

## Report to Planning and Environment Committee

**To:** Chair and Members  
Planning & Environment Committee

**From:** George Kotsifas P. Eng.,  
Managing Director, Development & Compliance Services and  
Chief Building Official

**Subject:** 2492222 Ontario Inc.  
536 and 542 Windermere Road

**Meeting on:** January 20, 2020

## Recommendation

That, on the recommendation of the Director, Development Services, the following actions be taken with respect to the application of 2492222 Ontario Inc. relating to the property located at 536 and 542 Windermere Road:

- (a) pursuant to section 13.3 of the Council Procedure By-law, part c) of the resolution of the Municipal Council from the meeting held on April 23, 2019 relating to Item 3.8 of the 7th Report of the Planning and Environment Committee having to do with the property located at 536 and 542 Windermere Road **BE RECONSIDERED**; it being noted that part c) reads as follows:

*“c) the trees on the westerly and northerly boundary BE PROTECTED AND BE PRESERVED with the exception of invasive species or trees that are in poor condition;”*

- (b) subject to the approval of (a) above, the Civic Administration **BE AUTHORIZED** to consider implementing a vegetated buffer on the westerly and northerly boundary as a result of either retaining existing trees, or new plantings, or the combination of the two, in accordance with a landscape plan to be considered through the Site Plan Approval process.

## Executive Summary

### Summary of Request

With regards to the Zoning By-law Amendment (“ZBA”) application for 536 and 542 Windermere Road and Council’s amending by-law (Z.-1-192743) that is subject to an appeal to the Local Planning Appeal Tribunal (“LPAT”) (PL190251), the applicant has requested that part c) of Municipal Council’s resolution of April 23, 2019 be reconsidered to allow for the replacement of existing trees proximate to the northerly property boundary.

### Purpose and the Effect of Recommended Action

The purpose and effect of the recommended action is to reconsider part c) of Municipal Council’s resolution of April 23, 2019, and authorize Civic Administration to consider the implementation of a vegetated buffer on the westerly and northerly property boundary consisting of either existing trees, new plantings, or the combination of the two through the Site Plan Approval process.

### Rationale of Recommended Action

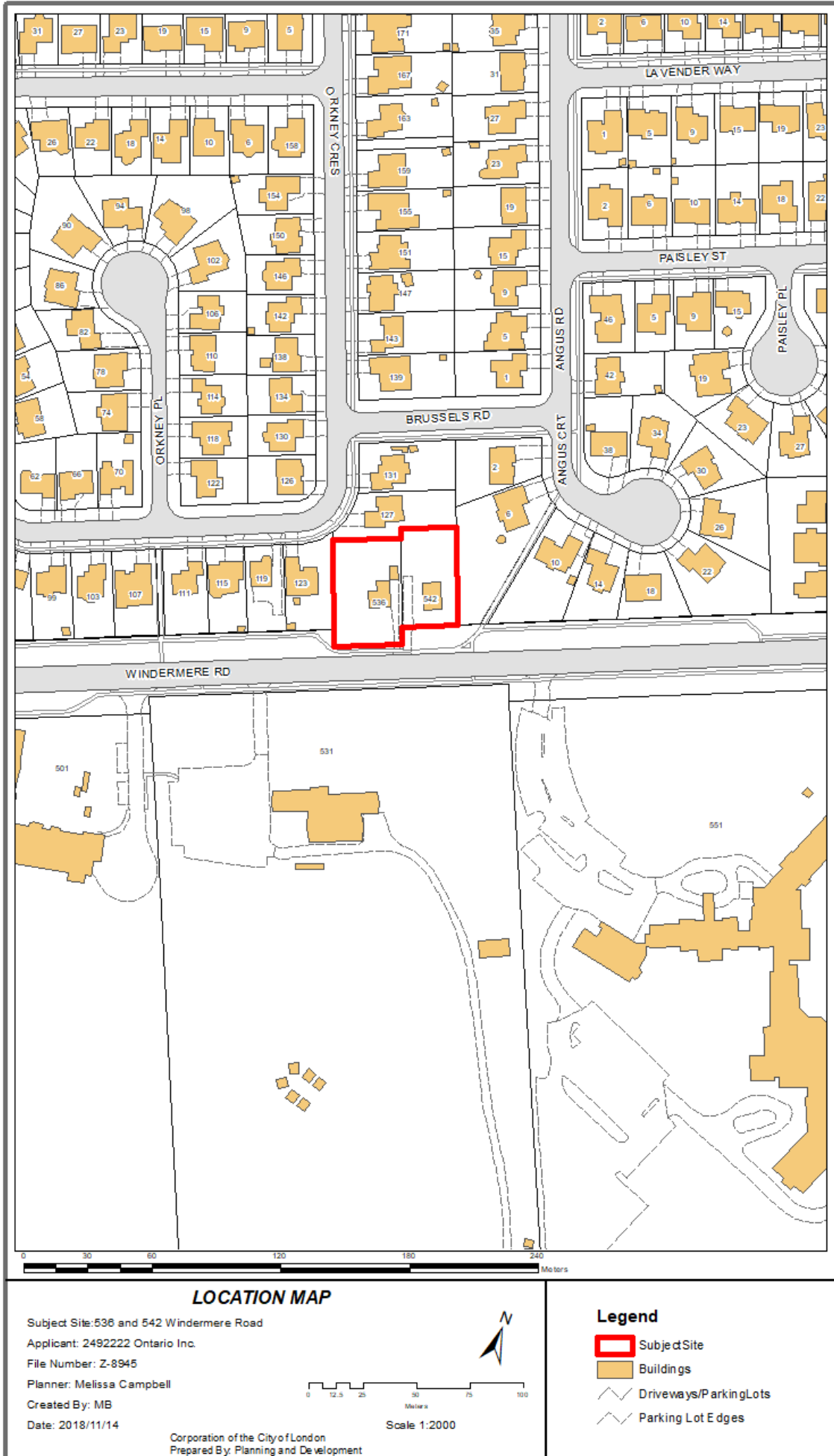
The replacement of the existing trees with new plantings can also achieve an acceptable buffer or screen to mitigate the visual impacts of the proposed development on adjacent properties and to ensure that development takes a form that is compatible with adjacent uses as was the intent of part c) of Municipal Council’s resolution of April 23, 2019. It is in the public interest to facilitate discussions between the applicant and

