

MEMO

TO: Eric Harvey, CN Rail

FROM: Chad B. John-Baptiste, MCIP, RPP, Director, Planning - Ontario
Planning, Landscape Architecture & Urban Design

SUBJECT: **9291 Jane Street – Planning Justification Report Review**
City of Vaughan - Application Nos. OP.20.017 and Z.20.044

DATE: **March 2, 2021**

This memo provides our review of the application material filed with respect of an Official Plan and Zoning By-law Amendment regarding the property located at 9291 Jane Street. The applications were submitted in December 2020 to the City of Vaughan, Application Nos. OP.20.017 and Z.20.044.

1.0 Subject Site and Application

9291 Jane Street (the subject site) is located directly south of the CN Pullback Track for Macmillan Yard. Per the circulation from City of Vaughan staff, the subject site is currently designated in the Official Plan as “High-Density Residential/Commercial” and zoned “Restricted Commercial”. It is important to note that the site-specific Official Plan (OPA 626) restricts the subject site to only commercial uses. It is our understanding that there are various appeals with respect to the Vaughan Official Plan 2010 as it relates to the subject site.

The applications are to re-designate and rezone the site to “High-Rise Residential” and “Apartment Residential” respectively to facilitate the development of two 36 storey apartment buildings with 760 units total and various residential amenity space.

2.0 MacMillan Yard and Pullback Track

As noted, the proposed development is immediately south of the terminus of the Pullback Track for MacMillan Yard. The Pullback Track is an important component of the yard. In fact, the yard could not function without the Pullback Track. There are currently two rail lines that form the Pullback Track. It is our understanding that CN is looking to add two more rail lines to the Pullback Track as part of ongoing improvements to MacMillan Yard. These two additional lines would be located within the existing CN property.

Furthermore, it is our understanding that CN is of the view that a total of five (5) tracks can be accommodated in the pullback track lands, in the long term. All tracks having the potential to operate simultaneously.

The Vaughan Official Plan 2010 identifies the MacMillan Yard and the Pullback Track as Rail Facilities in Schedule 1 – Urban Structure and designated as Prestige Employment and Infrastructure and Utilities in Schedule 13 – Land Use.. The Pullback Track is zoned “M3 – Transportation Industrial Zone.

3.0 Comments Summary

As outlined below, there is a general gap in considering all of the applicable provincial, regional and local policies and guidelines as part of the Planning Justification Report, prepared for Eastwood Holding Corp. by SGL Planning and Design Inc., dated December 2020. In addition, despite clear policy direction to consider applicable guidelines, that review has not been completed in this Report. In general, the policy test is no longer only a mitigation related test. The policy test now includes a clear requirement to first avoid land use conflicts from the rail yard to sensitive land uses, and only where avoidance is determined to no longer be possible then consider the need and potential alternatives for the redesignation of the subject site in addition to considering mitigation from adverse effects on the sensitive land use and potential impacts to the rail yard. The Report appears to focus solely on mitigation as the justification for the redesignation of the subject site. This is in addition to the various policies and guidelines related to the long-term protection of employment lands and recognizing the importance of goods movement facilities that generally speak to the separation of sensitive land uses from rail yards. Based on the comments provided by RWDI and my review of the Planning Justification Report, the material provided to date, **it is my opinion that the applications before the City of Vaughan do not comply the requirements of the *Planning Act* and should not be approved.**

Based on the input from RWDI in their comment letter for February 5, 2021. It is my opinion that utilizing Class 4 noise mitigation is not appropriate for the subject site. The main benefit to Class 4 is a mutually beneficial relationship between the noise source and the noise receptor as part of the Environmental Compliance Approval (ECA) that is required for the noise source. As CN is federally regulated, that mutually beneficial relationship does not apply as CN is not subject to ECA requirements. Furthermore, as CN is federally regulated, noise emissions from CN are based upon requirements and methodology of the Canadian Transportation Agency (CTA) and the Canada Transportation Act which are different than provincial requirements. Per RWDI, there are no formal federal noise levels and as such a more representative criterion would be the Class 1 limits.

