

Committee of the Whole (2) Report

DATE: Tuesday, November 9, 2021

WARD(S): 4

TITLE: NOISE EXEMPTION FOR MIXED USE TOWER CONSTRUCTION
AT 185 MILLWAY AVENUE

FROM:

Gus Michaels, Acting Deputy City Manager, Community Services

ACTION: DECISION

Purpose

To seek Council approval for an exemption to By-law 121-2021 for work to complete the construction of a 36-storey mixed-use tower by Penguin-Calloway (Vaughan) Inc. (the Applicant), located at 185 Millway Avenue, from December 1st, 2021 until September 23rd, 2023.

Report Highlights

- A noise exemption from By-law 121-2021, is being requested for a variety of work related to the construction of 36-storey mixed use tower, which includes 362 residential rental units.
- This project has been underway since 2019, with above grade work commencing in July 2021.
- Temporary limits imposed by the Province on municipal authority to regulate noise from construction ended on **October 7th, 2021**.
- One compliant pertaining to this project has been received to date.
- The noise exemption will enable the project to be completed in a shorter period of time and minimize traffic impact to local residents and businesses during regular business hours. This project supports the development of the Vaughan Metropolitan Centre in the City's new downtown.

Recommendations

1. That the Applicant, Penguin-Calloway (Vaughan) Inc., be granted a noise exemption, in accordance with the City's Noise Control By-Law 121-2021, for the purposes of construction of a 36-storey mixed-use tower located at 185 Millway Avenue, for the period of December 1st, 2021 until September 23rd, 2023., Monday through Sunday, from 6:00 am to 10:00 pm; and
2. That this request for exemption be granted with the following conditions for the Applicant:
 - a) That construction communication notices be sent to surrounding residents and business owners within a 60-metre radius, in a manner approved by the City, once annually on the anniversary of the initial exemption approval date, that provides an update on construction progress to date and outlines expected construction activities for the year;
 - b) That construction communication notices be sent to surrounding residents and business owners within a 60-metre radius two weeks prior to the start of each portion of the project and/or at any reasonable time as identified by the City;
 - c) That the construction communication notices to residents and businesses include 24-hour contact information for the Applicants, including the construction supervisor and/or any person having care, control and oversight over all construction activity taking place on the subject property;
 - d) That the Applicant monitor, investigate and respond to any complaints received regarding construction noise;
 - e) That the Applicant takes measures to minimize any unnecessary noise, including but not limited to idling of construction vehicles, unnecessary revving of engines, use of air brakes, and to maintain equipment in good working order (including muffling devices) to minimize noise impacts;
 - f) That no construction take place on Statutory Holidays and that any significant and substantiated complaints from residents or businesses may result in the revocation of the exemption to perform work on Sundays;
 - g) That where the City believes that a violation of the conditions of the noise exemption have or are taking place, in accordance with the City's Noise By-law provisions, the City reserves the right to revoke the exemption in its entirety or any condition of the exemption and/or impose additional conditions to mitigate unnecessary noise or require revised noise exemption applications to be submitted accordingly; and
 - h) That the Applicant advises the Chief Licensing Officer and/or designate of any public complaints received regarding noise within 72 hours of having received them.

Background

Legislation

The City of Vaughan's Noise Control By-law No. 121-2021, prohibits noise created from the use of "construction equipment" as defined, between the hours of 7:00pm of one day to 7:00 am the following day, and on Sundays and statutory holidays.

Any noise created by construction activity during these prescribed hours requires an exemption to the provisions of the By-law. Exemption requests for construction noise are governed by the By-law provisions of Section 20, Exemption for Construction Equipment.

Provincial Limits on Municipal Noise Exemptions and Current Exemption

As part of the Province's measures to respond to COVID-19, in April 2020, the provincial government introduced temporary limits on municipal authority to regulate noise from construction to help support expedited construction of healthcare facilities, vital infrastructure and other projects, including residential construction. Accordingly, construction activities 185 Millway Avenue have been occurring outside of the hours permitted by the noise by-law, between the hours of 6:00am until 10:00pm, Monday through Sunday, including statutory holidays, since the spring of 2020. On September 27th, 2021, the province informed the City that the provincial limits would expire October 7th, 2021.

To lessen the impact on construction activities and allow for adequate time for a report to be prepared for Council consideration, BCLPS staff have granted the Applicant a temporary noise exemption to continue construction activities between the hours of 6:00 am and 10:00 pm, Monday through Sunday, including statutory holidays, until December 1st, 2021. The decision to grant this temporary exemption as an interim measure until a Council decision is made was based on the premise that only one complaint pertaining to the project has been received to date by BCLPS and that the project timelines, ultimately affecting occupancy dates, should not be negatively impacted due to the short notice received that the provincial limits would be ending.

Requested Work Period

The Applicant, Penguin-Calloway (Vaughan) Inc., is requesting a work period of December 1st, 2021 through September 23rd, 2023, to work between the hours of 6:00 am and 10:00pm, daily, including on statutory holidays, at the site located at 185 Millway Avenue, located on the east side of Millway Ave, south of Portage Parkway and directly east of the York Regional Transit Bus Terminal.

