

**Attachment 1: Confidential Information – made public  
on April 13, 2015**

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**Proposed Settlement of Appeals to Official Plan  
Amendment 199 - Heritage Policies**

<b>Date:</b>	January 30, 2015
<b>To:</b>	Planning and Growth Management Committee
<b>From:</b>	Chief Planner and Executive Director, City Planning Division City Solicitor, Legal Services

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**Confidential Information**

**Proposed Settlement with the Roman Catholic Diocese of Toronto**

The Roman Catholic Diocese of Toronto's appeal relates to its concern that the liturgical elements of any religious heritage resource in active use for religious worship and interior alterations related to chattel or liturgical elements not be subject to the policies contained in OPA 199. Official Plan Amendment 199 as enacted by Council provided in a sidebar, that the city, in consultation with faith groups, would establish a protocol for the protection of places of worship with cultural heritage value.

The proposed settlement with the Roman Catholic Diocese of Toronto entails the addition of six additional policies in a new subsection entitled 'heritage places of worship'. The effect of the additional policies is as follows:

- Religious heritage properties that remain in active use for worship will be subject to the subsection, 'heritage places of worship' which will take precedence over other heritage policies.
- The designating by-law for religious properties listed on the heritage register and designated under the Ontario Heritage Act will be consistent with these Plan policies.
- Faith groups will advise the City as to liturgical elements to be identified in the designating by-law.
- As long as the place of worship is actively used for religious purposes, interior alterations related to the rites of worship will not be subject to the plan's heritage policies.
- If a heritage review is required for interior alterations not related to rites of worship it will be undertaken by the city and faith groups with the mutual goal of conserving the property's heritage values and respecting and protecting the faith group's rites of worship.

- The City, in consultation with faith groups, will establish a protocol to implement these policies.

This settlement fulfills the City's goal of continuing to designate and conserve the many heritage places of worship in the city while giving the Archdiocese the assurance that heritage conservation will not interfere with continuing active worship in these premises. These policies would apply to all places of worship not just those owned by the Roman Catholic Diocese of Toronto. Once a designated heritage property is no longer actively used for religious purposes, 'heritage places of worship policies' will no longer apply. This settlement is linked to a protocol for the designation of heritage places of worship currently under negotiation.

### **Proposed Settlement with Redpath Sugar, 95 Queens Quay East**

The appeal by Redpath Sugar raised concern with the term 'alteration' within the policies. Redpath Sugar opined that the wording was vague and could possibly trigger a heritage impact assessment for routine building repairs or equipment replacement for an operating industry within a designated industrial building on the heritage register. Redpath Sugar was concerned that this could undermine the functioning and economic viability of such properties. City staff identified only one other property in the City that had a manufacturing or industrial process function that is designated under the Ontario Heritage Act.

In order to safeguard both the economic functioning of the plant at 95 Queens Quay East and the conservation of the heritage resources on that site, it is proposed to add a site and area specific policy to Chapter 7 of the Official Plan. In the event that the current Employment Uses cease to exist the overall policies will apply. The proposed site and area specific policy would provide that:

- When a heritage review of the property is required, it will be undertaken with the mutual goal of conserving the property's cultural heritage values and also preserving and enhancing the productive and competitive nature of the property.
- As long as the property is used for employment uses, the following actions would not be subject to the heritage policies of the official plan: interior alterations; alteration, movement or installation of machinery or structures for production purposes; and alterations required to comply with government requirements or orders.

### **Proposed settlement with Cadillac Fairview Corporation**

The primary concern of the Cadillac Fairview Corporation was their interpretation that OPA 199 presented heritage matters as being distinct from other aspects of the planning and development approval process. They were of the opinion that the policies were not sufficiently clear that heritage was one aspect of the Official Plan or the Plan was to be read in its entirety. This matter was also raised as an issue by Redpath Sugar and the Building Industry and Land Development (BILD) Association. At the time of the

adoption of the Official Plan in 2002 this issue was also raised. To clarify how the plan is to be read, Council adopted policy 5.6.1 which reads as follows:

*'5.6.1. The Plan should be read as a whole to understand its comprehensive and integrative intent as a policy framework for priority setting and decision making.'*