the adjacent property owner in the interest of resolving the appeal to the LPAT.

## Analysis

### 1.0 Site at a Glance

#### 1.1 LOCATION MAP



## 1.2 Property Description

The properties known municipally as 536 and 542 Windermere Road (“the subject lands”) are located on the north side of Windermere Road between Richmond Street and Adelaide Street. Each property is currently occupied by an existing single detached dwelling and detached garage. There are a number of mature coniferous and deciduous trees located on the subject lands. The existing trees assist in screening the subject lands from the adjacent properties.

## 2.0 Relevant Background

### 2.1 Planning History

On December 13, 2019, the Clerks Department received correspondence from Zelinka Priamo Ltd. on behalf of the applicant (2492222 Ontario Inc.) regarding Municipal Council’s resolution of April 23, 2019. As a result of on-going discussions between the applicant and the property owner to the north, Mr. Tony Mara, the applicant’s agent has requested that the Planning and Environment Committee (“Committee”) and Municipal Council reconsider part c) of Municipal Council’s resolution to allow for the removal of existing trees and replacement with new plantings to provide for a vegetative screen between the subject lands and Mr. Mara’s property.

Municipal Council’s resolution of April 23, 2019 contained three (3) parts, a) through c). Part a) resolved to amend Zoning By-law No. Z.-1 to change the zoning of the subject property from a Residential R1 (R1-6) Zone to a Holding Residential R5 Special Provision (h-5•h-•R5-5(\_)) Zone to allow for the redevelopment of the subject lands to cluster housing in the form of twelve (12) back-to-back townhouse dwellings, the equivalent of 44 units per hectare, with a reduced maximum height of 10.5 metres, a reduced minimum westerly interior side yard depth of 3.0 metres, and an increased maximum encroachment into required front yard depths to allow sunken (below-grade) amenity spaces to be located 0.2 metres from the front lot line.