The intent of the work is to continue the construction of a 36-storey mixed use tower with a 6-storey podium, which is currently being constructed by PCL Constructors

Canada Inc., comprised of 362 rental units and various retail spaces at ground level, located within the Vaughan Metropolitan Centre (VMC), located in close proximity to the TTC Vaughan Metropolitan Centre station.

The Applicant is requesting the ability to perform a variety of construction work, including structural works, exterior façade, interior finishes and external landscaping. The work will require the use of tower cranes, material hoists, concrete pump, power float, excavators, drill rigs, concrete and rebar delivery trucks and dump trucks and powered and non-powered hand tools. Concrete work required for this project may not be able to commence until late in the afternoon and is required to be continuous and cannot stop operation until the last concrete truck is poured. The site is located at a busy area of the VMC development. If the Applicant is granted the requested exemption, residents and businesses will be less inconvenienced as deliveries can be scheduled for off-peak travel times. Additionally, the ability to commence and end construction activities during extended hours may allow for the project to be completed sooner than indicated on the application.

Notification to Affected Parties

If the noise exemption is approved, the Applicant will distribute communication notices with details of the project to all residents and businesses within 60 metres of the project site at least two weeks prior to the start of each portion of the project that will entail work outside of regular hours in line with the Noise Control By-law. Additionally, once annually on the anniversary of the initial exemption approval date, the Applicant shall send an additional notice to all residents and businesses within a 60-metre radius of the project that provides an update on construction progress to date and outlines expected construction activities for the year.

At present, the population in the VMC development is approximately 7,722, with approximately 4,600 residents within the direct vicinity of this project. Anticipated residential occupancy within the required notification area until the end of the requested exemption period is outlined in the chart below.

| DATE OF COMPLETION | PROJECT | OCCUPANCY STATUS | ADDRESS | UNITS | RESIDENTS |
|--------------------|--|--|---------------------|-------------------------|--------------|
| 2020 & 2021 | The Met | Currently occupied | 7895 Jane Street | 510 62 townhouses | 1,010 123 |
| 2021 | Transit City 1, 2, 3 | Currently Occupied | 950 Portage Parkway | 1,752 | 3,469 |
| 2022* | N/A | N/A | N/A | 0 | 0 |
| 2023 | SmartCentres East Block (Transit City 4 & 5 + Rental Building) | Presently Under Construction. Occupancy 2023 | 175 Millway Avenue | 1,480 | 2,930 |
| TOTAL | | | | 3,804 | 7,532 |

*No additional occupancy is projected in 2022

Alignment with Other Noise Exemptions in the Area

At the January 21st, 2020 Committee of the Whole meeting, Council approved a multi-year noise exemption request for project located at 175 Millway Avenue, adjacent to the location that is the subject of this request and also part of the overall development. In order to ensure all projects of similar scope and nature in the area are managed and administered with uniform conditions, staff are recommending that the same Council approved conditions attached to the noise exemption permit at 175 Millway Avenue be applied to the noise exemption request for 185 Millway Avenue. The proposed conditions are outlined in the Recommendations section of this report.

Noise mitigation

The construction supervisor will comply with standard noise exemption mitigation measures, including that they minimize idling of construction vehicles, avoid unnecessary revving of engines, use of airbrakes, as well as the requirement to maintain equipment in good working order (including the use of muffling devices) to minimize noise impacts.

Impact on completion

As discussed above, construction activities related to this project have been occurring outside of the hours permitted by the noise by-law since early 2020. Not granting the exemption would negatively impact construction timelines, thereby delaying occupancy of the units.

Previous Reports/Authority

[Extract from the Council meeting of January 28, 2020 \(Item 16, Report No. 1 of the Committee of the Whole, January 21, 2020\).](#)

Noise Control By-Law [121-2021](#)

Analysis and Options

As discussed above, construction activities related to this project have already been occurring outside of the hours permitted by the noise by-law since early 2020. Not granting the exemption would negatively impact construction timelines, thereby delaying occupancy of retail and commercial units.

Financial Impact

The approval of this noise exemption request will have no financial impact on the City.

Broader Regional Impacts/Considerations

This project supports the development of the Vaughan Metropolitan Centre, the City's new downtown, a vibrant, modern urban centre for residents and businesses that encompasses all amenities of urban lifestyle: inspiring multi-use office towers, residences, subway access, open green space, urban squares, pedestrian shopping areas and restaurants and walking and cycling paths.

Conclusion

Staff believe that the noise exemption for this project should be endorsed by Council pursuant to the recommendations set out in this report. This recommendation is being brought forth in consultation with the Vaughan Metropolitan Centre Program.

For more information, please contact: Gus Michaels, Director and Chief Licensing Officer, By-law & Compliance, Licensing & Permit Services, ext. 8735.

Attachments

1. Site Map
2. Letter to Residents and Businesses

Prepared by

Alexandra Scarr, Policy Implementation Specialist, Extension 8448

Approved by



Gus Michaels, Acting Deputy City
Manager, Community Services

Reviewed by



Nick Spensieri, City Manager