

## Committee of the Whole (2) Report

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**DATE:** Tuesday, November 9, 2021

**WARD:** 1

**TITLE:** EASTWOOD HOLDINGS CORP.

**OFFICIAL PLAN AMENDMENT FILE OP.20.017**

**ZONING BY-LAW AMENDMENT FILE Z.20.044**

**9221 JANE STREET**

**VICINITY OF JANE STREET AND RUTHERFORD ROAD**

**FROM:**

Haiqing Xu, Deputy City Manager Planning and Growth Management

**ACTION:** DECISION

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### **Purpose**

To seek endorsement from the Committee of the Whole of the Recommendations contained in this report to refuse Official Plan and Zoning By-law Amendment Files OP.20.017 and Z.20.044 (Eastwood Holdings Corp.) and obtain direction from Council for appropriate City staff and external consultants, as required, to attend the Ontario Land Tribunal Hearing in support of the Recommendations contained in this report respecting the Subject Lands shown on Attachment 1.

### **Report Highlights**

- The Owner is proposing to develop the subject lands to permit two 36-storey residential apartment buildings with 760 dwelling units
- The applications have been appealed to the Ontario Land Tribunal
- Staff do not support the proposed development as it is not consistent with the Provincial Policy Statement, does not conform to the Growth Plan, the York Region Official Plan, in-effect Official Plan Amendment 626, Vaughan Official Plan 2010 and does not meet the Ministry of Transportation-Freight Supportive Guidelines, the Guidelines for New Development in Proximity to Railway

Ministry of Environment, Conservation and Parks, Environmental Noise and Land Use Compatibility Guidelines, the City Noise By-law 062-2018

- Staff seek the endorsement from the Committee of the Whole of the Recommendation in this report to refuse the applications and for staff and external consultants, as required, to attend the Ontario Land Tribunal Hearing

## **Recommendations**

1. THAT Official Plan and Zoning By-law Amendment Files OP.20.017 and Z.20.044 (Eastwood Holdings Corp.) to amend the in-effect Official Plan Amendment 626 and to modify Vaughan Official Plan 2010, and to rezone the subject lands from “C1(H) Restricted Commercial Zone” to “RA3 Apartment Residential Zone” with site-specific zoning exceptions, BE REFUSED.
2. THAT Vaughan City Staff and external consultants, as required, be directed to attend the Ontario Land Tribunal hearing in support of the Recommendations contained in this report.
3. THAT should the Ontario Land Tribunal approve Official Plan and Zoning By-law Amendment Files OP.20.017 and Z.20.044, either in whole or in part, that the Ontario Land Tribunal withhold its final Decision and Order until:
  - a) the implementing Official Plan Amendment is prepared to the satisfaction of the City and the Toronto and Region Conservation Authority;
  - b) the implementing Zoning By-law Amendment is prepared to the satisfaction of the City and shall include the Holding Symbol “(H)” which shall not be removed from the subject lands, or any portion thereof, until the following conditions are addressed to the satisfaction of the City:
    - i. Vaughan Council adopts a resolution allocating sewage and water supply capacity in accordance with the City’s approved Servicing Capacity Distribution Protocol assigning capacity;
    - ii. the Owner shall submit an air quality study, and it shall be peer reviewed to the satisfaction of the City;
    - iii. the Owner shall pay \$15,000.00 to the City for the cost of the peer review of the noise vibration study and air quality study;
    - iv. the Owner shall satisfy all the requirements of the Toronto and Region Conservation Authority and York Region;

- v. the Owner shall successfully obtain Site Development Approval for the Subject Lands from Vaughan Council and satisfy all requirements of York Region and Toronto and Region Conservation Authority;
  - vi. the Owner shall convey the valley/woodland and associated Vegetative Protection Zone into public ownership to the satisfaction of the City and the Toronto and Region Conservation Authority;
  - vii. the Owner shall file a Ministry of the Environment, Conservation and Parks Record of Site Condition due to the change in land use;
  - viii. the Owner shall submit a copy of their Phase 2 Environmental Site Assessment to the satisfaction of the Ministry of the Environment, Conservation and Parks; and
  - ix. the Owner shall submit a detailed Architectural Noise and Feasibility Analysis Report including a detailed architectural response to the noise and vibration generated from the CN pullback tracks to the satisfaction of the City. The above-mentioned report shall be peer reviewed and the Owner shall cover the cost of the peer review.
- c) the Owner shall:
- i. enter into a Section 37 Bonusing Agreement with the City of Vaughan for the increased building height and density on the subject lands and the Owner shall pay the Section 37 Bonusing Agreement surcharge fee in accordance with the City's in-effect "Tariff of Fees By-law" for Planning Applications; and
  - ii. the implementing Zoning By-law shall include provisions respecting density bonusing pursuant to Section 37 of the *Planning Act* and the City's Guidelines for the Implementation of Section 37 of the *Planning Act*.

## **Background**

The subject lands (the 'Subject Lands') shown on Attachment 1 are located in the northeast quadrant of Jane Street and Rutherford Road, and are municipally known as 9291 Jane Street. A sales office building occupies the Subject Lands and would be demolished to accommodate the proposed development, if approved by the Ontario Land Tribunal ('OLT'). The surrounding land uses are shown on Attachment 1.

***Official Plan and Zoning By-law Amendment applications have been submitted to permit the proposed development***

The Owner has submitted the following applications (the 'Applications') for the Subject Lands, shown on Attachment 1 to permit two 36-storey residential apartment buildings containing 760 dwelling units (the 'Development'), to be constructed in two phases. Tower A (Phase 1) located on the east portion of the Subject Lands and Tower B (Phase 2) is located adjacent to Jane Street, as shown on Attachments 2 to 5.

1. Official Plan Amendment File OP.20.017 to amend OPA 626 and Vaughan Official Plan 2010 to permit the following:
  - a) redesignate the Subject Lands from "Community Commercial Mixed-Use" to "High-Rise Residential";
  - b) increase the maximum permitted building height to 36-storeys and the Floor Space Index from 2.7 to 4.2 times the area of the lot;
  - c) the classification of the Subject Lands as a Class 4 Area pursuant to the Ontario Ministry of the Environment, Conservation and Parks ('MECP') "Environmental Noise Guideline, Stationary and Transportation Sources - Approval and Planning, Publication NPC-300" be identified through the Zoning By-law Amendment; and
  - d) include site specific policies in the Official Plan Amendment that include study requirements to address Land Use Compatibility issues, air quality, noise and vibration studies and requirement for a future Site Plan Control application.
2. Zoning By-law Amendment File Z.20.044 to amend Zoning By-law 1-88 to rezone the Subject Lands from "C1(H) Restricted Commercial Zone", with the Holding Symbol "(H)" and subject to site-specific Exception 9(1246), as shown on Attachment 1, to "RA3 Apartment Residential Zone" in the manner shown on Attachment 2, together with the site-specific zoning exceptions identified in Table 1 of this Report.

***Official Plan Amendment 626 does not permit the Development***

The Subject Lands are designated "High Density Residential/Commercial" by the in-effect Official Plan Amendment 626 ('OPA 626'), which was approved by the Ontario Municipal Board, now known as the Ontario Land Tribunal (the "OLT") on April 19, 2005.

OPA 626 requires the following:

- a minimum 3-storey commercial building located south of the CN pullback tracks to ensure an intervening use to shield the residential grounds from unacceptable levels of noise from the CN pullback tracks
- residential buildings shall be setback a minimum of 115.5 m measured perpendicular from the northerly property line of the Amendment area, which is equivalent of 150 m from the south track of the CN pullback tracks

***When Vaughan Official Plan 2010 was adopted, the Subject Lands were inadvertently designated as “High-Rise Residential”***

The Subject Lands were inadvertently designated “High-Rise Residential” when Vaughan Official Plan 2010 (‘VOP 2010’) was adopted in September 2010 and the designation extended to the north limit of the Subject Lands and within the 150 m setback from the CN pullback tracks established in OPA 626.

