

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

### **Revisions to Proposed Settlement of Appeals to Official Plan Amendment No. 199 - Heritage Policies**

<b>Date:</b>	February 18, 2015
<b>To:</b>	Planning and Growth Management Committee
<b>From:</b>	Chief Planner and Executive Director, City Planning Division City Solicitor, Legal Services

### **CONFIDENTIAL INFORMATION**

#### **Further Mediation with the Building Industry and Land Development Association**

The report from the Chief Planner and City Solicitor, dated January 30, 2015 outlines a comprehensive settlement of the general appeals of OPA 199 policies filed by the Roman Catholic Diocese of Toronto, Redpath Sugar, Cadillac Fairview Corporation, and the Wychwood Park Ratepayers Association resulting from the Ontario Municipal Board mediation in the fall of 2014. The Building Industry and Land Development (BILD) Association has appealed OPA 199 in its entirety. Through the process of OMB mediation most of BILD's concerns will be resolved, subject to Council's endorsement of the proposed modifications to OPA 199 attached to the staff report dated January 30, 2015. In order to resolve the two remaining policy concerns and the wording of a sidebar, further OMB mediation took place on February 6, 2015. During this mediation the following changes were agreed to by BILD and city staff as a potential resolution to be brought forward for Council's consideration:

- a) Deleting the last sentence of Section 3.1.5 Policy 2;
- b) Deleting the words '*Significant* heritage' from the beginning of Section 3.1.5. Policy 3 and replacing them with the words 'Heritage properties of cultural heritage value or interest';
- c) Deleting the words 'is not feasible' from the second sentence of Section 3.1.5 Policy 36, and adding, after the word 'Where', the words 'mitigative measures and/or alternative development approaches would not feasibly allow for';
- d) Deleting the words 'in situ conservation is possible' from Section 3.1.5 Policy 37 and replacing them with the words 'is being *conserved*';
- e) Deleting the sidebar pertaining to Cultural Heritage Landscapes that appears after Section 3.1.5 Policy 43 and replacing it with the following:

#### **'SIDEBAR**

The City will establish a citywide guideline for identifying and evaluating potential cultural heritage landscapes prior to including individual cultural

heritage landscapes on the Heritage Register or designating them under the Ontario Heritage Act. Such a guideline will be adopted by Council and will include direction for the clear delineation of the boundaries of cultural heritage landscapes at the time of their listing or designation, as appropriate.'; and

- f) Italicizing the word '*significant*' where it appears in Section 3.1.5 Policies 9 and 30.

The first recommended revision is to delete the last sentence of Section 3.1.5 Policy 2 which states: 'Properties that demonstrate cultural heritage value are *significant* for the purpose of Section 2.6 of the Provincial Policy Statement.' BILD was concerned that by including a property on the Heritage Register it would automatically be deemed to be *significant*—defined as having cultural heritage value or interest for the important contribution they make to our understanding of the history of a place, an event, or a people. Through the course of mediation, staff gained an understanding of BILD's concern. With the term '*significant*' becoming a defined term, staff were also concerned that an additional test may have been added to the process of Council placing a property on the Heritage Register. It is therefore recommended that the last sentence be deleted from Policy 2. Similarly, rather than using the term '*Significant* heritage properties' at the beginning of Policy 3, a revision is suggested to simply refer to 'Heritage properties of cultural heritage value or interest' and not make reference to the definition of the term *significant*. This change also makes the policy more transparent and clear.

The second BILD concern related to Policy 36, which stated that preservation in situ is the preferred conservation strategy for an archaeological site, and only where this was 'not feasible' should archaeological resources be subject to excavation. BILD representatives were of the opinion that the word 'feasible' was too broad and undefined. The proposed revision provides that archeological resources may be subject to excavation 'where mitigative measures and/or alternative development approaches would not feasibly allow for in situ *conservation*'. This change gives context and criteria as to whether in situ *conservation* could feasibly occur on a site. The revised wording provides for a clearer and more transparent policy. Policy 37 inadvertently repeated the test in Policy 36 of whether in situ conservation is possible. The intent of Policy 37 was to obtain a heritage easement agreement when a decision has been made that an archaeological resource is being conserved in situ. The policy has been revised to reflect this intent.

The final matter discussed and agreed to with BILD at the February 6, 2015 mediation was the nature of the sidebar giving the public guidance on cultural heritage landscapes and their designation. The original sidebar simply gave several examples of cultural heritage landscapes (Allan Gardens and Fort York), which is a newer emerging form of heritage resource being studied and designated in municipalities. City staff and BILD have agreed on a more fulsome sidebar that will result in the City establishing a citywide guideline for identifying and evaluating potential cultural heritage landscapes prior to including individual cultural heritage landscapes on the Heritage Register or evaluating

them. This guideline will provide more transparency on how the City will be dealing with this component of the City's heritage resources.

Staff recommend that Council support the relatively minor further modifications to OPA 199 outlined in this report as a result of further negotiations with BILD to improve the transparency of the process and clarity of policy for the public.

### **Protocol for the Identification and Review of Heritage Places of Worship**

At the statutory public meeting for OPA 199 the Catholic Archdiocese expressed concern that the designation of places of worship required particular consideration to ensure that liturgical elements and interior alterations to active worship spaces were not to be affected by heritage designations or the Plan's heritage policies. At the time of adoption of OPA 199, Council directed the Chief Planner and Executive Director, City Planning to work with the Archdiocese to establish a protocol for the listing, designation, alteration and other treatment of heritage places of worship. Staff have been negotiating with the Archdiocese on such a protocol for the past year.

The Archdiocese appealed the Minister's approval of OPA 199. At the OMB mediation in the fall of 2014, a proposed agreement was reached on adding five additional policies to OPA 199 to deal with the heritage places of worship, which is reported out in the staff report dated January 30, 2015. Solicitors for the Archdiocese have expressed the need to have the Protocol considered by Council concurrently with the overall settlement of their appeal of OPA 199.

The proposed Protocol is appended as Attachment 3 to this report. The protocol is intended to ensure that the application of Official Plan policies and the City's responsibilities pursuant to the Ontario Heritage Act recognize the right to, and need for, the practice of worship. The proposed Protocol deals with matters such as: the identification of liturgical elements, identification of active places of worship, how the heritage review of places of worship will unfold, the removal of liturgical elements, and consultation with faith groups.