

ED-24-05

Christopher J. Tanzola
Partner
Direct 416-730-0645
Cell 416-428-7493
ctanzola@overlandllp.ca

Overland LLP
5255 Yonge St, Suite 1101
Toronto, ON M2N 6P4
Tel 416-730-0337
overlandllp.ca

overland

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November 30, 2023

VIA ELECTRONIC SUBMISSION AND COURIER

Mary Medeiros, City Clerk
City Clerk Services
City of Oshawa
5th Floor, Rundle Tower, City Hall
50 Centre Street South
Oshawa, ON L1H 3Z7

Dear Ms. Medeiros:

**RE: 149 Harmony Road South, Oshawa
Notice of Intention to Designate, issued by the City of Oshawa on November 6, 2023
*** NOTICE OF OBJECTION *** pursuant to s. 29(5) of the *Ontario Heritage Act***

We are the lawyers for Colony Real Estate Development Ltd. ("Colony"), the owner of the property municipally known as 149 Harmony Road South (the "Property") in the City of Oshawa (the "City").

We are in receipt of the City's Notice of Intention to Designate the Property under Part IV, section 29 of the *Ontario Heritage Act*, R.S.O. 1990, c.O.18 (the "OHA"), issued on November 6, 2023 (the "Notice of Intention"). On behalf of Colony, we hereby object to the Notice of Intention pursuant to section 29(5) of the OHA and request that City Council withdraw the Notice of Intention.

Prior to the issuance of the Notice of Intention, the proposed designation and Staff's recommendation to begin the designation process for the Property were considered by City Council at its meeting on October 30, 2023. On October 26, 2023, we submitted a letter to City Council advising of Colony's concerns with the proposed designation of the Property. A copy of our letter to City Council is enclosed as **Appendix A**.

Our reasons for the objection are set out below and include those set out in our letter of October 26, 2023. The City has previously considered these objections and determined that the Property should not be designated. We are asking City Council to be consistent in its assessment of the heritage merits of the Property weighed against its future use and conclude that the Property not be designated.

THE PROPERTY & PROPOSED DEVELOPMENT

The Property is approximately 4.92 acres (1.99 hectares) in size and is located on the east side of Harmony Road South, opposite Hoskin Avenue and one block south of King Street East. The

Property has limited frontage along Harmony Road South, a regional road under the jurisdiction of the Region of Durham (the “Region”) and is currently occupied by the former Harmony Public School. The former Harmony Public School is located along this frontage and directly opposite Hoskin Avenue. Access from the Regional road opposite Hoskin Avenue presents a real and significant limitation on the redevelopment of the Property, as has previously been considered and acknowledged by City Council. The Property is currently listed on the City’s Register of Properties of Cultural Heritage Value or Interest.

On October 19, 2023, Colony submitted a pre-consultation request to the City’s Planning Department to discuss impending applications for a zoning by-law amendment, a plan of subdivision, a plan of condominium and site plan approval for the redevelopment of the Property. The development proposal would see the Property intensified with a 14-block townhouse development containing approximately 73 residential units (the “Proposed Development”). As noted, the Proposed Development takes access from Harmony Road South in the location permitted by the Region and is, therefore, in conflict with the existing school building.

REASONS FOR THE OBJECTION

Previous Designation Attempts & Site Access Issue

As detailed in our letter, the Property had been the subject of two previous recommendations for designations in September 2015 and September 2019, respectively. On each occasion, a recommendation to designate the Property was not adopted by City Council.

As noted above and in our previous letter, Colony is concerned that the designation will restrict the already limited opportunities for site access to the Property due to the former Harmony Public School’s location and will impact its ability to achieve the form and scale of redevelopment envisioned by the Proposed Development. Colony has consistently raised this concern with City Staff, the Economic and Development Services Committee (the “Committee”) and City Council since it acquired the Property in 2016.

In fact, the site access issue was specifically considered by Heritage Oshawa in 2015 in response to a proposal to redevelop the Property, as documented in the Public Report to the Committee titled *Proposed Designation Pursuant to Ontario Heritage Act: 149 Harmony Road South (Former Harmony Public School) (DS-19-139)* dated September 4, 2019 (the “2019 Staff Report”). A copy of the 2019 Staff Report is enclosed as **Appendix B**.

The 2019 Staff Report states the following on page 5:

On August 27, 2015 a follow-up presentation was given to Heritage Oshawa by Rodger Miller of Urban Terra, on behalf of Brookfield Homes. Heritage Oshawa was advised that according to the Region of Durham, a road/driveway access to the site that is aligned with the centre line of Hoskin Avenue is the only option that provides sufficient space for safe traffic flow. Heritage Oshawa was also advised that while relocating the former school

building for adaptive reuse was determined not to be economically viable, the proponent is willing to work with Heritage Oshawa to ensure the building is appropriately commemorated in the new development. Heritage Oshawa passed the following motion (HTG-15-70) in response to the presentation:

"Whereas Heritage Oshawa would prefer to leave the school building located at 149 Harmony Road South in situ or be used for adaptive reuse; and,

Whereas the Region of Durham has determined that the only access option that provides sufficient traffic flow and entrance from the development onto Harmony Road South would be a new access that matches the existing centre line on Hoskin Avenue; and,

Whereas this development would leave no option other than the removal of the Heritage Oshawa Inventory Building at 149 Harmony Road South;

Therefore be it resolved that if a development is approved, the plan must include a commemorative project for the school building developed in consultation with Heritage Oshawa and the proponent." [Empasis added.]

As further noted by Councillor Kerr at the meeting of the Committee on October 16, 2023 and the meeting of City Council on October 30, 2023, the site access issue had also formed part of the justification for not proceeding with the designation of the Property in 2019.