Solmar on March 11, 2011, requested that York Region modify VOP 2010 to re-establish the “Community Commercial Mixed-Use” designation that was approved by the OLT through OPA 626.

Vaughan Council on September 27, 2011 endorsed the redesignation of the Subject Lands to “Community Commercial Mixed-Use”, and also established a maximum building height of 16-storeys and a Floor Space Index of 4 times the area of the lot. This designation is consistent with policies established by OPA 626 and in the OLT’s Decision issue date April 19, 2005.

***The Owner has appealed Vaughan Official Plan 2010 as it relates to the Subject Lands***

The Owner (Eastwood Holdings Corp.) is a related corporate entity of Solmar Inc. (‘Solmar’). Solmar on November 16, 2011 appealed VOP 2010 to the OLT as it pertains to the Subject Lands. The appeal has been identified as Appeal #3 of VOP 2010 and remains outstanding. Accordingly, VOP 2010 is not in effect on the Subject Lands.

***VOP 2010 Appeal #3 Solmar Settlement Motion***

On November 30, 2018, Solmar brought forward a motion seeking to resolve its appeal of the VOP 2010. The motion sought approval of a modification to the Land Use Schedule of VOP 2010 and the identification of a new Site-Specific Policy area to Section 13 of VOP 2010 for High-Rise Residential purposes. In response to the Solmar motion the City filed a Notice of Response consenting to the motion. The City’s consent to the designation was premised on the requirement for additional supporting materials, filed through site-specific development applications, demonstrating the appropriateness, compatibility and feasibility of a development proposal on the Subject Lands. The OLT

considered responses from the City, York Region, CN, and a private landowner. The OLT, following its consideration of the filed materials, ordered that the Solmar motion be dismissed.

***The Applications have been appealed to the OLT***

The Owner on April 26, 2021, appealed the Applications to the OLT, pursuant to Sections 22(7) and 34(11), respectively, of the *Planning Act* for Vaughan Council's failure to make a decision on the Applications within the timelines prescribed by the *Planning Act*. The first OLT Case Management Conference ("CMC") regarding the site-specific Applications was held on October 5, 2021.

***VOP 2010 Hearing and Consolidation***

A CMC was held on April 27, 2021 for the VOP 2010 appeal. At the VOP 2010 CMC certain matters regarding the Solmar VOP 2010 and site-specific appeal were discussed. Specifically, the issues of consolidating Solmar's VOP 2010 appeal with its site-specific appeal and whether 10 days was sufficient to complete a consolidated hearing was raised before the OLT. At the CMC, the OLT member noted that the appealed site-specific applications were not yet before the OLT and that the mandatory CMC for the site-specific appeals had not yet occurred. In the OLT's Order and Decision, dated May 13, 2021, the OLT directed that the issues of consolidation and how best to proceed with a hearing of the appeals, be addressed by the Parties at the future CMC for the site-specific appeals.

The first OLT CMC for the site-specific appeals was held on October 5, 2021. At this CMC, the OLT heard submissions regarding a hearing for Solmar's appeal to the VOP 2010 (Appeal #3 - PL111184) and Eastwood 's site-specific appeal (PL210333). The OLT at the CMC approved the hearing together of the two appeals.

Further, the OLT advised that it was prepared to schedule the hearing of the joined appeals following confirmation of Party availability for a hearing in the fall of 2022. This information was provided to the OLT by October 15, 2021. In addition, it was agreed that a finalized Procedural Order would be brought forward, for consideration and approval, at the next VOP 2010 CMC scheduled for December 6, 2021.

***Public Notice was provided in accordance with the Planning Act and Council's Notification Protocol. Deputations were received at the Public Hearing and written submissions were submitted to the Development Planning Department***

The City on March 12, 2021, mailed a Notice of Public Meeting (the "Notice") to an extended notification area of all property owners, as shown on Attachment 1. The Notice was also sent to the South Maple Ratepayers Association and to those individuals that had requested notice or provided a written submission regarding the Applications to the City. A copy of the Notice was also posted on the City's website at [www.vaughan.ca](http://www.vaughan.ca) and a notice sign was installed on the Subject Lands along Jane Street, in accordance with the City's Notice Signs Procedures and Protocols.

A Committee of the Whole (Public Meeting) was held on April 7, 2021, to receive comments from the public and the Committee of the Whole. Vaughan Council, on April 20, 2021, ratified the recommendation of the Committee of the Whole (Public Meeting) to receive the Public Meeting Report and to forward a comprehensive technical report to a future Committee of the Whole meeting.

The following deputations and written communications were received by the Committee of the Whole (Public Meeting) at the April 7, 2021 meeting:

#### Deputations

- David Riley, SGL, Bloor Street West, Toronto
- Alan Miliken Heisey, Papazian Heisey Myers, Barristers & Solicitors/Avocats, King Street West, Toronto

#### Written Submissions

- G. Marceau, Maple, email dated March 12, 2021
- L. Rinaldo, President for South Maple Ratepayers, Maple, email dated April 15, 2021
- R. Okamoto, email dated March 23, 2021 and April 6, 2021
- C. Casas, email dated March 27, 2021
- Samantha and Chris, Maple, email dated March 15, 2021
- A. Heisey, Solicitor for Canadian National Railway, Toronto, email dated March 31, 2021
- A. Strangis, Maple, email dated April 2, 2021
- T. Nicolais, Maple, email dated April 6, 2021
- M. Abbasi, Maple, email dated April 4, 2021
- M. Tafreshnia, Maple, email dated April 4, 2021
- I. Marginson, Maple, email dated April 5, 2021
- C. Mucci, A. Sinopoli, M. Ruggero Sassi, R. & D. Meleca, E. & A, Archese, Maple, consolidated email dated April 6, 2021

The following is a summary of the comments provided in the deputations, written submissions submitted at the Public Meeting of April 7, 2021 and written submissions received by the Development Planning Department. The comments have been organized by theme as follows:

#### Traffic

- Additional buildings and density will create traffic congestion and pollution in an already overcrowded, high traffic area

#### Noise

- The Development will be in proximity to the CN pullback tracks which emit a lot of noise through stopping, breaking and horn sounds. How will future residents be

guaranteed a level of acceptable level of noise due to the proximity of this Development to the existing commercial pullback track?

### Density

- Height impacts, obstructing views and light for existing residents of the neighbouring buildings
- Concern with ingress and egress with existing buildings along with traffic and safety concerns
- High buildings on a small parcel of land
- The number of units proposed is excessive
- Not compatible with the existing 16-storey towers and existing single-family dwelling to the east

### 2004 Ontario Municipal Board ('OMB') Order (now known as OLT)

- The Development does not comply with the Order requiring 150 m setback from CN pullback tracks for residential
- Order required that the Subject Lands be developed as commercial uses even excluding a hotel

CN also provided comments that are discussed later in the report and are appended as Attachment 9.

The Vaughan Development Planning Department on November 1, 2021, mailed and emailed a non-statutory courtesy notice of this Committee of the Whole meeting to those individuals requesting notice of further consideration of the Applications.

### **Previous Reports/Authority**

Previous site-specific OPA's and reports related to the Applications are available at the following links:

[OMB Approved OPA 626.pdf \(vaughan.ca\)](#)

[Committee of the Whole \(Public Meeting\) Council Extract dated April 20, 2021](#)

[Noise By-law 062-2018](#)

[Amendments to the Noise By-law January 30, 2018 Report No. 2 Item 8](#)

### **Analysis and Options**

***The Development Planning Department does not support the Applications based on the following considerations***

#### Surrounding Land Uses

The lands located immediately north of the Subject Lands are designated "General Employment" and "Railway" by VOP 2010. The railway is owned and operated by CN

and CN deems the pullback tracks as an integral part of the CN MacMillan Yard operations and the marshalling of the trains. OPA 626 and site-specific zoning Exception 9(1246) of Zoning By-law 1-88 requires residential buildings to be setback a minimum of 115.5 m, measured perpendicular from the north property line, which is equivalent to 150 m from the south track of the CN pullback tracks. These setbacks were established through the decision of the OLT in 2004.

