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Via Email and Courier

Mayor and Members of Council
c/o Planning and Growth Committee
Toronto City Hall,
10th Floor, West Tower
100 Queen Street West
Toronto, ON M5H 2N2

Dear Sirs/Mesdames:

Re: Proposed Official Plan Amendment No. 199 (“OPA 199”)

We are solicitors for DiamondCorp, a real estate development company located and operating in the City of Toronto. While our client acknowledges the contribution that cultural heritage makes to the City of Toronto, it is concerned with the overall approach to heritage policy in OPA 199. Both procedurally and substantively, OPA 199 is divorced from the broader land use planning framework that should inform it. This exacerbates the lack of clarity in a number of policies and highlights the deficiencies in others. DiamondCorp submits that this overall direction should be changed so that heritage policy is considered as part of a comprehensive land use planning policy exercise. Once the proposals for the official plan as a whole from the 5 Year Review are known, it would be possible to properly consider the details of implementing heritage objectives. Below please find preliminary comments and examples in this respect.

Procedurally, OPA 199 is a “stand alone” instrument. Our client submits that it is not possible to properly understand the effects that the policies therein might have without the context afforded by the other policies that will arise from the 5 Year Review. For example, various policies in OPA 199 contemplate that development on sites with archaeological resources might be appropriate, but preservation of these resources *in situ* is preferred “where possible”. Without further context, it is impossible to know what “where possible” is intended to mean (since it is always “possible” to retain such resources *in situ* by simply halting all development and fencing the site off).

An example of a policy that merits reconsideration in the context of broader policy concerns can be found in Section 3.1.5.28, which sets out a detailed regime respecting moving heritage structures. However, relocating a heritage structure on different terms than are set out therein may achieve significant public objectives. For example, a minor deviation from these rules might be desirable to accommodate public transit or other infrastructure or public amenities. Furthermore, the policy places strict limitations on any such proposed moving. As just one example, it precludes reconstruction of a heritage building, so if a heritage building was structurally unsound it could not be moved notwithstanding other good reasons for doing so. Thus we submit that the strict limitations on moving should be revisited in the context of the

consideration of the other public interest objectives that might become relevant in any given circumstance. However, the result of the very prescriptive approach taken in this section as currently proposed is that both the city and development proponents will be handcuffed in seeking creative solutions and thus the chance of disputes will increase.

One other issue merits particular comment at this time. One purpose of OPA 199 is to enable Council to create Heritage Conservation Districts. The approvals regime for and under Heritage Conservation Districts and Plans pursuant to the *Ontario Heritage Act* is still subject to legal uncertainty. However it is clear that Council's ability to give approvals under a Heritage Conservation District Plan is significantly constrained by the HCD Plan. Council does not have the same sort of discretion that it does in considering individually designated properties. Therefore, DiamondCorp submits that it is important to build clear directions into the Official Plan for how heritage relates to the broader land use planning framework.

The above are only examples of DiamondCorp concerns: many issues remain to be resolved. However we submit that these examples suffice to demonstrate that a deferral of the consideration of OPA 199 is justified. Therefore, DiamondCorp's request is that this matter be deferred until balance of the policies of the 5 Year Review are publicly tabled and under active consideration by the City. In and that staff be directed to continue public consultations in the meantime.

Thank you for your attention in this regard.

Yours truly,



John A.R. Dawson

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