Furthermore, it is noted that based upon and technical advice received, it appears that a sensitive land use cannot be implemented on the subject site. This includes the hotel

that is currently a permitted land use. As an example, the development has not considered the future expansion of the MacMillan Yard and the Pullback Track, nor does it appear to have considered the Rail Proximity Guidelines. If the development proposal can not reasonably be implemented, this suggests that it should not be approved and the land use planning regime on the site should be updated to remove all sensitive land uses as permitted uses.

4.0 Comments

4.1 Preliminary comments initially provided to Eastwood Holding Corp. (the applicant) are as follows:

1. There does not appear to be a land use compatibility assessment that has been completed per the MECP D-Series Guidelines. MacMillan Yard and the Pullback Track, in our opinion, would be considered a Class III Industrial use per the MECP D-Series Guidelines for land use compatibility. A Noise and Vibration Assessment have been completed, but these reports are only a component of an overall land use compatibility assessment per provincial guidelines. It is noted that the Planning Justification Report does not address the D-series guidelines directly.
2. It is our opinion that the MacMillan Yard and Pullback Track should be considered as a Major Facility(ies), Major Goods Movement Facility(ies) and Corridor(s), Infrastructure, Transportation System and a Rail Facility(ies) located within an Employment Area. The MacMillan Yard, per its function, should also be reviewed relative to the freight-supportive policies. The proposed development represents a Sensitive Land Use. All definitions are per the 2020 Provincial Policy Statement (PPS).
3. Based on a preliminary review of the Planning Justification Report prepared by SGL dated December 2020, we note the following discrepancies in relations to the 2020 PPS:
 - a. The 2020 PPS review does not correctly reference the land use compatibility policies of the PPS. Specifically, Section 1.2.6.1 of the 2020 PPS references that “Major facilities and sensitive land uses shall be planned and developed to avoid, or if avoidance is not possible, minimize and mitigate any potential adverse effects . . .”. This section also references needing to address these requirements per provincial guidelines.

- b. The Section 1.2.6.2 on Land Use compatibility of the PPS has not been reviewed or assessed. It is noted that there does not appear to be any evaluation of need or alternatives as required by this section of the PPS.
- c. There is no reference to section 1.3 Employment of the PPS for Employment Areas, which is noted given the designation of the MacMillan Yard and Pullback Track lands as General Employment.
- d. There is no reference to sections 1.6.8 Transportation and Infrastructure Corridors and 1.6.9 Airports, Rail and Marine Facilities of the PPS.
- e. There is no reference to the Ministry of Transportation of Ontario's (MTO) Freight Supportive Guidelines.
- f. There is no reference to the Land Needs Assessment Methodology for the Greater Golden Horseshoe, which in our opinion is relevant given Section 1.2.6.2 of the PPS and the location of the site within a municipality subject to the Growth Plan.
- g. As previously noted, there is no reference to the MECP D-Series Guidelines.
- h. Based upon a cursory review of the Growth Plan section of the Planning Justification Report, it is our opinion that there appear to be similar policy gaps relative to the said Growth Plan.

4.2 Additional Comments on the Planning Justification Report (PJR):

1. An additional comment in relation to the MECP D-Series Guidelines is that per Section 4.10.2 of the D-6 guidelines is that Zoning for infill needs to be based on the "worst case scenario" based on permitted uses in the zoning. Note that as CN is not subject to zoning as they are federally regulated, such an assessment should be based on the expanded operation for the facility as planned by CN. A Feasibility Analysis should also be prepared to assess adverse impacts based on those expanded operations and the requirements of the MOCEP Guidelines.
2. The Federation of Canadian Municipalities and the Railway Association of Canada (FCM-RAC) developed Guidelines for New Development in Proximity to Railway Operations. These guidelines are also reference in MTOs Freight Supportive Guidelines and need to be reviewed and appropriately incorporated into the Planning Justification Report. Guidelines are available here: <https://www.proximityissues.ca/>