The lands to the south are designated “High-Rise Residential” by VOP 2010 and are developed with existing 16 and 17-storey residential apartment buildings with a floor space index (‘FSI’) of 4 times the area of the lot. OPA 626 permits a maximum of 250 units per hectare based on a site area of 7.72 ha (portion of the lands south of the Subject Lands) thereby permitting 900 units. OPA 626 does not permit residential uses on the Subject Lands.

***The Development does not represent good planning***

The Development Planning Department recommends the Applications be refused as the Development does not represent good planning, does not contribute to appropriate City building and is not in the public interest. This recommendation is based on the review and analysis of the following:

1. The *Planning Act*
2. Provincial Policy Statement, 2020 (‘PPS’)
3. A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020, as amended (‘Growth Plan’)
4. The Ministry of Transportation – Freight Supportive Guidelines (‘Freight Guidelines’)
5. The Federation of Canadian Municipalities and Railway Association of Canada prepared “Guidelines for New Development in Proximity to Railway Operations”
6. Ministry of Environment, Conservation and Park (‘MECP’), Environmental Noise Guideline Publication NPC-300 and the City’s Noise Control By-law 062-2018
7. MECP Land Use Compatibility D-Series
8. York Region Official Plan 2010 (‘YROP’)
9. In-effect OPA 626
10. VOP 2010

***Land Use Policies and Planning Considerations***

***1. The Development does not satisfy the requirements of the Planning Act***

Policy 2 of the *Planning Act* states that the Council of a municipality in carrying out their responsibilities shall have regard to, among other matters, matters of Provincial interest such as:

- The protection of ecological systems, including natural areas, features, and functions
- The protection of public health and safety
- The orderly development of safe and healthy communities
- The appropriate location of growth and development
- The promotion of built form that:
  - i) is well-designed
  - ii) encourages a sense of place, and
  - iii) provides for public spaces that are high quality, safe, accessible, attractive, and vibrant

Policy 3(5) of the *Planning Act* requires that a decision of Council of a municipality in respect of the exercise of any authority that affects a planning matter:

- shall be consistent with the policy statements issued under subsection (1) that are in effect on the date of the decision
- shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be

The Applications do not satisfy the requirements of the *Planning Act*, as discussed in further detail below.

## **2. *The Development is not consistent with the PPS***

In accordance with Policy 3 of the *Planning Act*, all land use decisions in Ontario "shall be consistent" with the PPS. The PPS provides policy direction on matters of provincial interest related to land use planning and development. Land use planning decisions made by municipalities, planning boards, the Province, or a commission or agency of the government must be consistent with the PPS.

Land use must be carefully managed to accommodate appropriate development to meet the full range of current and future needs, while achieving efficient development patterns and avoiding significant or sensitive resources and areas which may pose a risk to public health and safety.

The PPS includes the following policies (in part):

- a) Policy 1.1.1 of "Managing and Directing Land Use to Achieve Efficient and Resilient Development and Land Use Patterns"

Policy 1.1 of the PPS requires that development accommodate an appropriate range of residential, employment, institutional, recreation, park and open space, and other uses to meet long term needs. Development should not cause environmental or public health and safety concerns.

b) Policy 1.1.3 – “Settlement Areas”

It is in the interest of all communities to use land and resources wisely, to promote efficient development patterns, protect resources, promote green spaces, ensure effective use of infrastructure and public service facilities, and minimize unnecessary public expenditures.

1.1.3.2 “Land use patterns within settlement areas shall be based on densities and a mix of land uses which (in part):

- a) efficiently use land and resources;
- b) are appropriate for, and efficiently use, the infrastructure and public service facilities which are planned or available, and avoid the need for their unjustified and/or uneconomical expansion;
- c) minimize negative impacts to air quality and climate change, and promote energy efficiency;
- g) are freight-supportive.”

1.1.3.3 “Planning authorities shall identify appropriate locations and promote opportunities for transit-supportive development, accommodating a significant supply and range of housing options through intensification and redevelopment where this can be accommodated taking into account existing building stock or areas, including brownfield sites, and the availability of suitable existing or planned infrastructure and public service facilities required to accommodate projected needs.”

1.1.3.4 “Appropriate development standards should be promoted which facilitate intensification, redevelopment and compact form, while avoiding or mitigating risks to public health and safety.”

c) Policy 1.2.6 Land Use Compatibility

1.2.6.1 “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 from odour, noise and other contaminants, minimize risk to public health and safety, and to ensure the long-term operational and economic viability of major facilities in accordance with provincial guidelines, standards and procedures.”

1.2.6.2 “Where avoidance is not possible in accordance with Policy 1.2.6.1, planning authorities shall protect the long-term viability of existing or planned industrial, manufacturing or other uses that are vulnerable to encroachment by ensuring that the planning and development of proposed adjacent sensitive land uses are only permitted if the following are demonstrated in accordance with provincial guidelines, standards and procedures:

- a) there is an identified need for the proposed use;
- b) alternative locations for the proposed use have been evaluated and there are no reasonable alternative locations;
- c) adverse effects to the proposed sensitive land use are minimized and mitigated; and
- d) potential impacts to industrial, manufacturing, or other uses are minimized and mitigated.”

d) Policy 1.3.2 Employment Areas

1.3.2.1 “Planning authorities shall plan for, protect, and preserve employment areas for current and future uses and ensure that the necessary infrastructure is provided to support current and projected needs.”

1.3.2.2 “At the time of the official plan review or update, planning authorities should assess employment areas identified in local official plans to ensure that this designation is appropriate to the planned function of the employment area.

Employment areas planned for industrial and manufacturing uses shall provide for separation or mitigation from sensitive land uses to maintain the long-term operational and economic viability of the planned uses and function of these areas.”

1.3.2.3 “Within employment areas planned for industrial or manufacturing uses, planning authorities shall prohibit residential uses and prohibit or limit other sensitive land uses that are not ancillary to the primary employment uses in order to maintain land use compatibility. Employment areas planned for industrial, or manufacturing uses should include an appropriate transition to adjacent non-employment areas.”

1.3.2.6 “Planning authorities shall protect employment areas in proximity to major goods movement facilities and corridors for employment uses that require those locations.”

e) Policy 1.6.8 Transportation and Infrastructure Corridors

1.6.8.1 “Planning authorities shall plan for and protect corridors and rights-of-way for infrastructure, including transportation, transit and electricity generation facilities and transmission systems to meet current and projected needs.”

1.6.8.2 “Major goods movement facilities and corridors shall be protected for the long term.”

1.6.8.3 “Planning authorities shall not permit development in planned corridors that could preclude or negatively affect the use of the corridor for the purpose(s) for which it was identified.

New development proposed on adjacent lands to existing or planned corridors and transportation facilities should be compatible with, and supportive of, the long-term purposes of the corridor and should be designed to avoid, mitigate, or minimize negative impacts on and from the corridor and transportation facilities.”

f) Policy 1.6.9 Airports, Rail and Marine Facilities

1.6.9.1 “Planning for land uses in the vicinity of airports, rail facilities and marine facilities shall be undertaken so that:

- a) their long-term operation and economic role is protected; and
- b) airports, rail facilities and marine facilities and sensitive land uses are appropriately designed, buffered and/or separated from each other, in accordance with Policy 1.2.6.”

g) Policy 1.7 Long-Term Economic Prosperity

1.7.1 “Long-term economic prosperity should be supported by (in part):

- c) optimizing the long-term availability and use of land, resources, infrastructure and public service facilities;”
- g) “providing for an efficient, cost-effective, reliable multimodal transportation system that is integrated with adjacent systems and those of other jurisdictions, and is appropriate to address projected needs to support the movement of goods and people;”

h) Section 6 – Definitions

The PPS definitions of Adjacent lands, Adverse effects, Development, Ecological Function, Freight-supportive, Infrastructure, Major facilities, Major good movement facilities and corridors, Natural heritage features and areas and Sensitive land uses are shown on Attachment 7.