While this policy continues to apply, it did not provide sufficient comfort for Cadillac Fairview, BILD or Redpath Sugar as to how the policies of OPA 199 will be interpreted. A proposed settlement with these appellants adds a new policy 5.6.1.1 which expands upon policy 5.6.1 and is wholly consistent with its original intent. The proposed new policy 5.6.1.1 reads as follows:

*'5.6.1.1 The Plan is more than a set of individual policies. Policies in the Plan should not be read in isolation or to the exclusion of other relevant policies of the Plan. When more than one policy is relevant all appropriate policies are to be considered in each situation. The goal of this Plan is to appropriately balance and reconcile a range of diverse objectives affecting land use planning in the city.'*

### **Proposed Settlement with the Wychwood Park Ratepayers Association**

The Wychwood Park Ratepayers Association appealed OPA 199 and requested that a new policy be added requiring that any alterations, additions, demolitions, removals and new development within Wychwood Park be in accordance with the Wychwood Park Heritage Conservation District Plan. Although the City had already included a similar policy to this effect that applies to all heritage conservation districts, the Wychwood Park Ratepayers Association felt that the unique qualities of Wychwood Park warranted an additional clarification.

Through settlement discussions, agreement was reached amongst the parties that a site and area specific policy was appropriate to set out the defining aspects of the existing physical character of the neighbourhood and provide that new development be consistent with it. Other 'character areas' in downtown and midtown Toronto have site and area specific policies in Chapter 7 that set out their unique traits and provide that new development be consistent with them. A new site and area specific policy is therefore proposed as a settlement, which would state the following:

- Wychwood Park has unique and outstanding features. It is a residential area laid out according to a plan registered in 1891.
- The park-like ambience of Wychwood Park gives it a unique character. Trees within the park are important and the situation of the houses in relation to the mature trees and natural land contours complements the architecture and lends it added importance.
- All site alteration, alterations, additions, new development and public works shall preserve the character and nature of the Wychwood Park area. Any proposed height, massing, scale and setbacks shall be consistent with this unique character.

An additional element of the proposed settlement is that the City would make a review of the Wychwood Park Heritage Conservation District Plan a priority of the City's work program for Heritage Conservation Districts. As this is the earliest residential Heritage Conservation District Plan in Toronto it would benefit from a review and potential updating to reflect the altered nature and content of HCD Plans required by legislative changes to the Ontario Heritage Act.

### **Proposed Partial Settlement with the Building Industry and Land Development (BILD) Association**

BILD appealed OPA 199 in its entirety. Its initial issues list cited concerns with many sections and policies of OPA 199. At the time of writing this report, a partial settlement is proposed for Council endorsement that covers all but two of the policies within OPA 199. A discussion of the substantive changes proposed to OPA 199 as part of the partial settlement with BILD follows.

#### **Policies on Important Views**

A key policy of Official Plan Amendment 199 is to identify and protect views from the public realm to prominent buildings, structures, landscapes and natural features that are an important part of the form and image of the city. OPA 199 adds three policies to section 3.1.1, the Public Realm policies, to add the protection of these important views. The views are identified on two new Plan maps, 7A and 7B, and the view origin and terminus, are set out in a new Schedule 4 to the Plan. The changes to the 'views' policies in section 3.1.1 requested by BILD are technical in nature. Under the proposed settlement, Policy 9 and the sidebar would repeat for clarity that the views to be protected are identified on Maps 7A and 7B and the addition of views to these maps and Schedule 4 can only be through an Official Plan Amendment. This proposed wording would constitute a fair and transparent process and reflects Council's original intent.

Official Plan Amendment 199 amends Section 3.1.5, the Heritage policies, to add three policies dealing with views of heritage properties. These policies originally provided that a view to a property on the heritage register would be conserved where the view was included on the new Maps 7A or 7B and/or the view was identified in the Council adopted values/attributes for a property on the heritage register or the property was identified in those values/attributes as a landmark property. BILD members were concerned that it would be difficult to know when considering the purchase of a property whether the development of that property had the potential to affect the values or attributes of a landmark property in the vicinity. For transparency BILD recommended that any view to be protected should be added to Map 7A and 7B through an Official Plan amendment. Staff acknowledges this concern and agrees that if a view is to be protected, the view policies of the Plan should specify this is the case by adding the view to Map 7A or 7B and Schedule 4. Staff recommend that the amendment be modified to reflect this intent.