Part b) resolved to refuse the applicant’s request to amend Zoning By-law No. Z.-1, to change the zoning of the subject property from a Residential R1 (R1-6) Zone to a Residential R5 Special Provision (R5-7(\_)) Zone to allow for the redevelopment of the subject lands to cluster housing in the form of sixteen (16) “back-to-back” townhouse dwellings and the equivalent of 58 uph. In accordance with the recommendation of Civic Administration, the reasons for refusal included that the requested amendment did not provide the appropriate development standards by which to minimize or mitigate potential adverse impacts for adjacent land uses to ensure compatibility and a good fit with the receiving neighbourhood; the requested amendment did not conform to the residential intensification policies in the 1989 Official Plan or \*The London Plan; and the Zoning By-law does not contemplate the level of residential intensity (density in uph) proposed by the applicant in a cluster townhouse form outside of Central London.

Part c) resolved to protect and preserve the existing trees along the northerly and westerly property boundary with the exception of invasive species or trees that are in poor condition in response to submissions and comments received through community engagement and the public participation meetings.

The decision of Municipal Council to amend Zoning By-law No. Z.-1 to change the zoning of the subject property was subsequently appealed to the LPAT by Mr. Mara who opposed the level of residential intensity permitted by the amending by-law; and who articulated that yard depths permitted by the amending by-law were inadequate to protect existing trees along the northerly and westerly property boundary to screen the proposed development from the existing dwellings.

In an effort to resolve the appeal to the LPAT, Civic Administration is aware of ongoing discussions between the applicant and Mr. Mara. The December 13, 2019 correspondence from the applicant’s agent indicated that, as they understand, it is now the preference of Mr. Mara to have trees replaced instead of retained to provide the most robust vegetative screen possible between the proposed development and existing dwellings since the existing trees have been “limbed up” to remove lower

branches. The December 13, 2019 correspondence also indicated that it is their belief that Mr. Mara's earlier comments and submissions directly resulted in part c) being included in Municipal Council's resolution of April 23, 2019.

On the advice of the City Solicitor's office, the Site Plan Approval Authority is unable to consider a site concept plan and/or landscape plan that would not protect and preserve the existing trees along the northerly and westerly property boundary given part c) of Municipal Council's resolution. The applicant's agent has therefore, brought forward a request to Committee and Municipal Council to reconsider part c).

## **3.0 Key Issues and Considerations**

### **3.1 Analysis of Request**

Through the course of the ZBA application there was considerable discussion regarding the protection and preservation of existing trees, located both on-site and off-site, proximate to the northerly and westerly boundary of the subject lands for the purpose of screening views between properties and preserving privacy. It is also important to note that such trees may also provide broader public benefits such as shade, erosion control and storm-water attenuation, improved air quality, and wildlife habitat, contribute to the quality and character of the neighbourhood, and help to mitigate the effects of climate change.

Previous staff reports dated January 7, 2019 and April 15, 2019 regarding the ZBA application focused on whether the yard depths proposed would provide an adequate protection buffer for the survival of the existing trees along the boundary of the subject lands for the purposes of screening, since at the time of those reports it was understood to be the preference of abutting property owners, and the direction of Council to staff, to preserve as many of the trees as possible.

If it is no longer the preference of the abutting property owners to have the existing trees preserved, Development Services is of the opinion that replacing the existing trees with new plantings could also achieve an acceptable buffer or screen to mitigate the visual impacts of the proposed development on adjacent properties.

With respect to the "right tree in the right place" for the purpose of screening views between properties and preserving privacy, the revised Tree Assessment Report (March 2019) prepared by Ron Koudy's Landscape Architects and submitted as part of the ZBA application supports the statement made in the recent December 13, 2019 correspondence that several of the trees along the westerly and northerly property line have been "limbed up" with the lower branches removed. Included in the revised Tree Assessment Report (March 2019) was an inventory of all trees located on the subject lands and within 3.0 metres of the subject lands and a description of each tree's condition. As an alternative to the retaining the existing trees for the purposes of screening, new plantings could be selected for the express intent of screening views, providing separation between land uses, stabilizing slopes, reducing soil erosion, and providing wind and sun protection. Given the reported condition of the existing trees, their replacement with new plantings could provide for a more robust vegetative buffer between the proposed development and the abutting dwellings.

As discussed in the previous staff reports, it is a goal of The London Plan to manage the tree canopy proactively and increase the tree canopy over time (\*Policy 389\_). To achieve tree canopy targets The London Plan directs that action shall be taken to protect more, maintain and monitor the tree canopy better, and plant more (Policy 398\_). The prevailing preference of The London Plan is to protect trees that may be impacted by development, however it is acknowledged that removal and replacement by new tree plantings can be contemplated (\*Policy 399 2. and 4.).