Compatibility of Uses

The Subject Lands about the CN pullback tracks which are integral to the operation of the CN MacMillan Yard, forming part of CN's national rail network. The CN pullback tracks are used to marshal the trains causing noise, odour increasing risk to public health and safety which is not a land use that is compatible (Policies 1.1.1 and 1.2.6.1). CN has also identified their plans to increase the number of tracks from 2 to potentially 5 tracks in the future and in accordance with the PPS, planning authorities shall protect and preserve employment areas for current and projected needs (Policies 1.3.2.1 and 1.6.8). The Development is located 29 m away from the CN pullback tracks reducing the previously OLT approved 150/115 m setbacks, thereby reducing CN's protection for their long-term operation and economic role, increasing negative impacts and potential risk to public health and safety (Policies 1.6.9.1, 1.1.3.2, 1.1.3.3, 1.1.3.4, 1.6.8 and 1.7.1).

Through review of the submitted Noise and Vibration studies, the City's peer reviewer has concluded that the proposed Development is currently not feasible in its current location and design owing to its lack of setback, the requirements of the City's Noise By-law with respect to the use of Class 4 and the lack of mitigation recommendations to provide an adequate indoor sound environment. The conclusion of the peer reviewer is that the proposed Development is not consistent with the PPS Policies 1.1.3.4, 1.2.6.2, 1.3.2.2 and 1.6.9.1 which states rail facilities/ employment areas and sensitive land uses must be appropriately designed, buffered and/or separated from each other with appropriate development standards, in accordance with the land use compatibility.

The Development proposes intensification that has not been identified by VOP 2010 nor is supported by the PPS. Policy 1.1.3.3 states that planning authorities shall identify appropriate locations for intensification where it can be accommodated taking into account infrastructure. Policy 6 further defines Infrastructure (Attachment 7) to include transit and transportation corridors and facilities. The rail yard is considered a transportation corridor as it is used for the movement of goods and further defined as a major goods movement facilities and corridors (Policy 6.0). The Development does not protect the long-term viability of infrastructure as identified in Policy 1.7.1.

The CN pullback tracks form part of the MacMillan Yard, which are both located within an employment area. Policy 1.3 states that planning authorities shall protect and

preserve employment areas. Planning authorities shall prohibit residential uses and prohibit or limit sensitive land uses that are not ancillary to the primary employment uses in order to maintain land use compatibility (Policy 1.3.2.3). In addition, planning authorities shall protect employment areas in proximity to major goods movement facilities and corridors for employment uses (Policy 1.3.2.6).

The CN pullback tracks are defined by the PPS (Attachment 7) and meets the definition of a major facility, major good movement facilities and corridor, infrastructure, transportation system and rail facility (Policy 6.0 Definitions) located within an employment designation. The PPS also states that facilities may require a separation or mitigation from sensitive lands uses (Policy 1.3.2.2). A sensitive land use is defined (Policy 6.0) and includes residences, amenity areas or outdoor spaces as proposed by this Development. The Owner's submitted documentation does not address Policies 1.3, 1.68 and 1.2.6.2 as identified above and therefore, the report has not demonstrated consistency with the PPS.

The Development would result in a residential land use in close proximity to the CN pullback tracks that is not appropriate nor compatible with the existing CN pullback tracks. The MacMillan Yard and its uses create a situation that potentially increases the adverse effects of odor, noise, other contaminants and risk to public health and safety of future residents. Furthermore, both OPA 626 and VOP 2010 do not identify a need for the proposed Development at this location and provides alternative planned locations within the Urban Structure that would not impact the long-term operational and economic viability of the MacMillan Yard. The existing commercial designation and zoning would maintain appropriate land use compatibility. The proposed Development is not consistent with the policies of the PPS.

### **3. *The Development does not conform to the Places to Grow: Growth Plan for the Greater Golden Horseshoe, August 2020, as amended***

The Applications are required to conform to A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020, as amended ('Growth Plan'). The Growth Plan is intended to guide decisions on a wide range of issues, including economic development, land-use planning, urban form, housing, transportation, and infrastructure. The Growth Plan promotes intensification of existing built-up areas, with a focus on directing growth to settlement areas and prioritizing intensification, with a focus on strategic growth areas, including urban growth centres and major transit station areas, as well as brownfield sites and greyfields. Concentrating intensification in these areas provides a focus for transit infrastructure investment to support growth and for building compact, transit-supportive communities.

The Growth Plan together with the other provincial plans builds on the PPS to establish a unique land use planning framework for the Greater Golden Horseshoe ('GGH') that supports the achievement of complete communities, a thriving economy, clean and healthy environment, and social equity. It encourages population and employment growth to be accommodated within the built-up areas encouraging the development of complete communities with a mix of housing types with access to local amenities.

The Development is not consistent with the policy framework of the Growth Plan specifically with the following policies (in part):

- a) Sections 1.2.1, 2.1 and 2.2.1.2 Complete Communities and Managing Growth states (in part) that forecasted growth (population and employment) to the horizon will be allocated based on the following:
- “Support the achievement of complete communities that are designed to support healthy and active living and meet people’s needs for daily living throughout an entire lifetime.” (Policy 1.2.1)
  - “Prioritize intensification and higher densities in strategic growth areas to make efficient use of land and infrastructure and support transit viability.” (Policy 1.2.1)
  - “Provide flexibility to capitalize on new economic and employment opportunities as they emerge, while providing certainty for traditional industries, including resource-based sectors.” (Policy 1.2.1)
  - “Complete communities support quality of life and human health by encouraging the use of active transportation and providing high quality public open space, adequate parkland, opportunities for recreation, and access to local and healthy food.” (Policy 2.1)
  - “the vast majority of growth be directed to settlement areas that:
    - i. have a delineated built boundary;
    - ii. have existing and planned municipal water and wastewater systems;
    - iii. can support the achievement of complete communities
    - iv. designed to support healthy and active living” (Policy 2.2.1.2)
  - Sections 2.2.1.3 Upper and single-tier municipalities will undertake integrated planning to manage forecasted growth to the horizon of this plan, which will (in part):

- a) “establish a hierarchy of settlement areas, and areas within settlement areas, in accordance with policy 2.2.1.2;”
  - c) “provide direction for an urban form that will optimize infrastructure particularly along transit and transportation corridors, to support the achievement of complete communities through a more compact built form;”
  - e) “be implemented through a municipal comprehensive review and where applicable, include direction to lower-tier municipalities.”
- All municipalities will develop a strategy to achieve the minimum intensification target which includes (in part) the achievement of the desired urban structure, identify the appropriate type and scale of development and transition of built form to adjacent uses and ensure lands are zoned and development is designed in a manner that supports the achievement of complete communities and implemented through the official plan policies and designation. (Section 2.2.2.4)
- b) Sections 2.2.5.1 and 2.2.5.7 states that economic development competitiveness will be promoted and that municipalities plan for all employment areas within settlement areas (in part) by:
- integrating and aligning land use planning and economic development goals and strategies to retain and attract investments and employment (2.2.5.1d)
  - prohibiting residential uses and prohibiting or limiting other sensitive land uses that are not ancillary to the primary employment use (2.2.5.7a)
  - providing an appropriate interface between employment areas and adjacent non employment areas to maintain land use compatibility (2.2.5.7c)
- c) Section 3.2.4.2 Moving Goods states that the Province and municipalities will work with agencies and transportation service providers to:
- a) co-ordinate, optimize, and ensure the long-term viability of major goods movement facilities and corridors;
  - b) improve corridors for moving goods across the Greater Golden Horseshoe (‘GGH’);

- c) promote and better integrate multimodal goods movement and freight-supportive land use and transportation system planning.”
- d) Section 3.2.5.1 Infrastructure (in part) states that in planning for the development, optimization, or expansion of existing and planned corridors and supporting facilities, the Province, other public agencies and upper- and single-tier municipalities will:
  - f) ensure that existing and planned corridors are protected to meet current and projected needs in accordance with the transportation and infrastructure corridor protection policies in the PPS.”