## **Heritage Register**

Policy 1 of OPA 199 sets out the inclusion of properties on the City's heritage register (formerly known as the heritage inventory). Several amendments were requested to this policy to provide more detail. Rather than just stating that the heritage register will be maintained, it is proposed to add clarity that it will be maintained 'by the City Clerk, or his or her designate'. The policy also provides that the Register may include properties that are not designated but have been identified by Council for their heritage value. Further, it is proposed that the policy specify that properties being added to the register will be identified through consultation with the municipal heritage committee (the Toronto Preservation Board) and approved by council. Setting out this process of adding non-designated properties to the heritage register is both current practice and a requirement of the Ontario Heritage Act. Therefore staff supports these specific requirements and additional policy language.

## **Heritage Impact Assessments**

Policy 24 of OPA 199 requires a Heritage Impact Assessment for the proposed demolition of a property on the heritage register, as well as for demolition of a property adjacent to a property on the heritage register. However, the way adjacent is defined in OPA 199 the properties not abutting a heritage property could be subject to an unnecessary HIA requirement. For example, a property across the street from a heritage property might be proposed for demolition and this action would not likely affect the physical stability of the heritage property. The proposed settlement policy would continue to require a Heritage Impact Assessment where demolition was proposed on a property on the heritage register. However, where demolition is proposed on a property adjacent to a property on the heritage register, the City may require a study of the physical implications of the demolition of the property on the heritage register. However, such a study would not automatically be required and would only be requested if there was sufficient reason to believe that damage to a heritage property was of concern.

Several other minor changes have been proposed to the policies dealing with Heritage Impact Assessments to provide further clarity to existing wording. A statement has been added to Policy 22 to provide that the Heritage Impact Assessment will be considered when determining how a heritage property is to be conserved. An addition to the sidebar dealing with Heritage Impact Assessments provides that the HIA will consider the property's cultural heritage values and attributes as identified by Council when establishing how impacts can be mitigated or avoided.

## **Development of Properties on the Heritage Register**

For consistency with the Provincial framework and other policies of the Official Plan, Policy 26 is proposed to be modified to state that new construction shall 'conserve', rather than 'protect', the cultural heritage values, attributes and character of a property on the heritage register when new construction occurs on that property or adjacent to it. It is also proposed to move the listing of the potential physical and visual impacts from Policy

26 to the accompanying sidebar. Those impacts can include considerations such as scale, massing, materials, height, building orientation and location relative to the heritage property.

Policy 29 is also proposed to be modified. This policy deals with the relocation of a heritage building or structure on the same property or development site. The policy continues to state that heritage buildings and/or structures located on properties on the Heritage Register should be conserved on their original location. However, the policy is proposed to be modified by the addition of a condition that relocation should be considered only where 'it is supported by the cultural heritage values and attributes of the property on the Heritage Register'.

### **Archaeological Resources**

Among the concerns of BILD was a concern with the participation of First Nations in the treatment of archaeological resources. BILD perceived that developers would be required to determine which First Nations group was to be involved. This is not the intent of the policy and the proposed settlement modifies Policy 39 to explicitly state that the First Nation or Metis with the closest cultural affiliation to the archaeological resource in question will be identified by the City.

### **Cultural Heritage Landscapes**

Policy 44 of OPA 199 provides that in addition to protection under the Ontario Heritage Act, other planning tools and strategies for the protection of Cultural Heritage Landscapes may be investigated and employed by the City. The City already has these powers and has used tools such as a Secondary Plan, zoning and a Parks Plan to protect Cultural Heritage Landscapes such as Fort York. Therefore, there is no need to include this as a statutory policy. Staff recommend this statement move to the descriptive sidebar dealing with Cultural Heritage Landscapes.

### **Definitions**

In the interest of consistency and clarity, the definitions of 'Conservation' and 'Cultural Heritage Landscape' in OPA 199 are proposed to be modified to correspond to the definitions of those terms in the 2014 Provincial Policy Statement. Similarly a new definition for the term 'Significant' is proposed to be added to OPA 199 that corresponds to the definition in the 2014 Provincial Policy Statement.