We note that neither the Notice of Intention nor the supporting *Evaluation of Cultural Heritage Value or Interest Report* prepared by Archeological Research Associates Ltd. and dated September 19, 2023 provide new reasons in support of designation that would not have previously been before City Council.

Coordination with Proposed Development

As noted above, Colony is preparing planning and development applications for the redevelopment of the Property. As the application process moves forward, the treatment of the former Harmony Public School will be addressed in the context of the intended redevelopment through consultation with City Staff. The designation of the Property may have the effect of sterilizing the Property in light of the site access issue should the former Harmony Public School be required to remain in situ.

Proceeding with the designation of the Property without the resolution of the site access issue raised by our client will necessitate our client's appeal to the Ontario Land Tribunal to protect for the intended redevelopment of the Property.

Maintenance Concerns

We note that the City's website regarding designated properties states that "*Owners are not expected to incur expenses beyond those of any other property owner.*"¹ Our client is concerned that the proposed designation will trigger financial implications in connection with, but not limited to, municipal property tax considerations and maintenance costs if the Property is designated.

We would appreciate confirmation from the City as to the limitation of such financial implications in accordance with the City's website.

Please send notice of any decision in respect of this matter and all required notices under the OHA to both Colony, as the owner of the Property, and to Overland LLP, the undersigned and Justine Reyes (jreyes@overlandllp.ca). Our contact information is set out herein.

Yours truly,
Overland LLP



Per: Christopher J. Tanzola
Partner

Encl.

¹ <https://www.oshawa.ca/en/parks-recreation-and-culture/designated-properties.aspx>

APPENDIX A

Letter from Overland LLP dated October 26, 2023

Christopher J. Tanzola
Partner
Direct 416-730-0645
Cell 416-428-7493
ctanzola@overlandllp.ca

Overland LLP
5255 Yonge St, Suite 1101
Toronto, ON M2N 6P4
Tel 416-730-0337
overlandllp.ca

overland

October 26, 2023

VIA ELECTRONIC SUBMISSION

Mayor Dan Carter and Members of City Council
City of Oshawa
50 Centre Street South
Oshawa, ON L1H 3Z7

Your Worship and Members of City Council:

**RE: Item ED-23-196 – Update on Impacts of Bill 23 on the City of Oshawa Register of Properties of Cultural Heritage Value or Interest (Wards 3 and 4)
149 Harmony Road South**

We are the lawyers for Colony Real Estate Development Ltd. (“Colony”), the owner of the property municipally known as 149 Harmony Road South (the “Property”) in the City of Oshawa (the “City”).

Colony acquired the Property from the Durham District School Board in April 2016, and is in the process of preparing applications for a zoning by-law amendment and site plan approval to redevelop the property with residential uses (the “Applications”). The development proposal would see the Property intensified with a townhouse form of development. There have been preliminary discussions with City Staff regarding the development proposal and a pre-consultation meeting request and concept site plan were submitted to the City’s Planning Department on October 19, 2023.

The Property is located on the east side of Harmony Road South, opposite Hoskin Avenue and one block south of King Street East. The Property has limited frontage along Harmony Road South, a regional road under the jurisdiction of the Region of Durham (the “Region”) and is currently occupied by the former Harmony Public School.

Due to the location of the Property on the regional road network, the intersection with Hoskin Avenue, and the current location of the Harmony Public School building, a heritage designation that requires the school building to remain in-situ would seriously impact the ability to achieve an appropriate form and scale of revitalization for the Property.

Our client does not support the designation of the Property under Section 29 of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended (the “OHA”). Consequently, we are asking Council not to proceed with the designation process for this Property at this time.

STAFF REPORT

We have reviewed the report *ED-23-196 - Update on Impacts of Bill 23 on the City of Oshawa Register of Properties of Cultural Heritage Value or Interest* (the "**Staff Report**") dated October 11, 2023 and the related *Evaluation of Cultural Heritage Value or Interest Report* prepared by Archaeological Research Associates Ltd. (ARA) on September 19, 2023 (the "**CHVI Report**") in respect of the Property and the former Harmony Public School.

In our view, the cultural heritage value attributed to the Property through the CHVI Report does not seem to be tied primarily to the physical attributes of the former Harmony Public School, but rather its associative value as a historical educational institute. For example, the CHVI Report notes the following:

- *149 Harmony Road South is a well-built structure but does not display a high degree of craftsmanship or artistic value. The materials and ornamentation designs are typical of Beaux-Arts public buildings.*
- *149 Harmony Road South is historically linked to its surroundings as one of last vestiges of Village of Harmony, which has largely disappeared into the City of Oshawa.*
- *149 Harmony Road South does not clearly yield or have the potential to yield information that contributes to the understanding of a community or culture.*
- *Although 149 Harmony Road South served the surrounding community, the influence of the school property on the character of the surrounding area has not been demonstrated.*
- *149 Harmony Road South does not reflect the ideas of an architect, builder, designer, or theorist. Research did not reveal a notable builder or architect of the building. Research also did not find that that the design of the school generates new or key ideas in the field of architecture.*

THIRD ATTEMPT AT DESIGNATION – PREVIOUS EFFORTS FAILED

We understand that the Property had been the subject of two previous recommendations for designation in September 2015 and in September 2019, respectively, on the basis of its cultural heritage value or interest. On both occasions, City Council refused to approve the designation, with the latter resulting in the Property being listed on the City's Register of Properties of Cultural Heritage Value or Interest (the "**Heritage Register**").