VOP 2010 was developed following a full municipal comprehensive review of the City’s Official Plan and represents part of the City’s growth management strategy. The City’s Urban Structure and the implementation strategy is described within the intensification policies of VOP 2010. Although the Growth Plan encourages that the majority of growth be directed to settlement areas within delineated built boundaries, it does not infer that all types/forms of development that represent intensification are appropriate in every location in the municipality. Intensification must be planned, and municipalities will develop a strategy where intensification is to be directed to ensure it is an appropriate type of development, that provides appropriate transition of built form to adjacent uses and is implemented through official plan designations and policies (Policy 2.2.5.7).

The City’s strategic growth areas are identified in the VOP 2010 Schedule 1 through the Urban Structure, which identifies the Subject Lands being on a “Primary Intensification Corridor”. However, VOP 2010 and OPA 626 do not identify the Subject Lands for residential intensification as it is a sensitive land use next to the CN pullback tracks, which should be avoided to maintain land use compatibility (Policies 2.2.2.4 and 2.2.5.7). There are other lands such as the Vaughan Mills Secondary Plan area located in the southwest quadrant of Jane Street and Rutherford Road, where this form of development is more appropriate and would avoid the potential adverse impact from the CN pullback tracks and MacMillan Yard.

The Development is not compatible and does not contribute to achieving a complete community. The Urban Structure identified in VOP 2010 and within this report identifies a hierarchy of intensification areas, within other areas of the City with land use designations that are more appropriate and compatible. Introducing a sensitive land use next to an employment use such as the CN pullback tracks which are part of the CN MacMillan Yard creates a conflict between uses, which does not protect and ensure the long-term viability of major goods movement facilities and corridors and does not

support the achievement of a complete community (Policies 2.2.1.3, 3.2.4.2 and 3.2.5.1). On this basis, the Development does not conform to the Growth Plan.

***The Growth Plan designates the CN MacMillan Yard as a Provincially Significant Employment Zone***

The Growth Plan states that it is important to maximize the benefits of land use planning as well as existing and future investments in infrastructure so that communities are well-positioned to leverage economic change. It is also critical to understand the importance of provincially significant employment zones and consider opportunities to better co-ordinate efforts across municipalities to support their contribution to economic growth and improve access to transit.

Under the Growth Plan 2019, as amended, the MacMillan Yard is designated as a Provincially Significant Employment Zone ('PSEZ'), as shown on Attachment 6. The Growth Plan defines a PSEZ as:

“Areas defined by the Minister in consultation with affected municipalities for the purpose of long-term planning for job creation and economic development. Provincially significant employment zones can consist of employment areas as well as mixed-use areas that contain a significant number of jobs.”

The CN pullback tracks are not designated as part of the PSEZ however, the pullback track is deemed by CN to be integral to the operation of the MacMillan Yard. By extension, the MacMillan Yard has now been granted the highest level of protection under the Growth Plan. At the time of the original OLT decision approving residential uses on the lands to the immediate south, the Growth Plan and PSEZ did not exist (2004). Based on the decision of the OLT, the limit of residential development in proximity to the CN pullback tracks was determined to ensure a substantial intervening use in that location between the CN pullback tracks and the existing residential development to the south of the Subject Lands.

***4. The Ministry of Transportation – Freight Supportive Guidelines support the protection of Freight Corridors***

The purpose of the Ministry of Transportation – Freight Supportive Guidelines ('Freight Guidelines') is to help municipalities, planners, engineers, developers, and other practitioners create safe, and efficient freight-supportive communities. By coordinating land use planning and freight mobility planning, the Freight Guidelines help to respond to industry needs for freight movement in Ontario, as well as provide linkages between freight movement and land use planning policy and practice.

In this context, the Freight Guidelines are intended to:

- Provide direction for land use planning, site design practices and operational procedures that help with the movement of freight;
- Assist municipalities in understanding and planning for the various modes and types of vehicles used in the movement of freight; and
- Support the overall economic health and competitiveness of Ontario's municipalities.

The Freight Guidelines include the following (in part):

a) 1.3 Benefits of Freight-Supportive Planning

“Sensitive land uses such as residential areas, schools and hospitals are appropriately located, and either set away from freight movement facilities or buffered from them with landscaping, screens and walls.”

b) 1.4.3.2 Rail

“Ontario also has a number of shortline and regional railways that operate on privately owned ‘lower density’ rail lines. Shortline and regional railways are an important component of Ontario’s freight transportation system as they provide a direct link to the networks on branch lines connecting shippers to national, continental, and international markets.”

“Railways under federal jurisdiction, including CN, CP, and various smaller railways, are governed by the Canada Transportation Act and Railway Safety Act. Agreements with the federal government and agencies allow federal laws and powers, including safety regulations, to be applied to provincially-licensed railways. In planning for movement of goods by rail through communities, rail safety is a critical consideration. Municipalities can support rail safety through planning decisions such as avoiding/reducing conflicts between various road users at road/rail crossings and between rail lines and adjacent land uses.”

c) 2.2.2 Identify and protect all major goods movement facilities and corridors within and between neighbouring jurisdictions

“As more freight is shipped via truck and rail transport, it is increasingly important to ensure that the existing infrastructure is maintained and enhanced, and that future freight corridors and adjacent lands are protected.”

d) 2.2.5 Plan for efficient freight movements and complementary land uses around multimodal freight systems

“a. Preserve and protect existing freight-oriented land uses surrounding intermodal facilities at marine ports, airports, and rail yards.”

- e) 5.2.5 Maintenance of an Effective and Efficient Regional Freight Transportation System  
Strategies - “Protect lands adjacent to transportation facilities for freight-intensive land uses.”
  
- f) Adjacent lands in the Freight Guidelines are defined as:  
“Adjacent lands: lands contiguous to existing or planned corridors and transportation facilities where development would have a negative impact on the corridor or facility. The extent of the adjacent lands may be recommended in guidelines developed by the Province or based on municipal approaches that achieve the same objectives.”

These Freight Guidelines provide additional direction and support with regard to planning sensitive lands uses around existing freight. OPA 626 requires a 115.5 m setback from the property line and VOP 2010 does not recognize the Subject Lands for residential use in keeping with the OLT decision. The Development is proposed to be located 29 m from the property line bringing it closer to the CN pullback track. The Owner’s Planning Justification Report dated, December 2020 prepared by SGL has not included any reference to the Freight Guidelines for the Development. As such the proposed Development has not demonstrated how the proposed reduced setback meets the intent of these guidelines, preserves and protects the existing freight corridor.

**5. *The Federation of Canadian Municipalities (‘FCM’) and Railway Association of Canada (‘RAC’) prepared Guidelines for New Development in Proximity to Railway Operations (‘FCM & RAC Guidelines’)***

The FCM & RAC Guidelines are meant to assist municipal governments and railways in reviewing and determining general planning policies when developing on lands in proximity to railway facilities as well as to reduce land-use incompatibilities for developments in proximity to railway operations.

The FCM & RAC Guidelines states the following in part:

- a) 1.4.3 Municipal  
“Municipal governments have a role to play in proximity issues management by ensuring responsible land use planning policies, guidelines, and regulatory frameworks, as well as by providing a development approvals process that reduces the potential for future conflicts between land uses.”
  