- a. Per the FCM-RAC Guidelines, the CN Pullback track is fundamental to the CN MacMillan Yard and as such is part of a freight rail yard per the Guidelines.
 - b. A Development Viability Assessment should be prepared relative to the FCM-RAC Guidelines. A formal Terms of Reference should be approved by CN prior to completing the Development Viability Assessment.
3. Section 2, Page 7 – Appeals Process: On January 19th, 2021, Mr. Rino Mostacci did a presentation on behalf of Solmar Development Corp, at the Committee of the Whole meeting for the City of Vaughan where the settlement was discussed. At the meeting of January 19th, the discussion suggested that there are different perspectives regarding the settlement. Note that such a settlement needs to be reviewed in the context of the 2020 PPS and the updated policies related to land use compatibility. In addition, there is no reference to CNs objection to the residential land use designation on the subject site.
4. Section 2, Page 7 – Provincial Direction on Housing Supply; Request for High Density Residential: There is no discussion regarding economic development, employment opportunities and the long-term protection of employment areas. As an example, one of the guiding principles in the Growth Plan states the following: “Provide flexibility to capitalize on new economic and employment opportunities as they emerge, while providing certainty for traditional industries, including resource-based sectors.”
5. Section 2, Page 7 – Provincial Direction on Housing Supply; Request for High Density Residential: Note that the pullback track is critical to the operation of the MacMillan Yard. At a minimum, the function of the MacMillan Yard would change if sensitive land uses impacted the current operations of the Yard and pullback track. The MacMillan Yard is within a Provincially Significant Employment Zone. Section 2 of the Growth Plan states that: “It is also critical that we understand the importance of provincially significant employment zones and consider opportunities to better co-ordinate our collective efforts across municipalities to support their contribution to economic growth and improve access to transit.”
6. Section 3.4, Page 10 – Transportation Network: There is no mention of MacMillan Yard and the pullback track and its role as part of the national rail network. As previously noted, the definition of Transportation system in the PPS includes rail and inter-modal facilities.
7. Section 4.1 Proposed Development, Page 13 – RWDI has provided separate concerns regarding the mitigation approaches. Note that the proposed parking

garage will go to the property line. There is no reference as to whether a crash wall is proposed as part of the development.

8. Section 4.2.1 Existing Official Plan, Page 14: Regarding the settlement, while such a settlement maybe considered as context, it is not an approved Official Plan policy and should not be used as justification to support the development.
9. Section 4.2.2 Official Plan Amendment and Zoning By-law Amendment, Page 15 and 16: See detailed comments below, in general there is no reference to appropriate mitigation from rail that reflects the results of the various related studies. Furthermore, the amendments leave to many matters to the Site Plan Control process.
10. Section 5.1 – Provincial Policy Statement 2020, pp. 17-19: Comments on this section are noted above.
11. Section 5.2 – A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2020), pp. 22-25: As a general comment, this section of the report does not reference economic development, transportation, infrastructure or employment related policies in the Growth Plan, more specific comments are as follows:
 - a. p. 22: As further discussed below, per Section 5.2.4 of the Growth Plan, growth forecasts beyond 2051 cannot be used to justify the approval or refusal of a site-specific development application until an MCR is completed. I note this here as the 2051 time horizon is referenced in the draft Official Plan Amendment.
 - b. There is no reference to the guiding principles in Section 1.2.1 related to the economy, employment and infrastructure and how that relates to CN MacMillan Yard and the development proposal.
 - c. There is no reference to 2.2.2.3 b), e) and the consideration of these policies in the context of a Class III Industrial Facility and the proposed sensitive land use. As noted above, CN is looking to further invest in the MacMillan Yard to support employment growth in the economy for the long term.
 - d. There is no reference to Section 2.2.5 and the employment policies, which is note worthy considering that pullback track is an integral and essential component to the operations of the MacMillan Yard, a Class III Facility, and is designated and zoned for employment uses. We note that these policies also encourage employment intensification to support economic development and support retail and office uses near planned transit. In addition, there are specific policies in related to development