Substantively, neither the CHVI Report nor the Staff Report provide persuasive new reasons in support of the designation of the former Harmony Public School that would not have been taken into account on these previous occasions. In fact, the Staff Report is clear that this third attempt at designation is being done merely as a procedural reaction to a change in the legislative framework.

As addressed below, and in any event, the existing listing on the Heritage Register does afford the Property a measure of protection until December 31, 2024 without any further action by Council at this time.

Despite Council's previous decisions not to designate the Property, on October 16, 2023, the Economic and Development Services Committee adopted Staff's recommendation to initiate the process of designating the Property under Part IV of the OHA. As a result, Colony finds itself once more having to oppose the designation in order to maintain the ability to move forward with its development intentions.

SITE ACCESS ISSUE

Colony is concerned that the potential designation of the Property will restrict site access and will in turn severely limit the planned redevelopment of the Property.

As noted above, the Property has limited frontage along Harmony Road South, a regional road under the jurisdiction of the Region. The former Harmony Public School is located along this frontage and directly opposite Hoskin Avenue. As identified in the letter from D.G. Biddle & Associates Limited, our client's planning consultant, dated September 29, 2023 (attached as **Appendix A**), opportunities for access to the property are limited and could conflict with full retention of the former Harmony Public School on the property due to its location opposite to Hoskin Avenue. We note that this concern was also raised with the Economic and Development Services Committee in 2019 when the prior recommendation for designation of the Property was brought forward by Staff. This was specifically noted by Councillor Kerr at the October 16, 2023 meeting of the Economic and Development Services Committee – i.e., the site access issue had been raised previously and formed part of the justification for not proceeding with the designation of the Property in 2019.

ALTERNATIVES TO DESIGNATION

As noted above (and in the Staff Report), in accordance with the changes to the OHA made through the *More Homes Built Faster Act, 2022*, the City has at least until **December 31, 2024** to make a decision as to whether the Property should be designated if no applications for the Property are submitted. If the Applications are made before December 31, 2024, then because the Property is already listed on the Heritage Register, the City can consider the heritage status in response to the Applications in accordance with timelines set out in the OHA.

Given that the Applications are expected to be submitted to the City for review in short order, proceeding with the designation of the Property without the benefit of the context of the intended redevelopment, could have the effect of sterilizing the Property to development by virtue of the identified site access issue. A recommendation to designate the Property despite this access issue will necessitate our client's formal objection and probable appeal to the Ontario Land Tribunal to protect for the intended redevelopment of the Property.

Instead the City could defer this matter to a later date in 2024 and revisit the issue of designation once the Applications have been submitted.¹

For these reasons, our client requests that City Council not adopt the recommendation to initiate the designation process, or in the alternative, defer this item until the submission of the impending Applications and that staff be given direction to continue discussions with our client through the planning process for the Property. A deferral will allow for further consultation between Staff and our client's consultants with respect to the treatment of the former Harmony Public School building and a consistent assessment of the Property with all the relevant supporting documentation.

Please send notice of any decision in respect of this matter and all required notices under the OHA to both Colony as the owner of the Property and to the undersigned and Justine Reyes (jreyes@overlandllp.ca).

Yours truly,
Overland LLP



Per: Christopher J. Tanzola
Partner

Encl.

¹ If for some reason the Applications are not forthcoming, the City would still have over a year to address this matter.

APPENDIX "A"

Letter from D.G. Biddle & Associates Limited, dated September 29, 2023



D. G. Biddle & Associates Limited

consulting engineers and planners

96 KING ST. E., OSHAWA, ONTARIO L1H 1B6 PHONE (905) 576-8500 FAX (905) 576-9730
e-mail: info@dgbiddle.com

September 29, 2023

Planning Department
City of Oshawa
50 Centre Street South
Oshawa ON L1H 3Z7

Attention: Connor Leherbauer

**RE: 149 Harmony Road South, Harmony Public School Building
Heritage Research Report
Our File: 115175**

Dear Mr. Leherbauer:

D.G. Biddle and Associates Limited has been retained by the owner, Colony Real Estate Development Inc., to provide professional land use planning consulting services in support of development applications for the property at 149 Harmony Road South in the City of Oshawa, the Harmony Road Public School.

We are in receipt of Evaluation of 149 Harmony Road South - Harmony Public School report prepared by Archaeological Research Associates Ltd. for the City of Oshawa (September 19, 2023).

On September 9, 2019, the Oshawa Heritage Committee brought forward a proposal to the Development Services Committee to designate 149 Harmony Road South as a heritage property. The Development Services Committee recommended to Council that the property not be designated, but instead to list the property on the City of Oshawa's Register of Properties of Cultural Heritage Value or Interest. The recommendation to not designate was approved by City Council on September 23, 2019.

The owner purchased the property from the Durham District School Board with the intent to redevelop the property under the permissions of the Region of Durham and City of Oshawa Official Plans.

Harmony Road South and the properties fronting onto Harmony are designated as **Regional Corridor** in the Region of Durham Official Plan, with an underlying **Living Areas** land use designation. The Regional Corridor designation is intended to allow for higher density residential, commercial, and mixed-use development with

minimum residential density requirements of 60 units per hectare. The Living Areas land use designation does not specify a minimum or maximum density permission, but instead defers to the local official plan.

The City of Oshawa Official Plan designates the property for **Residential** land uses. Location criteria found in Table 2 of the Oshawa Official Plan would generally allow for **Medium Density I Residential** land use and density permissions due to its location on an arterial road and at the periphery of a residential neighbourhood. The Medium Density I Residential land use designation permits densities of 30 to 60 units per hectare.