- b) 1.4.5 Land Developer / Property Owner  
“Land developers are responsible for respecting land use development policies and regulations to achieve development that considers and respects the needs of

surrounding existing and future land uses. As initiators of urban developments, they also have the responsibility to ensure that development projects are adequately integrated in existing environment.”

c) 2.1 Safety

A principle objective of the railways is to ensure safety and promote a high quality of life for people living and working in close proximity to railway corridors by promoting mitigation in the form of standard setbacks, berms, crash walls and other forms of mitigation. As noted, safety, noise and vibration issues become more significant when dealing with residential development.

d) 2.2 Noise and Vibration

“Freight rail yard noises tend to be frequent and of longer duration, including shunting cars, idling locomotives, wheel and brake retarder squeal, clamps used to secure containers, bulk loading/unloading operations, shakers, and many others.”

“Ground borne vibration from the wheel-rail interface passes through the track structure into the ground and can transfer and propagate through the ground to nearby buildings.”

e) 2.3 Standard Mitigation

“In order to reduce incompatibility issues associated with locating new development (particularly new residential development) in proximity to railway corridors, the railways suggest a package of mitigation measures that have been designed to ameliorate the inherent potential for the occurrence of safety, security, noise, vibration, and trespass issues.”

f) 2.4 Challenges Associated with New Residential Development

High-density development becomes challenging as mitigation is needed such as setbacks, berms, crash walls and extensive vibration isolation.

g) 3.3 Building Setbacks for New Developments

“A setback from the railway corridor, or railway freight yard, is a highly desirable development condition, particularly in the case of new residential development. It provides a buffer from railway operations; permits dissipation of rail-oriented emissions, vibrations, and noise; and accommodates a safety barrier. Residential separation distances from freight rail yards are intended to address the fundamental land use incompatibilities.”

### 3.3.1 Guidelines

“The standard recommended building setbacks for new residential development in proximity to railway operations are as follows: Freight Rail Yard: 300 metres”

### h) 3.4 Noise Mitigation

“Noise resulting from rail operations is a key issue with regards to the liveability of residential developments in proximity to railway facilities, and may also be problematic for other types of sensitive uses, including schools, daycares, recording studios, etc.”

### 3.4.1 Guidelines

“The recommended minimum noise influence areas to be considered for railway corridors when undertaking noise studies are: Freight Rail Yards: 1,000 metres”

### i) 3.5 Vibration Mitigation

“Vibration caused by passing trains is an issue that could affect the structure of a building as well as the liveability of the units inside residential structures.”

### j) 3.6 Safety Barriers

“Setbacks and berms should typically be provided together in order to afford a maximum level of mitigation.”

### k) 3.7 Security Fencing

Trespassing onto a railway corridor can be dangerous. A fence, noise barrier and/ or crash wall is required for all new residential development in proximity to railway corridors to ensure that there is a continuous barrier.

The FCM & RAC Guidelines include the following definition for Sensitive Land Uses “A land use where routine or normal activities occurring at reasonably expected times would experience adverse effects from the externalities, such as noise and vibration, generated from the operation of a railway. Sensitive land uses include, but are not limited to, residences or other facilities where people sleep, and institutional structures such as schools and daycares, etc.”

The City’s peer reviewer has indicated that the FCM & RAC Guidelines were not included in the noise report submitted by the Owner (Attachment 11). According to the FCM & FAC Guidelines, new development should be planned with appropriate setbacks and buffering to prevent or mitigate adverse impacts such as noise, odor and vibration to minimize risk to public health and safety, while supporting the viability of the existing railway. The Development in its current form does not meet the guidelines as it is

located 29 m from the CN pullback tracks and has not been demonstrated to be an appropriate setback as noted in the above sections.

**6. *The Development does not comply with Ministry of the Environment, Conservation and Parks, Environmental Noise Guideline Publication NPC-300 and the City's Noise Control By-law 062-2018***

In August 2013, the Ministry of the Environment, Conservation, and Parks ('MECP') released Environmental Noise Guideline - Stationary and Transportation Sources - Approval and Planning ('NPC-300') to replace a number of existing Ministry guidance documents. This guideline establishes a class system of designating various "acoustic environments", defining permissible sound levels for each class.

In prior guidance documents, the MECP defined three classes of acoustical environments with their respective noise limits:

- Class 1 - urban areas
- Class 2 - areas that exhibit a mixture of urban and rural characteristics
- Class 3 - rural areas

NPC-300 introduces Class 4 Areas, to address noise in areas where there is intended development of noise-sensitive land uses, such as a residential development, in proximity to existing stationary noise sources, such as an industrial facility. A Class 4 Area allows for the use of higher noise guideline limits and the use of receptor-based noise mitigation measures, such as enclosed buffer balconies, which otherwise would not be allowed. The Class 4 Area classification are intended for use in intensification developments with noise sensitive land-uses in proximity to existing employment areas.

The Class 4 Area classification of a specific site or area is established through formal confirmation by the land use planning authority, i.e., the City and Council. In previous developments where a Class 4 Area classification has been requested, the City has retained a noise peer reviewer to review the applicable noise reports to ensure the viability and feasibility of the Class 4 request; and if Class 4 is accepted, to ensure that appropriate mitigation measures are implemented to meet or achieve as close as possible to the lower noise guideline limits of Class 1 Area classification that would result in the most suitable acoustical environment for the sensitive land use while also maintaining flexibility of MECP compliance for adjacent employment noise generating activities.

In January 2018, the City's Noise Control By-law 062-2018 was amended to recognize NPC-300 and the Class 4 Area classification. The amendments included the addition of two new schedules:

- Schedule 4 which identifies and documents approved Class 4 Areas in the City; and
- Schedule 5 which identifies Exempted Employment Areas in the City.

In a Class 4 area, there may be instances where employment activities may result in resident complaints notwithstanding the inclusion of noise attenuation measures in the residential building. The creation of Exempted Employment Areas was to ensure businesses which have a valid MECP Environmental Compliance Approval ('ECA') permitting a specific noise generating activity and that are adjacent to a Class 4 Area would be exempt from Schedule 2 of the Noise Control By-law which prohibits certain activities that generate excessive noise in residential areas and Quiet Zones. This was also implemented to ensure businesses were able to maintain compliance with their MECP ECA requirements. Formally approved Class 4 Area sites require amendments to the Schedules in the Noise Control By-law.

The Development has not satisfactorily demonstrated that applicable NPC-300 guideline sound level limited criteria can be achieved, nor does it meet the intent of the use of Class 4 with respect to the City's Noise By-law. In addition, Jade Acoustics, the City's peer reviewer concluded that the Development is not feasible as currently located and designed, due to the unique characteristics of the noise/vibration sources, the lack of setback, the magnitude of the predicted sound level, the requirements of the City's noise by-law with respect to the use of Class 4 and the lack of mitigation recommendations to provide an adequate indoor sound environment (Attachment 11).

**7. *The Development does not meet the Ministry of Environment, Conservation and Parks D-1 and D-6 Compatibility Guidelines between Industrial Facilities and Sensitive Land Uses***

The D-1 and D-6 Guidelines are intended to be applied in the land use planning process to prevent or minimize adverse effects from the encroachment of incompatible land uses where a facility either exists or is proposed, through the use of buffers.

The D-6 Guideline specifically addresses the prevention or minimization for the encroachment of sensitive land use upon industrial land use and vice versa. The D-6 Guideline indicates that when impacts from industrial activities cannot be mitigated or prevented to the level of trivial impact (i.e. no adverse effects), new development, whether it be an industrial facility or a sensitive land use, shall not be permitted.

The D-6 Guideline categorizes industrial facilities into three Classes according to the objectionable nature of their emissions, their physical size/scale, production volumes and/or the intensity and scheduling of operations. Based on types of activities, the City and CN categorized the CN pullback tracks as a Class III industrial facility. The D-6 Guidelines indicate the potential influence area for a Class III industrial facility is 1000 m and recommended minimum separation distance of 300 m between incompatible land uses. OPA 626 establishes a minimum setback of 115.5 m for residential buildings measured perpendicular to the north property line of the OPA Amendment area, which

is the equivalent of 150 m from the south track of the CN pullback tracks for residential buildings.