adjacent to Major Goods Movement facilities such as MacMillan Yard (2.2.5.5) land use compatibility (2.2.5.7) and avoidance of sensitive land uses adjacent to uses vulnerable to encroachment such as MacMillan Yard (2.2.5.8).

- e. MacMillan Yard, south of Rutherford is located within a provincially significant employment zone. MacMillan Yard can not function without the pullback track. The proposal for a sensitive land uses abutting the pullback track needs to be considered in the context of the added policy emphasis applied to provincially significant employment zones.
- f. There is no review of Section 3 of the Growth Plan including looking at the policies related to infrastructure planning and investment, transportation systems (which includes inter-modal facilities), goods movement including ensuring the long-term viability of such facilities, infrastructure corridors (which includes moving goods by rail) and freight-supportive land uses.
- g. Schedule 6 identifies MacMillan Yard as an intermodal hub.

12. Section 5.3 addresses the York Region Official Plan. As a general comment the section does not address policies related to goods movement, the protection of employment areas nor clearly identifies why employment or retail intensification is not appropriate for the subject site. Specific comments are as follows:

- a. The York Region Official Plan has not been updated to reflect the 2020 PPS and 2020 Growth Plan. As such, any policy review of the York Region Official Plan must consider any conflicts or change of policy direction relative to those new policy documents.
- b. p. 26 – There is no reference in the introduction to the protection of employment lands from non-employment uses as noted in Section 1.2.
- c. p. 27 – There is no reference to Section 3.2 discussing Air Quality and specifically Section 3.2.6 regarding the location of sensitive uses, 3.2.10 regarding infrastructure resiliency and emergency preparedness.
- d. There is no reference to Chapter 4 of the Official Plan related to Economic Vitality and policies related to employment areas. Including, but not limited to Section 4.3.3 and 4.3.4 and 4.3.5.
- e. p. 28 – In consideration of the other comments provide by CN, the land use compatibility policy of 5.2.8 e) will need to be updated.

- f. p. 28 – As employment intensification is also encouraged in the Region of York, the report does not appear to address why the subject site should be developed for residential land uses in lieu of non-sensitive land uses such as retail or other employment related uses. Policies include 5.3.3 e), 5.3.6, 5.3.10.
- g. There is no reference to the Goods Movement policies of the York Region Official Plan, including but not limited to 7.2.72, 7.2.74 (which specifically speaks to sensitive land uses and intermodal yards), 7.2.75, 7.2.79 and 7.2.80.

13. Section 5.4 addresses the City of Vaughan Official Plan.

- a. The City of Vaughan Official Plan has not been updated to reflect the 2020 PPS and 2020 Growth Plan. As such, any policy review of the City of Vaughan Official Plan must consider any conflicts or change of policy direction relative to those new policy documents.
- b. There is no reference to Section 1.5 of the Official Plan related to Goals for the Official Plan. These include a variety of goals that do not only include residential growth but also development in appropriate locations and developing a diverse economy.
- c. There is no reference to 2.2.1.1 related to the urban structure, including c) related to the stability of employment areas.
- d. p. 32 – The PJR does reference Section 2.2.1.2. However, this section specifically references that Intensification Areas shall be consistent with the PPS, Growth Plan and York Region Official Plan. This is not discussed in the PJR. As noted above, the PPS and Growth Plan have been updated with new direction related to development around Major Facilities such as MacMillan Yard and the pullback track, as such the review of this policy needs to be updated to reflect the evolution of provincial policy and the implications as it relates to the intensification of the subject site relative to this policy.
- e. There is no reference to Section 2.2.4 including the reference to Employment Areas being protected from non-employment uses.
- f. p. 32 - There is no reference to 2.2.5 and the initial bullet for Primary Intensification Corridors which specifically references that these corridors may accommodate mixed-use or employment intensification.