Harmony Road South is a Regional Road under the jurisdiction of the Region of Durham. The Region's intersection spacing protocol will require any new driveway into the property to line up opposite Hoskin Avenue. Site access is restricted along Harmony Road South due to the site's limited frontage and proximity to Hoskin Avenue. No other site access location is feasible due to restrictions of turning movements into and out of the site and due to potential conflicting turning movements on Harmony. A site access opposite Hoskin Avenue is the only feasible option.

Unfortunately, the Harmony Road Public School is located at the intersection of Harmony Road with Hoskin Avenue. The location of the existing building does not permit feasible site access in line with the Region's site access protocol.

As such, the designation of the Harmony Road Public School would severely limit access to the site, which in turn will severely limit any future development potential of the site. For this reason, the owner is opposed to the designation of the Harmony Road Public School under the Ontario Heritage Act.

Yours Truly,
D.G. BIDDLE & ASSOCIATES LIMITED

Ashlee Prescott

Ashlee Prescott
Junior Planner

Cc. Monica Chen, Colony Real Estate Development Inc. (via email)

APPENDIX B

Public Report from City Staff dated September 4, 2019

To: Development Services Committee

From: Warren Munro, HBA, RPP, Commissioner,
Development Services Department

Report Number: DS-19-139

Date of Report: September 4, 2019

Date of Meeting: September 9, 2019

Subject: Proposed Designation Pursuant to Ontario Heritage Act:
149 Harmony Road South (Former Harmony Public School)

File: B-8600-0353

1.0 Purpose

The purpose of this report is to seek Council's direction on whether or not to designate the property located at 149 Harmony Road South (former Harmony Public School) as a property of cultural heritage value or interest under Part IV of the *Ontario Heritage Act*.

On September 27, 2018, Heritage Oshawa recommended that the property located at 149 Harmony Road South be designated under the *Ontario Heritage Act*.

On January 14, 2019, Development Services Committee referred the recommendation from Heritage Oshawa to staff for a report.

Attachment 1 shows the location of 149 Harmony Road South as well as the existing zoning in the area.

Attachment 2 is an air photo showing the footprint of the former school building at 149 Harmony Road South.

Attachment 3 is a copy of the September 2012 Heritage Research Report prepared by Melissa Cole, a local heritage consultant, for 149 Harmony Road South.

Attachment 4 is a copy of Report DS-14-74 dated April 9, 2014 regarding an offer from the Durham District School Board (D.D.S.B.) to sell 149 Harmony Road South to the City.

Attachment 5 is correspondence dated May 27, 2019 from Monica Chen, representing Colony Real Estate Development Ltd., the owner of 149 Harmony Road South, indicating that the owner does not support the designation of their property under Part IV of the *Ontario Heritage Act*.

Attachment 6 is correspondence dated May 29, 2019 from Michael J. Fry of D.G. Biddle & Associates Ltd., on behalf of Colony Real Estate Development Ltd., outlining the reasons the owner does not support the designation of 149 Harmony Road South.

Attachment 7 is a Cultural Heritage Evaluation & Options Analysis relating to 149 Harmony Road South dated May 30, 2019, prepared by Golder Associates Ltd. for Colony Real Estate Development Ltd.

Attachment 8 is a copy of email correspondence dated August 13, 2019 from Michael J. Fry of D. G. Biddle & Associates Ltd., on behalf of Colony Real Estate Development Ltd., confirming that the property owner does not support the designation of 149 Harmony Road South, including any part of the former school building, notwithstanding the recommendations contained in the Cultural Heritage Evaluation & Options Analysis dated May 30, 2019 prepared by Golder Associates Ltd. for the owner (see Attachment 7).

2.0 Recommendation

That the Development Services Committee select an appropriate option as set out in Section 5.9 of Report DS-19-139 dated September 4, 2019.

3.0 Executive Summary

Not applicable.

4.0 Input From Other Sources

The following have been consulted in the preparation of this report:

- Commissioner, Finance Services
- City Solicitor
- Heritage Oshawa
- Owner of 149 Harmony Road South (Colony Real Estate Development Ltd.)

5.0 Analysis

5.1 Heritage Oshawa Inventory of City of Oshawa Heritage Properties

The Heritage Oshawa Inventory of City of Oshawa Heritage Properties (the Inventory) identifies properties of cultural heritage value or interest within the City of Oshawa. The Inventory includes all properties on the City of Oshawa Register of Properties of Cultural Heritage Value or Interest as well as properties identified as 'Class A' or 'Class B'.

Class A properties are properties that have been evaluated by Heritage Oshawa and determined to have the highest potential for designation.

Class B properties are properties that have been evaluated by Heritage Oshawa and determined to have good potential for designation.

149 Harmony Road South (see Attachments 1 and 2) is identified in the Inventory as a Class A property.

5.2 The City of Oshawa Register of Properties of Cultural Heritage Value or Interest

The City of Oshawa Register of Properties of Cultural Heritage Value or Interest (the Register) is the list of properties from the Inventory that have been formally recognized by Council, pursuant to Section 27 of the *Ontario Heritage Act*, as being properties within the City of Oshawa having cultural heritage value or interest.

The Register includes “designated” and “listed, non-designated” properties.

A property is automatically added to the Register as a designated property once it is designated in accordance with the process established in the *Ontario Heritage Act*.

A property is added to the Register as a listed, non-designated property by resolution of Council.

149 Harmony Road South is currently not on the City of Oshawa Register of Properties of Cultural Heritage Value or Interest.