The D-6 Guideline does recognize that achieving the minimum separation distance in cases of redevelopment, infilling and mixed-use areas may not be possible. In these cases, the D-6 Guideline states that a sensitive land use less than the minimum separation distance to a facility may be acceptable to a municipality if justifying impact assessments in the areas of noise, dust, and odor are provided confirming the overall feasibility of the proposal and necessary mitigation measures can be implemented to lessen anticipated adverse effects from an industry on the sensitive land use.

The proposed development does not meet the required setbacks outlined in the D-6 Guideline for a Class 3 Industry nor does it comply with the reduced setback approved in the 2004 OLT decision and OPA 626. The Owner has also not demonstrated to the satisfaction of the City that adverse impacts between the incompatible land uses can be feasibly achieved as the noise and vibration studies have a number of comments and concerns that were raised by the City's noise peer reviewer (Attachment 11) along with CN Rail (Attachments 9 and 10); and an air quality impact study has not been submitted.

**8. *The Development does not conform to the policies of York Region Official Plan 2010 ('YROP')***

The YROP guides economic, environmental and community building decisions across York Region. The Subject lands are designated 'Urban Area' by the YROP.

Compatibility

The following are policies from YROP:

- a) Towards a Sustainable Region Policy states (in part):
  - 1.2.4 "The protection of employment lands from non-employment uses".
  
- b) Healthy Communities Policies state (in part):
  - 3.2.5 "To require health, environmental and cumulative air quality impact studies that assess the impact on human health for development with significant known or potential air emission levels near sensitive uses such as schools, daycares and seniors' facilities."
  
  - 3.2.6 "That sensitive uses such as schools, daycares and seniors' facilities not be located near significant known air emissions sources such as controlled access provincial 400-series highways."

c) Policy 4.3 Planning for Employment Lands

“Objective: to ensure the long-term supply and effective planning and design of employment lands”

4.3.3 “To recognize that employment lands are strategic and vital to the Regional economy and are major drivers of economic activity in the Region.”

4.3.4 “To require local municipalities to designate and protect employment lands in local municipal official plans.”

4.3.5 “To protect, maintain and enhance the long-term viability of all employment lands designated in local municipal official plans for employment land uses.”

YROP identifies that the movement of goods by truck and rail is integral to York Region’s economic vitality. The York Region Transportation system should allow for efficient goods movement that has regard for the sensitivities of residents and different land uses. As the region grows, it is increasingly important that lands surrounding major goods movement corridors be reserved for employment activities.

An objective of YROP is to promote a linked and efficient network of goods movement that supports economic vitality and minimizes conflicts with sensitive land uses and that they be implemented by the following Council Policies of Policy 7.2 (in part) as follows:

- “To support the protection of existing rail lines and promote rail as an efficient goods movement method” (7.2.72)
- “To discourage the location of land uses sensitive to noise and vibration and safety issues, in proximity to rail facilities, rail corridors and intermodal yards, to avoid issues of compatibility” (7.2.74)
- “To work with other levels of government, agencies and private sector to minimize risks and ensure the safe and efficient movement of goods by either rail or streets in the Region” (7.2.80)

Intensification

The YROP states that policies for development and intensification are established through the local municipal official plan. Policy 3.5.4 in the YROP requires that local municipal Official Plans and Zoning By-laws permit a mix and range of housing types, lot sizes, unit sizes, functions, tenures, and levels of affordability within each community.

In order to create high-quality, sustainable communities, Policy 5.2.8 of YROP states that it is the policy of Regional Council, “To employ the highest standard of urban design, which:

- a. provides pedestrian scale, safety, comfort, accessibility, and connectivity;
- b. complements the character of existing areas and fosters each community’s unique sense of place;
- d. promotes landscaping, public spaces, and streetscapes;
- e. ensures compatibility with and transition to surrounding land uses;
- f. emphasizes walkability and accessibility through strategic building placement and orientation;
- g. follows the York Region Transit-Oriented Development Guidelines; and
- h. creates well-defined, centrally-located urban public spaces.”

The Development is not appropriate at this location as it does not provide safe access, comfort and connectivity while ensuring compatibility and an appropriate transition with the surrounding land uses. The Development sites the building closer to the CN pullback tracks, whereas OPA 626 requires a minimum setback of 115.5 m from the north property line for all residential uses. The Development proposes a minimum setback of 29 from the north lot line abutting the CN Pullback tracks which increases the adverse impact of noise, vibration and air quality to future residents should the Development be approved as designed in its current form, which does not conform to the intensification policies of YROP (Sections 5.2.8 and 5.3)

The YROP prescribes an urban structure focused on a system of Regional Centres and Regional Corridors. Policy 5.3 of the YROP states that, “intensification will occur in strategic locations in the built-up area to maximize efficiencies in infrastructure delivery, human services provision and transit ridership. These strategic locations are based on an intensification framework that recognizes that the highest density and scale of development will occur in the Regional Centres followed by the Regional Corridors.” Regional Centres and Corridors are intended to accommodate the highest concentration of intensification. York Region has planned and committed to accommodating rapid transit systems along these Corridors and Centres to support the levels of intensification. It is also important that developments in areas not located in a Regional Centre or on a Regional Corridor be subordinate in height and density to those that are located in Regional Centres or Regional Corridors.

The YROP also identifies a Regional Transit Priority Network where municipal infrastructure is planned to support transit and identifies Regional Rapid Transit Corridors.

Policy 5.3 of YROP states that intensification will occur in strategic locations in the built-up area to maximize efficiencies in infrastructure delivery, human services provision, and transit ridership. These strategic locations are based on an intensification framework that recognizes that the highest density and scale of development will occur in the Regional Centres and followed by Regional Transit Corridors. These areas along these transit corridors are recognized in the YROP as intensification areas.

Policy 5.3.3 states that it is the policy of Regional Council that local municipalities complete and adopt their own intensification strategies through the approval of Official Plan, which identifies intensification areas. Policy 5.3.6 states “that intensification areas be planned and designed to achieve an appropriate transition of built form to adjacent areas”.

In consideration of the above, the Development is not compatible in this location nor does it achieve a complete community that supports healthy, active, and safe living because it introduces a sensitive land use (residential use) next to a major employment activity, the CN pullback tracks, with insufficient setbacks which does not support the protection of the existing rail yard use. The Development at this location will create adverse impacts to future residents with respect to noise, vibration and air quality, and overall health and enjoyment. The Development does not conform to YROP (Sections 7.2.72, 7.2.74 and 7.2.80). The hierarchy of intensification areas identified through the VOP 2010 growth strategy provides for areas with land use designations better suited and more compatible than the Subject Lands.

Although the Subject Lands are located on a primary intensification corridor, the in-effect OPA 626 and not in effect VOP 2010 do not permit the Development as it is not appropriate at this location next to the CN pullback tracks, which form part of the uses of the CN MacMillan Yard.

**9. *The Development does not conform to the policies of in-effect Official Plan Amendment 626***

The Subject Lands are designated “High Density Residential/Commercial” by OPA 626. OPA 626, states “to adequately protect the proposed residential uses, specific policies regarding environment noise impact from the pullback track are included within the OPA and residential buildings shall not be permitted within 150 m from the CN pullback track located to the north, measured from the south rail of the south track.”

OPA 626 establishes a minimum setback of 115.5 m for residential buildings measured perpendicular to the north property line of the OPA Amendment area, which is the equivalent of 150 m from the south track of the CN pullback tracks for residential buildings. The Subject Lands and the Development fall within the 115/150 m setbacks.

Only commercial uses are permitted on the Subject Lands. The Applications do not conform to the in-effect OPA 626.

**10. *The VOP 2010 which is not in effect does not permit the Development***

Policy 1.1.3.3 of the PPS provides direction for municipalities to identify opportunities for accommodating intensification and redevelopment within the municipality, through the implementation of municipal Official Plans.