In the 1989 Official Plan, Section 11 contains urban design principles intended to supplement the land use designation policies. Section 11.1 ii) directs that, to the extent feasible, existing trees of a desirable species should be retained and incorporated into the landscape plans for new development, but again the policies allow for discretion with respect to removal of trees within the context of development.

From a regulatory standpoint, the subject lands and adjacent properties are located within the City's Tree Protection Area wherein according to the City of London Tree Protection By-law, private tree removal and injury is regulated in order to prevent the unnecessary loss of public benefits; however, private tree removal and injury as a condition of approval of a site plan and related development is exempt from the Tree Protection By-law and the protection that it provides.

Notwithstanding Development Services support for the request to reconsider part c) of Municipal Council's resolution of April 23, 2019, Development Services has not undertaken detailed design review of the revised site concept plan and landscape plan that accompanied the request (See Appendix A and B). At this time it is premature for Development Services to endorse or accept these plans. Detailed design review of the revised site concept plan and landscape plan would be undertaken through the Site Plan Approval process. For this particular development proposal, the Site Plan Approval process would be subject to public site plan review, which will provide the public with an opportunity in the future to provide input and comment on the revised site concept plan and landscape plan.

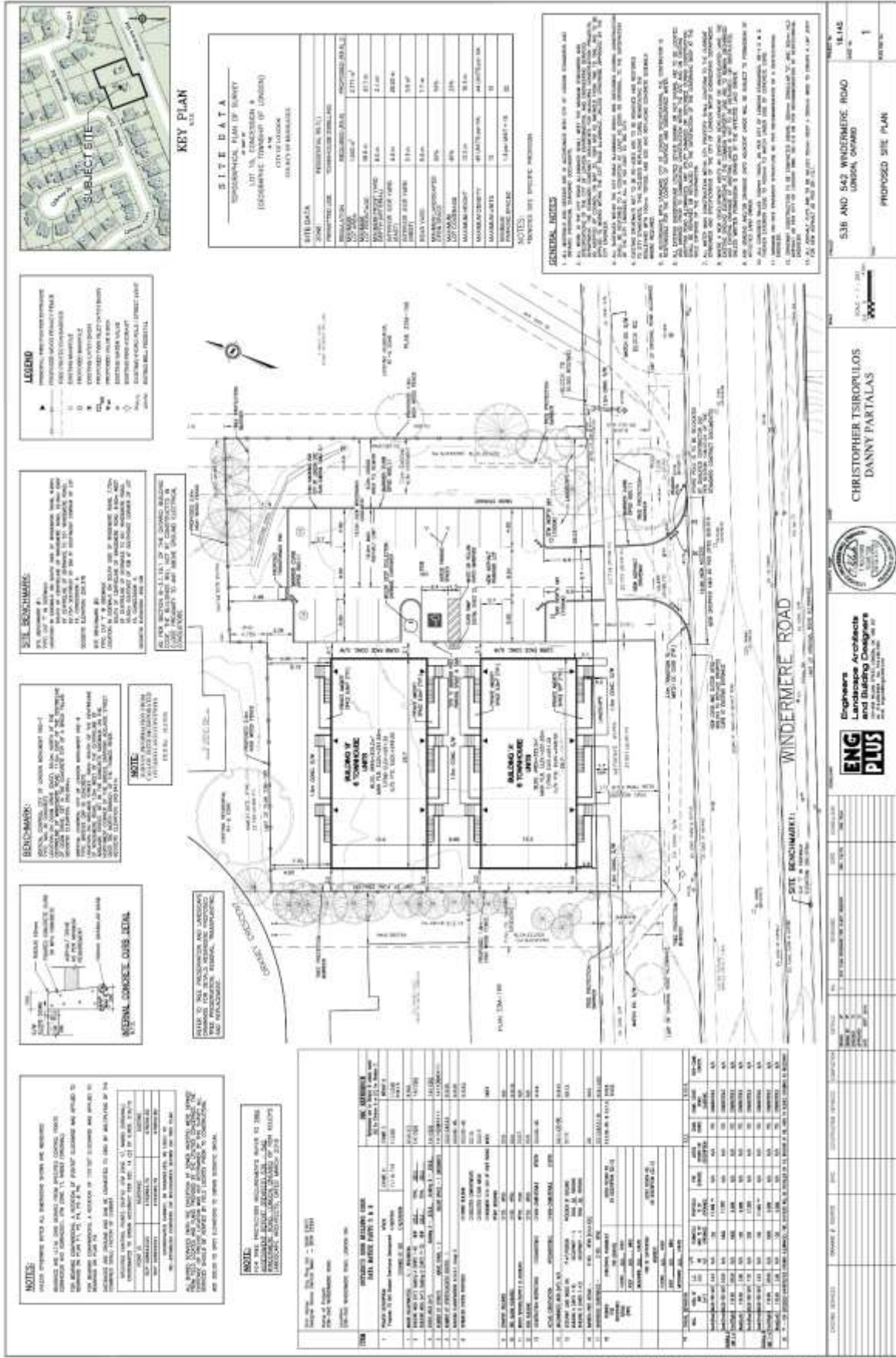