5.3 Background

5.3.1 Heritage Research Report

On June 28, 2012 Heritage Oshawa passed the following resolution:

“That Heritage Oshawa recommend to the Development Services Committee:

Whereas Harmony Public School and Ritson Public School are closing and are to be decommissioned at the end of June 2012; and,

Whereas it is anticipated that the Durham District School Board will be considering the future of these school buildings; and,

Whereas Harmony Public School is a Class A and Ritson Public School is a Class B on the Heritage Oshawa Inventory of Heritage Properties;

Whereas Heritage Oshawa recognizes the cultural heritage importance of both of these schools;

Therefore be it resolved:

1. That Council initiate discussion with the Durham District School Board regarding future uses for Harmony Public School and Ritson Public School; and,
2. That Heritage Oshawa be consulted in the planning process for any future adaptive reuse.

3. That a research report should be prepared for both buildings in the near future.”

Heritage Oshawa subsequently engaged Melissa Cole, a qualified heritage consultant, to prepare a heritage research report for 149 Harmony Road South. Ms. Cole’s heritage research report dated September 2012 forms Attachment 3 to this report.

The September 2012 heritage research report for 149 Harmony Road South provides evidence that the property meets one or more of the criteria for designation under the *Ontario Heritage Act* (Ontario Regulation 9/06) under the following three categories:

1. Design or physical value
2. Historical or associative value
3. Contextual value

5.3.2 Heritage Oshawa Follow-up to Research Report

Subsequent to its receipt of the heritage research report, Heritage Oshawa did not recommend designation of the school under the *Ontario Heritage Act*. Rather, on November 22, 2012, it passed a resolution to receive the heritage research report for information and to monitor future activities related to the subject school property.

Accordingly, when a letter dated February 5, 2014 from the D.D.S.B. was received by the City offering to sell 149 Harmony Road South as a surplus school site, City staff advised Heritage Oshawa in this regard.

On February 24, 2014 the Development Services Committee referred to staff for a report the letter from the D.D.S.B. offering to sell the Harmony Public School site located at 149 Harmony Road South (see Attachments 1 and 2) to the City.

On March 11, 2014 Heritage Oshawa recommended that Council consider purchasing the school site for re-purposing as an Arts, Culture and Heritage Education Centre.

On April 7, 2014 Council referred to staff Heritage Oshawa’s recommendation that the school site be considered for acquisition and re-purposing as an Arts, Culture and Heritage Education Centre.

On April 28, 2014 Council considered Report DS-14-74 (see Attachment 4) regarding the offer from the D.D.S.B. and passed the following motion:

“That, pursuant to Report DS-14-74 dated April 9, 2014, the Durham District School Board be advised that the City does not wish to acquire the Harmony Road Public School site at 149 Harmony Road South.”

On June 25, 2015 a proposal to demolish the former school building and redevelop the site at 149 Harmony Road South was presented to Heritage Oshawa by Rodger Miller of Urban Terra, on behalf of Brookfield Homes. Heritage Oshawa passed the following motion in response to the presentation:

"That Heritage Oshawa seek clarification regarding the alignment of the new road into the proposed development with Hoskin Avenue or if it can be accommodated in the existing driveway north of the school building; and,

That Brookfield Homes seek additional information on adaptive reuse of 149 Harmony Road South; and,

That in the event that the building must be demolished, that Brookfield Homes identify options to commemorate the building."

On August 27, 2015 a follow-up presentation was given to Heritage Oshawa by Rodger Miller of Urban Terra, on behalf of Brookfield Homes. Heritage Oshawa was advised that according to the Region of Durham, a road/driveway access to the site that is aligned with the centre line of Hoskin Avenue is the only option that provides sufficient space for safe traffic flow. Heritage Oshawa was also advised that while relocating the former school building for adaptive reuse was determined not to be economically viable, the proponent is willing to work with Heritage Oshawa to ensure the building is appropriately commemorated in the new development. Heritage Oshawa passed the following motion (HTG-15-70) in response to the presentation:

"Whereas Heritage Oshawa would prefer to leave the school building located at 149 Harmony Road South in situ or be used for adaptive reuse; and,

Whereas the Region of Durham has determined that the only access option that provides sufficient traffic flow and entrance from the development onto Harmony Road South would be a new access that matches the existing centre line on Hoskin Avenue; and,

Whereas this development would leave no option other than the removal of the Heritage Oshawa Inventory Building at 149 Harmony Road South;

Therefore be it resolved that if a development is approved, the plan must include a commemorative project for the school building developed in consultation with Heritage Oshawa and the proponent."

On September 14, 2015 the Development Services Committee endorsed the recommendation of Heritage Oshawa (DS-15-177).

On September 28, 2015 City Council adopted the recommendation of the Development Services Committee as contained in DS-15-177.

The D.D.S.B. subsequently sold 149 Harmony Road South to Colony Real Estate Development Ltd. (the current owner) on April 11, 2016.

5.3.3 Heritage Oshawa Recommendation to Designate

Given that both the former Harmony Public School at 149 Harmony Road South and the former Ritson Public School at 300 Ritson Road South were declared surplus by the D.D.S.B. and that heritage research reports for both properties had previously been

prepared, Heritage Oshawa determined as part of its 2018 work plan to seek heritage designation for both former school sites. With respect to 149 Harmony Road South, on September 27, 2018 Heritage Oshawa recommended the following to Development Services Committee (HTG-18-61):

“Whereas Heritage Oshawa has a research report on Harmony Public School at 149 Harmony Road South which is a Class A property in the Heritage Oshawa Inventory and recommended designation; and,

Whereas Harmony Public School was built in 1924, the year of incorporation for the City of Oshawa; and,