- g. p. 32 - There is no reference to Section 2.2.5.12 which supports mixed-use or employment intensification within Primary Intensification Corridors in consideration of the changes to the 2020 PPS.
- h. p. 33 - The conformity review of Section 2.2.5.13 makes no reference to the employment land use designation and the Class III industrial use located directly north of the subject site. This section should be updated to reconsider Section 2.2.5.13(b) and (f) in particular given the abutting employment use.
- i. p. 35 and 36 - Transportation. The report does not make any reference to Schedule 9, Future Transportation Network, focussing slowly on Schedule 10 - Major Transit Network. Schedule 9 identifies Macmillan Yard and the pullback track.
- j. p. 35 and 36 - Transportation - There is no reference to section 4.1.1.7 and the protection of Transportation network and corridors such as the railway network/MacMillan Yard identified on Schedule 9.
- k. p. 35 and 36 - Transportation- There is no discussion of Section 4.4 Rail and Goods Movement. This includes Section 4.4.1 related to the long-term protection of rail and 4.4.1.5 related to protecting rail infrastructure from adjacent development. Note that these land use compatibility policies predate the 2020 PPS and consideration of these policies should also consider the updated 2020 PPS Land Use Compatibility policies.
- l. There is no reference to Section 5.1.1.1 and 5.1.1.3. There is no reference to 5.1.2 which includes directing job growth to Intensification areas such as the subject site. There is no reference to Section 5.1.2.3 (b), (e) and 5.2.1.2. It is not clear per the policies of 5.2.2, 5.2.3 and 5.2.5 which support non-sensitive land uses in intensification areas why such uses are not considered for the subject site in considering the other policies of the Vaughan Official Plan.
- m. There is no reference to section 9.2.1.12. This policy needs to be considered in the context of previous comments by RWDI in relation to the expansion of the CN pullback track as part of the projected growth of MacMillan Yard. A review of this policy should also consider the 2020 PPS and the 2020 Growth Plan updated policies related to sensitive land uses.

- n. p. 38 and 39 – Urban Structure and Land Use – As the City’s Official Plan, including the Urban Structure has not been updated to reflect the 2020 PPS and 2020 Growth Plan, including the policies related to avoiding sensitive lands uses near major facilities, an updated review of this section of the PJR is required relative to these policy tests and whether the Vaughan Official Plan is in conformity with these new provincial policies. An updated review is also required relative to all the policies in the Vaughan Official Plan that support non-sensitive uses in locations such as the subject site that have not been addressed in the PJR at present. Only upon completion of such an updated policy review can it be determined whether the development represents “a better and more efficient use of land.”
- o. p. 39 and 40 – Height, Density and Built Form – There is no reference to the OPA 626 separation distance requirements from the pullback track and how the updated design addresses those policy requirements. Relative to the separation distances in OPA 626, the proposed development is not “well-separated” physically from the CN pullback track. Furthermore, it is noted that along the Jane Street corridor, in the vicinity of the site, that there are non-sensitive land uses such as recently constructed office buildings that provide a more appropriate transition to employment uses such as the CN pullback track.
- p. p. 40 – Noise Mitigation – The Noise Mitigation section needs to be updated to reflect the proposed expansion of the MacMillan Yard including its pullback track. It is also noted that mitigation from a Class III Industrial facility should be based on a completed Land Use Compatibility Study per the D-6 Guidelines. It is noted that issues related to dust, odour, air quality, noise and vibration need to be considered per those guidelines. As previously noted, the PJR needs to reflect the land use compatibility policies of the 2020 PPS of the 2020 Growth Plan. In addition, given the limited separation to the residential towers and the 0 metre separate to the parking garage a Development Viability Assessment per the FCM/RAC Guidelines should also be provided to assess the need and design for a Crash Wall.
- q. P. 43 - Section 6.5 – Noise Assessment – As CN is federally regulated, operations within the rail yard are not subject to the limitations of NPC-300 and as such will derive no operational benefit from the proposed site being identified as a Class 4 area. Unlike provincially regulated industries, CN cannot use a Class 4 designation to mitigate any regulatory and operation risks associated with an abutting sensitive land use. NPC-300 specifically states in Section B.9.3 – Area Classification Issues that “This (Class 4) will allow the owners of the stationary sources