## 5.0 Conclusion

The Site Plan Approval Authority is unable to consider a site concept plan and/or landscape plan that would not protect and preserve the existing trees along the northerly and westerly property boundary given part c) of Municipal Council's resolution of April, 23, 2019. Development Services is of the opinion that replacing the existing trees with new plantings can also achieve an acceptable buffer or screen to mitigate the visual impacts of the proposed development on adjacent properties to ensure that development takes a form that is compatible with adjacent uses as was the intent of part c) of Municipal Council's resolution. It is in the public interest to facilitate appropriate discussion between the applicant and the adjacent property owner in the interest of resolving the LPAT appeal.

<b>Prepared by:</b>	<b>Melissa Campbell, MCIP, RPP Manager, Development Planning, Development Services</b>
<b>Recommended by:</b>	<b>Paul Yeoman, RPP, PLE Director, Development Services</b>
<b>Submitted by:</b>	<b>George Kotsifas, P.ENG Managing Director, Development and Compliance Services and Chief building Official</b>
Note: The opinions contained herein are offered by a person or persons qualified to provide expert opinion. Further detail with respect to qualifications can be obtained from Development Services.	

January 13, 2020

cc: Michael Tomazincic, MCIP, RPP, Manager, Current Planning



**NOTES:**  
 1. REFER TO ALL NOTES ON DRAWINGS FOR ALL DIMENSIONS UNLESS OTHERWISE SPECIFIED.  
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NO.	DESCRIPTION	QUANTITY	UNIT	PRICE	TOTAL
1	CONCRETE	1000	m <sup>3</sup>	100	100000
2	STEEL	500	kg	200	100000
3	BRICKS	10000	units	100	1000000
4	ROOFING	1000	m <sup>2</sup>	100	100000
5	PAINT	1000	liters	100	100000
6	GLASS	1000	m <sup>2</sup>	100	100000
7	MECHANICAL	1000	units	100	100000
8	ELECTRICAL	1000	units	100	100000
9	PLUMBING	1000	units	100	100000
10	LANDSCAPE	1000	units	100	100000

**INTERNAL CONCRETE CURB DETAIL**  
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**53B AND 542 WINDERMERE ROAD**  
 LONDON, ONTARIO