Whereas Harmony Public School has architectural value as a rare example of a schoolhouse of Classic Revival style with an elaborate Greek Doric portico entrance, an embodiment of a philosophy of natural light, spaciousness and good ventilation introduced in the late 1800s when small wooden schoolhouses were replaced with those such as the Harmony Public School; and,

Whereas Harmony Public School has associative value as public schools have stood on the site for over 150 years, the current building was constructed at a time when the population was expanding, increasing demand for schooling; and,

Whereas Harmony Public School has associative value with the Farewell family, one of the first to settle in the Village of Harmony in 1804; and,

Whereas Harmony Public School has contextual value as a landmark in the City of Oshawa, near the Farewell Cemetery; and,

Whereas the benefits of designating this property include promoting knowledge and understanding of Oshawa’s cultural heritage, recognizing highly visible resources, recognizing the community’s identity, and inspiring pride in Oshawa’s citizens because the City has been built with care, thought, and hard work over the past 100 years; and,

Whereas the responsibilities of the owners of designated properties do not extend to upkeep or expenses beyond those of any property owner;

Therefore be it resolved that the building and site at Harmony Public School be designated as a property of cultural heritage significance under the *Ontario Heritage Act*.”

On January 14, 2019 the Development Services Committee referred HTG-18-61 to staff for a report.

5.4 Historical Significance of 149 Harmony Road South

The heritage research report dated September 2012 (see Attachment 3) generally summarizes the cultural heritage value or interest of 149 Harmony Road South as follows:

1. The school building located at 149 Harmony Road South has design and physical value because the building is an example of a school that was built in the 1920s representative of the Classic Revival architectural style.
2. This property has associative value because:
 - Harmony Public School has direct association with the Farewell family. The land on which the school sits was donated by Akeus Farewell. The Farewells were one of the first families to settle in the Village of Harmony. They came to the area in circa 1804.
 - Harmony Public School is historically linked to the City of Oshawa as it is representative of the Village of Harmony that now lies within the City of Oshawa. That is where the name of the school originates.
3. This property has contextual value because Harmony Public School is a landmark in the City of Oshawa; approximately 0.5 km to the north is located Farewell Cemetery which represents another landmark in a community that was once known as the Village of Harmony.

After analyzing the history of, and heritage attributed to, the subject property, the heritage research report concludes that the subject property meets several of the criteria outlined in Ontario Regulation 9/06, Criteria for Determining Cultural Heritage Value or Interest, and merits designation under the *Ontario Heritage Act*.

5.5 The Provincial Policy Statement

The Provincial Policy Statement (P.P.S.) provides policy direction on matters of provincial interest related to land use planning and development. Section 3 of the *Planning Act* requires that decisions affecting planning matters “shall be consistent with” policy statements issued under the *Act*.

Section 2.6 of the P.P.S. addresses Cultural Heritage and Archaeology and in particular states that (among other things):

“Planning authorities shall not permit development and site alteration on adjacent lands to protected heritage property except where the proposed development and site alteration has been evaluated and it has been demonstrated that the heritage attributes of the protected heritage property will be conserved.”

This Section of the P.P.S. does not currently apply to the properties adjacent to 149 Harmony Road South since it is not a designated property. It would apply if it was designated.

5.6 Heritage Designation Process

The *Ontario Heritage Act* provides a framework for identification, conservation and protection of cultural heritage resources.

The *Ontario Heritage Act* empowers a municipality to designate, by by-law, a property to be of cultural heritage value or interest.

A heritage designation under the *Ontario Heritage Act*:

- Recognizes the importance of a property to the local community;
- Protects the property's cultural heritage value;
- Encourages good stewardship and conservation; and
- Promotes knowledge and understanding about the property.

The designation of 149 Harmony Road South would be governed by Part IV of the *Ontario Heritage Act* for individual property designation.

The *Ontario Heritage Act* requires that a municipal council must consult with its municipal heritage committee, where one exists, before considering a designation.

The *Ontario Heritage Act* specifies that a Notice of Intention to Designate a property be served on the owner and the Ontario Heritage Trust as well as being published in a newspaper having general circulation in the municipality. Based on City policy any Notice of Intention to Designate would be published in both the Oshawa This Week and Oshawa Express newspapers.

A Notice of Intention to Designate a property must include:

1. The Description of Property so that it can be readily identified;
2. The Statement of Cultural Heritage Value or Interest, which identifies the property's heritage significance;
3. The Description of Heritage Attributes outlining the particular features that should be protected for the future; and
4. A statement that any notice of objection to the designation must be filed with the municipality within 30 days after the date of publication of the newspaper notice.

If no objections are filed with the municipality within 30 days after the date of publication of notice in the newspaper, the council can proceed to pass a by-law designating the property.

If an objection to a designation is filed with the municipality within the 30 day period, Council must refer the objection to the Conservation Review Board (Review Board) for a hearing. The Review Board will then hold a hearing and make recommendations to Council. Council is not bound to follow the recommendations of the Review Board but must consider the Review Board's report. Council then decides whether to pass a designating by-law or withdraw its intention to designate.

All properties that are designated by Council are automatically listed on the City of Oshawa Register of Properties of Cultural Heritage Value or Interest.

It should be noted that while the heritage designation process as described above currently applies, changes to this process have been approved under Bill 108 and will come into effect on a day to be named by proclamation of the Lieutenant Governor.

5.7 Register Designated Versus Register Non-designated

5.7.1 Non-designated Properties Listed on the Register

149 Harmony Road South is currently identified on the Heritage Oshawa Inventory of City of Oshawa Heritage Properties as a Class A property. A Class A property has no standing, or special protection, under the *Ontario Heritage Act*.