to use the appropriate classification and sound level limits in applications for MOE approvals.” While Class 4 applies to the receptor, Class 4 is only beneficial to a noise source that has an Environmental Compliance Approval, that is not the case with CN. The Noise Assessment must also be updated to reflect the future operations of the CN pullback track per RWDIs comments and based on the provincially policy direction to provide long term protection to employment uses. There is no discussion in relation to the noise level approaches and methodology outlined by the Canadian Transportation Agency, which are the noise requirements that CN are subject to address. Those noise level approaches do not consider Class 4 type mitigation.

14. Official Plan Amendment – Comments on the proposed Official Plan Amendment are noted below should the development be approved:

a. The Basis of the Amendment

- i. The Basis of the amendment does not provide consideration for how the tests in the 2020 PPS have been satisfied related to land use compatibility. There is no reference to the avoidance test, the needs test or the consideration of alternatives for the sensitive land use prior to the subject site being selected for residential development. The Basis of the amendment should also be updated relative to the comments provided on the Planning Justification Report with respected to the PPS.
- ii. Per Section 5.2.4 of the Growth Plan the rationale for approving or refusing a development can not be based on growth until 2051 for a site-specific application until the completion of the MCR. There is no discussion in the Basis for the amendment related to the CN pullback track. However, the Growth Plan does include policies related to the long-term protection of employment lands and goods movement facilities beyond the horizon of the Growth Plan. The Basis of the amendment should also be updated relative to the comments provided on the Planning Justification Report with respected to the Growth Plan.
- iii. The York Region Official Plan section needs to be updated to reflect comments provided on the Planning Justification Report.
- iv. There is no discussion on the Basis for the amendment relative to City of Vaughan Official Plan policies.

b. Details of the Amendment:

- i. 13.xx.1.2.1 – The amendment and subsequent zoning are written under the assumption that a Class 4 Area will be approved. What are the land use permission if it is not approved?
- ii. 13.xx.1.3 – While OPA 626 does permit a hotel. The PPS and NPC-300 considers hotels to be a sensitive land use. There has been no justification or assessment as to whether a hotel or long-term care facility should continue to be a permitted land use in the context of PPS 2020 and its direction related to sensitive land uses near major facilities. Nor has the application and report material assessed a hotel or long-term care facility. As such, they should be removed as a permitted use.
- iii. 13.xx.1.4 – Site Plan Control and Land Use Compatibility – Deferring land use compatibility matters to Site Plan approval is not consistent the D-series guidelines of the Province of Ontario. Specifically, Section 7.6 of D-1-1 states that” Site Plan Control should not be used for requiring large studies which may necessitate a change in land use - in this respect the principle of development is determined and established in the official plan (i.e. the official plan determines land use)”. As an example, a study that supports identifying the lands as Class 4 area should not be left up to Site Plan.
- iv. 13.xx.1.4 – Site Plan Control and Land Use Compatibility – As there is no dust, odour and air quality study, there is no basis to determine whether such mitigation is feasible or possible at this stage. Such an assessment must be completed prior to the consideration of the Official Plan Amendment and not left until site plan.
- v. 13.xx.1.5.b – Environmental Noise Impact Study – There is no reference to the noise considerations of the Canadian Transportation Agency. Federal Assessment procedures should also be considered in the noise assessment.
- vi. 13.xx.1.5.b, c) I, vii – Environmental Noise Impact Study – In addition, note that CN as federally regulated is not subject to Environmental Compliance Approval.
- vii. 13.xx.1.5.d – Environmental Noise Impact Study - Mitigation to the extent possible should be included within the zoning by-law,