**PROPOSED SITE PLAN**

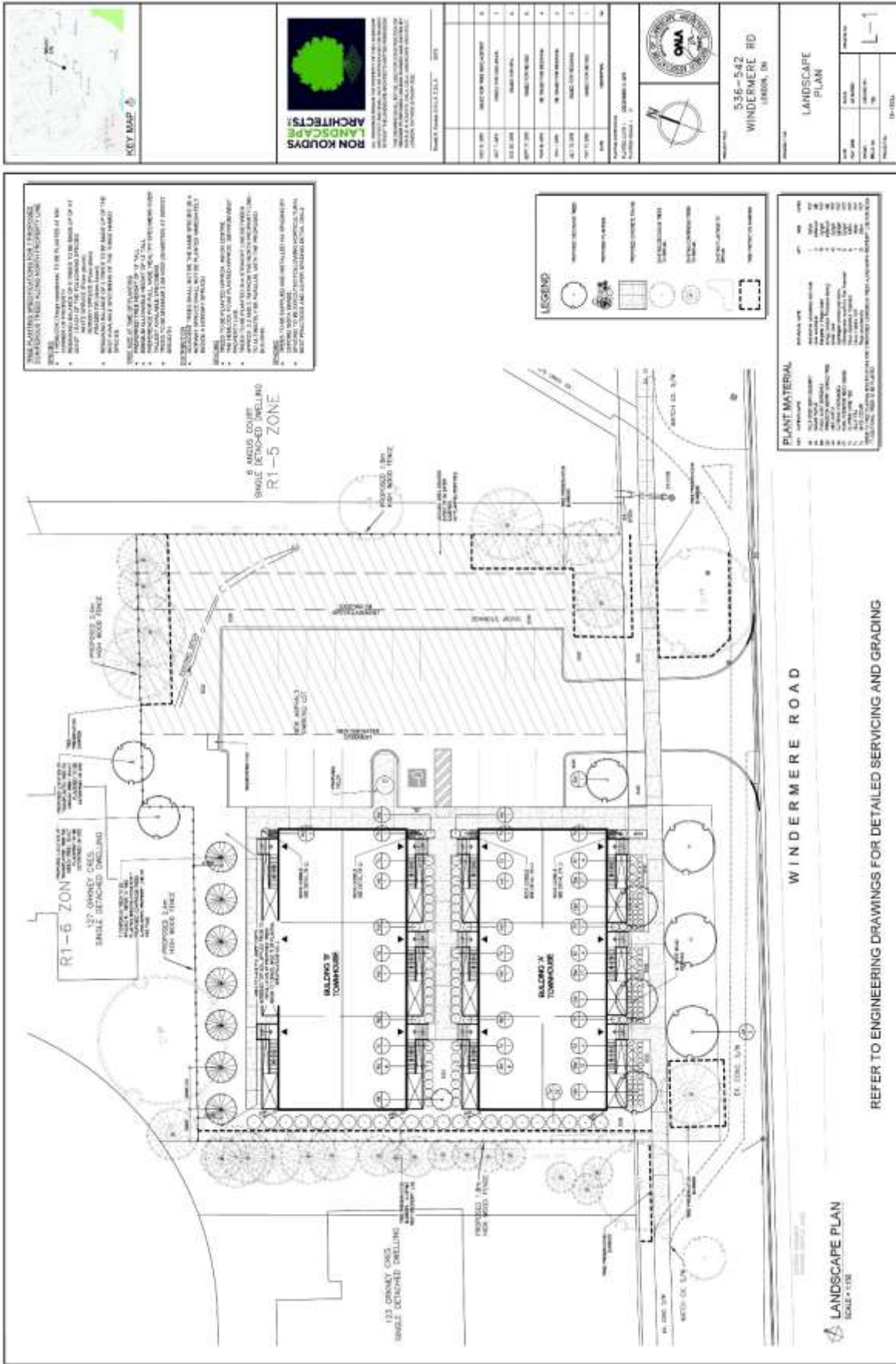
**ENGINEERS**  
 Landscape Architects  
 and Building Designers

**ENG PLUS**

**CHRISTOPHER TSIROPOULOS**  
 DANNY PARTALAS

**DATE:** 18/05/2024  
**SCALE:** 1:100  
**PROJECT NO.:** 24-001





## Appendix C

### Additional Reports

*Z-8945 – 536 and 542 Windermere Road, Public Participation Meeting on January 7, 2019* – Amendment to Zoning By-law Z.-1 to permit 12 cluster “back-to-back” townhouse dwellings and special provisions for reduced minimum front yard and westerly interior side yard depths; reduced maximum building height; and increased maximum yard encroachment for below-grade “sunken” amenity spaces.

*Z-8945 – 536 and 542 Windermere Road, Public Participation Meeting on April 15, 2019* – Amendment to Zoning By-law Z.-1 to permit 12 cluster “back-to-back” townhouse dwellings and special provisions for reduced minimum front yard and westerly interior side yard depths; reduced maximum building height; and increased maximum yard encroachment for below-grade “sunken” amenity spaces. This report followed a referral back to staff on January 7, 2019 to consider the comments and concerns of the general public; a tree preservation plan and the preservation of as many trees as possible on site; the presence of fencing that would restrict access to Orkney Crescent; and specific yard depths.