Pursuant to Section 27 of the *Ontario Heritage Act*, Council may choose to elevate the status of a Class A property by adding it to the City of Oshawa Register of Properties of Cultural Heritage Value or Interest as a “listed, non-designated” property. This can be done through a resolution of Council, subject to consultation with Heritage Oshawa.

There is no legislated appeal process for the addition by Council of a listed, non-designated property to the City’s Register. However, under changes to the *Ontario Heritage Act* introduced through Bill 108, an owner of a Class A property that has been added to the Register will have the ability, as of a date to be named by proclamation of the Lieutenant Governor, to request that Council re-consider its decision to add the subject property to the City’s Register.

A listed, non-designated property is protected under the *Ontario Heritage Act* to the extent that a municipality can withhold a demolition permit for up to 60 days after receiving an application from the property owner to demolish or remove the building or structure. This 60 day period enables municipal councils, if they so choose, to designate the property by by-law as a property of cultural heritage value or interest, and thereby seek to prevent demolition.

There are no legislated obligations regarding proposed alterations to a listed, non-designated property. However, the City’s standard practice is for Heritage Oshawa to review and comment on alteration proposals for listed, non-designated properties.

5.7.2 Designated Properties Listed on the Register

A designated property is given protection under the *Ontario Heritage Act* from alteration and demolition. The owner of a designated property must apply to Council for approval of demolition or any alteration that may impact heritage attributes established in the designation by-law, and receive consent in writing from Council. Council must first consult with its municipal heritage committee (Heritage Oshawa) prior to deciding on the proposed alteration or demolition. The *Ontario Heritage Act* further details the process for requests for approval of alteration or demolition and the associated appeal process.

5.7.3 Effect on Process to Alter or Demolish

Only the property owner can object to Council’s decision regarding an application to alter or demolish a designated structure. In the case of an application for alteration, the owner

has 30 days from the issuance of the Notice of Decision to Refuse, to object to Council's decision. This objection is then referred to the Conservation Review Board (C.R.B.). The C.R.B. holds a hearing and reports to Council on the matter. Council considers the C.R.B. report and makes a final decision on the request for alteration. If Council refuses to consent to the application for alteration, then the property cannot be altered.

In the case of a designated property, if the owner applies to Council to demolish a designated structure, the owner has 30 days to appeal Council's decision to the Local Planning Appeal Tribunal (L.P.A.T.). The L.P.A.T. deals with the matter and makes a final decision.

Where demolition of a property identified on the City's Register as a listed, non-designated property is proposed, the owner is required to give Council at least 60 days' notice in writing of the owner's intention to demolish the building. This notification is typically given through submission of an actual demolition permit application. There is no decision/appeal/objection process associated with this requirement.

It is important to note that while the processes described above regarding applications to alter or demolish structures or buildings identified in the City's Register currently apply, changes to these processes have been approved under Bill 108 and will come into effect on a day to be named by proclamation of the Lieutenant Governor.

5.8 Heritage Property Tax Reduction Program

On March 21, 2011 Council adopted a Heritage Property Tax Reduction Program. This program provides annual tax reductions for eligible heritage properties as an incentive to encourage property owners to restore and maintain heritage properties within the City.

The amount of the Heritage Property Tax Reduction is 40% of the City and education portions of the property taxes. At this time, the Region of Durham does not participate in the program and therefore the reduction does not apply to the Region's portion of the property taxes.

In order to qualify for the Heritage Property Tax Reduction Program, a property must meet the following eligibility criteria:

1. Be located in the City;
2. Be designated under Part IV or Part V of the *Ontario Heritage Act*;
3. Be subject to a Heritage Easement Agreement with the City; and
4. Comply with additional eligibility criteria as set out in By-law 106-2011.

Additional eligibility criteria set out in By-law 106-2011 include, but are not limited to:

1. The property is not subject to any by-law contravention, work order or outstanding municipal requirements or liens; and
2. The property is in good and habitable condition and meets all of the City's requirements related to the heritage property.

In 2018, 40% of the City and school board portion of the taxes for 149 Harmony Road South amounted to approximately \$4,828 (the total 2018 City and school board portion of the taxes are \$12,069). The foregoing values do not include Regional taxes given that the Region of Durham does not participate in the City's Heritage Property Tax Reduction Program.

5.9 Options

The September 2012 heritage research report for 149 Harmony Road South (see Attachment 3) establishes the reasons for designation pursuant to the *Ontario Heritage Act*. Notwithstanding Heritage Oshawa's November 22, 2012 resolution and on the basis of the research report, on September 27, 2018, Heritage Oshawa recommended that 149 Harmony Road South be designated under Part IV of the *Ontario Heritage Act*.

After notice of Heritage Oshawa's motion to designate 149 Harmony Road South was issued to the property owner (Colony Real Estate Development Ltd.), correspondence dated May 27, 2019 was received by staff from Monica Chen representing Colony Real Estate Development Ltd. (see Attachment 5). Additional correspondence dated May 29, 2019 from Michael J. Fry of D. G. Biddle & Associates Ltd. on behalf of Colony Real Estate Development Ltd., was subsequently received by staff (see Attachment 6).

Through this correspondence staff were informed that the owner does not support the designation of 149 Harmony Road South on the basis that it would restrict the future development potential of the property and does not take into account the intent of the infill and intensification policies of the Regional Official Plan and the City of Oshawa Official Plan.

Staff subsequently received a Cultural Heritage Evaluation & Options Analysis dated May 30, 2019, prepared by Golder Associates Ltd. (Golder) for the property owner (see Attachment 7). Golder concluded that the school building can be partially demolished (i.e. the north single-storey wing and the later 1957 addition, which is not identified as a heritage attribute) and compatibly incorporated into the proposed development without substantially losing its integrity, cultural heritage significance, or importance to the local community.