zoning can limit as an example the placement of outdoor living areas and openings to a structure. CN would be at risk of having no further involvement/appeal rights in the Site Plan Approval process. In addition, the LPAT and this Official Plan Amendment should not be based on examples from other developments such as 9245 and 9255 Jane Street as they are not located within the same land use planning context.

- viii. 13.xx.1.5.f – Environmental Noise Impact Study – The reference to new technologies being considered in the future is an example of the need to ensure that CN continues to be involved in the approvals process and an example as to why mitigation needs to be incorporated into the zoning by-law. New technologies should be approved by the MECP, reviewed and assessed through a public process when considering a matter of provincial and local policy such as land use compatibility.
 - ix. 13.xx.1.6 b – Environment Vibration Report – It is noted that there are no vibration criteria currently available from the MECP. Reference to the FCM/RAC Guidelines should be utilized here as a result.
 - x. 13.xx.1.6 c and d – Environment Vibration Report – Per the D-Series Guidelines and given the location of the proposed development such a report should be required similar to a Noise study. As such, remove the reference to “if required”.
 - xi. The Official Plan Amendment appears to focus solely on Noise and Vibration matters during the Official Plan and Zoning Amendment process. There is no consideration of a broader Land Use Compatibility study to determine whether other adverse effects are possible and addressed. In addition, it is noted that there is no reference to a Development Viability Assessment per the FCM/RAC Guidelines to address those requirements, including such matters as whether a Crash Wall should be required.
15. Zoning By-Law Amendment – As a general comment, the Planning Act allows for substantially more mitigation to be included in the Zoning By-law. Matters not only related to use separation but also matters related to the placement of amenity areas, the control of openings, the location of mitigation that can be controlled in the zoning by-law (i.e. location of enclosed noise buffers) and building materials are examples of matters that can be included in the Zoning By-law. As such, a higher level of zoning control with respect to mitigation needs

to be included in the Zoning By-law should the applications be approved. This can be reassessed upon completion of the revised mitigation reports based on CNs comments. Specific comments on the current by-law are as follows:

- a. Uses – The Zoning is written under the assumption that a Class 4 designation per NPC-300 would be approved, despite draft Official Plan Amendment referencing that further studies are required at the zoning and site plan stage.
 - b. Below Grade Setback – While this section references only the front lot line, the plans show the parking garage abutting the CN pullback track. CN anticipates that a crash wall would be required in this location and that should be a requirement specifically stipulated in the zoning by-law.
 - c. Amenity Space – The location of Amenity Space is not stipulated in the zoning by-law. Such space could be located anywhere on site as a result, and it is reasonable for the location of such space to be specifically regulated relative to the mitigation requirements for such space. Including, but not limited to the location of such space and potential mitigation approaches (i.e. noise walls).
16. The Planning Justification Report has no reference MTOs Freight Supportive Guidelines. These Guidelines are referenced in the Provincial Policy Statement. These Guidelines include provisions for the buffering and separation of sensitive land uses from major facilities.
 17. As previously noted, while mitigation is ultimately implemented at the Site Plan Control stage. Policy direction in the Official Plan and regulations in the Zoning By-law can provide a higher level of mitigation then is currently proposed. In addition, if approved, CN needs to be involved in the Site Plan approval process.
 18. If approved, an agreement between CN and applicant per the MECP D-series guidelines is recommended for this application. Such an agreement should be completed prior to approval of the Official Plan Amendment and Zoning By-law Amendment.

Chad B. John-Baptiste, MCIP, RPP
Director Planning - Ontario