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The City Solicitor requires further instructions on this matter. This report is about ongoing litigation before the OLT and contains advice or communications that are subject to solicitor-client privilege.

## **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