While demolishing the north wing and the 1957 addition and reconstituting the structure as a two-storey hall with a single-storey south wing would enable development and safe vehicle access, and retain the building for community use, it would result in an asymmetrical structure and present an "unbalanced" street facing façade.

To guide these structural changes and adaptive re-use of the building, Golder recommends conducting a heritage conservation plan for the rehabilitation of the building in a new configuration and use.

To confirm the position of the property owner in view of Golder's recommendation, staff contacted Michael J. Fry of D. G. Biddle & Associates Ltd. (the owner's consultant). Email correspondence dated August 13, 2019 was received from the same confirming that the property owner does not support designation of the property including any part of the former school building, notwithstanding Golder's recommendation (see Attachment 8).

Staff notes that Golder's conclusion that the school building could be partially retained while allowing access to the site that is aligned with Hoskin Avenue is relevant with regard to resolution DS-15-177 endorsed by Council on September 28, 2015, referenced in Section 5.3.2. The presentation to Heritage Oshawa in June and August 2015 by Urban Terra on behalf of Brookfield Homes did not provide any option for development of the site which did not involve the full demolition of the school building. Golder's option involving the partial demolition of the school building, and the retention of the two-storey hall and single-storey south wing, was not presented to Heritage Oshawa at that time. Heritage Oshawa has not commented on Golder's analysis as the current property owner is opposed to designation of any part of the building, including the two-storey hall and single-storey south wing.

Given the contrasting positions of Heritage Oshawa and the property owner, three options are available to the Development Services Committee on a go forward basis to deal with this matter.

5.9.1 Option 1: Status Quo

Should the Development Services Committee wish to maintain the status quo and have 149 Harmony Road South remain as a "Class A" property on the Heritage Oshawa Inventory of City of Oshawa Heritage Properties, then the following recommendation should be adopted:

"That the Development Services Committee recommends to City Council:

1. That, pursuant to Report DS-19-139 dated September 4, 2019, 149 Harmony Road South not be designated under the *Ontario Heritage Act* but rather remain as a "Class A" property on the Heritage Oshawa Inventory of City of Oshawa Heritage Properties."
2. That Council affirm its position, as identified in resolution DS-15-177 and adopted on September 28, 2015, that in the event a development is approved at 149 Harmony Road South involving the demolition of the former Harmony Public School, the development plan must include a commemorative project for the school building developed in consultation with Heritage Oshawa and the proponent.

5.9.2 Option 2: Designate

Should the Development Services Committee wish to designate 149 Harmony Road South as a property of cultural heritage value or interest, in which case it would be added as a designated property to the City of Oshawa Register of Properties of Cultural Heritage Value or Interest, then the following recommendation should be adopted:

"That the Development Services Committee recommends to City Council:

That, pursuant to Report DS-19-139 dated September 4, 2019, Development Services staff be authorized to undertake the process established in the *Ontario Heritage Act* to designate the property located at 149 Harmony Road South as a property of cultural heritage value or interest under the *Ontario Heritage Act* by undertaking the following:

- (a) Prepare a Notice of Intention to Designate the property located at 149 Harmony Road South under the *Ontario Heritage Act*;
- (b) Publish the Notice in the Oshawa This Week and Oshawa Express newspapers;
- (c) Forward the Notice to the Ontario Heritage Trust and the owner in accordance with the *Ontario Heritage Act*; and
- (d) Prepare the necessary by-law and Designation Statement and Description, with input from Heritage Oshawa, for subsequent consideration by Council."

5.9.3 Option 3: Add to the City's Register as a Listed, Non-designated Property

Should the Development Services Committee wish Council to formally recognize 149 Harmony Road South as a property having cultural value or interest pursuant to Section 27 of the *Ontario Heritage Act*, in which case it would become a "listed, non-designated" property on the City's Register, then the following recommendation should be adopted:

"That the Development Services Committee recommends to City Council:

That, pursuant to Report DS-19-139 dated September 4, 2019, the property known as 149 Harmony Road South be included on the City of Oshawa Register of Properties of Cultural Heritage Value or Interest as a listed, non-designated property.

6.0 Financial Implications

The costs associated with the designation of a property under the *Ontario Heritage Act* are related to notice requirements, which can be accommodated within the Department's budget.

In the event of any objection to the Notice of Intention to Designate and referral to the Conservation Review Board (or to the Local Planning Appeal Tribunal, once changes to the *Ontario Heritage Act* establishing the Local Planning Appeal Tribunal as the appeal body come into effect on a day to be named by proclamation of the Lieutenant Governor), the appropriate City staff, with the potential assistance of a heritage consultant, would need to participate in the associated hearing. These costs can be accommodated within the Departmental budget.

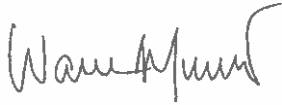
If 149 Harmony Road South is designated under the *Ontario Heritage Act* and the eligibility criteria for the City's Heritage Property Tax Reduction Program are satisfied, the property owner would be eligible for a reduction of 40% of the taxes paid annually to the City and school boards.

Finance Services has advised that 40% of the City and school board portion of the taxes for 149 Harmony Road South in 2018 amounts to approximately \$4,828 (the total 2018 City and school board portion of the taxes is \$12,069).

If 149 Harmony Road South is redeveloped as an infill development, the new development may accrue property taxes.

7.0 Relationship to the Oshawa Strategic Plan

The information in this report addresses the Cultural Vitality goal of the Oshawa Strategic Plan.



Warren Munro, HBA, RPP, Commissioner,
Development Services Department