VOP 2010 which is not in effect designates the Subject Lands “Community Commercial Mixed-Use”, and “Natural Areas” by VOP 2010 as identified on Schedule 13 – Land Use and Schedule 2- Natural Heritage Network. The “Community Commercial Mixed-Use” designation permits office uses, hotel, cultural and entertainment uses, retail uses and gas stations with a maximum building height of 16-storeys and an FSI of 4. The proposed Development does not conform to the “Community Commercial Mixed-Use” designation policies of VOP 2010 and requires an Official Plan Amendment as they do not conform to the policies of the in-effect OPA 626 and VOP 2010. The designation is predominately commercial which is appropriate for non-residential intensification and is in keeping with the OLT approved OPA 626.

The Subject Lands are located within a “Community Area” that fronts onto a “Primary Intensification Corridor” as identified on Schedule 1 Urban Structure. The east end of the Subject Lands are identified as a “Natural Area” as they are located within a valley/stream corridor and woodland. The east end of the Subject Lands are considered to be “Core Features” of the Natural Heritage Network (‘NHN’) and are subject to the policies within Chapter 3. Should the OLT approve the applications, the “Natural Area” located at the east end in accordance with the TRCA comments will be dedicated into public ownership and identified on the Official Plan Amendment schedule.

The MacMillan Yard and the CN pullback tracks are identified as Rail Facilities (Schedule 1) and are designated as “General Employment” (Schedule 13) in VOP 2010

- a) VOP 2010 includes the following policies regarding the protection of Vaughan’s rail infrastructure (in part):

- 4.4.1 “Vaughan’s rail infrastructure plays an important role in safely and efficiently moving people and goods and is a foundational part of Vaughan’s economy. This role will continue. Major manufacturing industries in Vaughan capitalize on the nearby rail lines and terminals to efficiently ship goods over long distances. Areas near rail infrastructure will continue to be protected for industrial and other employment uses to provide for the continued use of rail movement.”

4.4.1.1 “To support the long-term protection of rail infrastructure in Vaughan.”

4.4.1.2 “To maximize utilization of rail infrastructure for goods movement by directing industrial development that requires locations adjacent to the rail corridor for business operations, and/or that utilizes rail lines for moving goods and have large volume inputs and outputs, to locations adjacent to rail corridors and Rail Facilities within Employment Areas shown on Schedule 1.”

4.4.1.5 “To protect rail infrastructure from encroaching adjacent development that may impede operations due to noise or environmental concerns. Specifically, development adjacent to a railway right-of-way shall provide:

- a. appropriate land use compatibility, as may be set out in Ministry of Environment Land Use Compatibility guidelines;
- b. appropriate noise and vibration levels for the adjacent development, as may be set out in Ministry of Environment guidelines on noise and vibration; and
- c. appropriate separation distances and/or safety barriers, as may be prescribed by Provincial guidelines or railway operators.”

#### 4.4.2 Supporting Goods Movement

“Vaughan’s large industrial and manufacturing base results in high levels of goods movement throughout the City and especially in Employment Areas. The movement of goods is an important contributor to Vaughan’s economic well-being and must be supported. While long distance goods movement by rail is generally more efficient than by truck, it is not always feasible. Vaughan has significant resources for goods movement, including the rail corridors and yards, the extensive Provincial highway network, numerous truck terminals and courier hubs; and proximity to Pearson International Airport.

These resources provide the structure for integration of goods movement systems for efficient and effective intermodal networks.

Despite the significant economic benefits of goods movement, there are also adverse impacts, including emissions, noise and truck traffic.”

- b) 5.1.2.3 “To support the long-term flexibility, vitality and competitiveness of Employment Areas by (in part):
  - b. requiring that sensitive land-uses outside of Employment Areas, as defined by the Ministry of Environment Guidelines for Land-Use Compatibility, are designed and located so as not to create adverse impacts on businesses within Employment Areas and that such compatibility, including any required mitigation, be addressed in an Employment Area Compatibility Assessment report;
  - e. facilitating efficient goods movement systems, in accordance with the policies in Section 4.4 of this Plan;”
- 5.2.1.2. “To protect Vaughan’s manufacturing, industrial and warehousing sectors from potential impacts, any development or redevelopment of lands for more sensitive land uses located within 500 metres of an Employment Area, will be required to undertake appropriate environmental studies (e.g., noise, dust, vibration, etc.), to be identified on a case by case basis, in order to ensure land use compatibility with the surrounding Employment Area lands. As a result of the studies, on-site or off-site mitigation measures may be required prior to development at the expense of the applicant for the more sensitive land use.”
- c) 9.2.2.10 “In areas designated on Schedule 13 as General Employment, the following policies shall apply:
  - e. Separation distance guidelines prepared by the Ministry of Environment or alternative measures shall be applied to achieve compatibility between uses in the Prestige Employment designation and adjacent sensitive land uses.”

Intensification

VOP 2010 also directs intensification, both new and infill, to certain areas of the City, while requiring that other areas remain stable. VOP 2010 contains the following policies (in part):

- a) Policy 2.1.3.2 of “Defining Vaughan’s Transformation: Key Planning Objectives” (in part)  
To address the City’s main land-use planning challenges and manage future growth by (in part):

- c. identifying Intensification Areas, consistent with the intensification objectives of this Plan and the Regional Official Plan, as the primary location for accommodating intensification
- b) Policy 2.2.1.2 of “Vaughan’s Urban Structure”  
“That the areas identified on Schedule 1 as the Vaughan Metropolitan Centre, Primary Centres, Local Centres, Regional Intensification Corridors and Primary Intensification Corridors are collectively known within this Plan as Intensification Areas. Intensification Areas will be the primary locations for the accommodation of growth and the greatest mix of uses, heights and densities in accordance with the prescribed hierarchy established in this Plan. The policies related to Intensification Areas shall be consistent with the policies for such areas as contained in the Provincial Policy Statement, the provincial Growth Plan for the Greater Golden Horseshoe and the York Region Official Plan.”
- c) Policy 2.2.5 of Intensification Areas (in part):  
This Policy identifies that the development of Intensification Areas will support the overall policy objectives of VOP 2010 by protecting primary locations for the accommodation of growth and that Community Areas will not see significant physical change as the vast majority of development within the built boundary will take place within Intensification Areas which consist of a hierarchy of mixed-use centres and corridors as follows:
- “The Vaughan Metropolitan Centre will be the City’s downtown. It will have the widest range of uses and will have buildings of various sizes, including the tallest buildings in the City
  - Regional Intensification Corridors (e.g., Highway 7 and Yonge Street) will link Regional centres both in Vaughan and beyond and are linear places of significant activity. They may accommodate mixed-use intensification or employment intensification
  - Primary Centres will accommodate a wide range of uses and will have tall buildings, as well as lower ones, to facilitate an appropriate transition to neighbouring areas
  - Primary Intensification Corridors (e.g., Jane Street and Major Mackenzie Drive) will link various centres and are linear places of activity in their own right. They may accommodate mixed-use intensification or employment intensification

- Key development areas are Intensification Areas on Regional Corridors that will link and complement the planning for Primary Centres and Local Centers
- Local Centres act as the focus for communities, are lower in scale and offer a more limited range of uses

Intensification Areas have been established to make efficient use of underutilized sites served with a high-level of existing or planned transit. They will be developed with a mix of uses and appropriate densities to support transit use and promote walking and cycling. The development of Intensification Areas that will support the policies of this Plan related to Stable Areas will be maintained. Specifically, existing Community Areas will not see significant physical change as the vast majority of residential development within the built boundary will take place within Intensification Areas.”

Policy 1.1.3.3 of the PPS, Policy 2.2.3 of the Growth Plan and Policy 5.3.3 of YROP states that local municipalities shall identify intensification areas and adopt their own intensification strategies. The City of Vaughan established polices within VOP 2010 where Intensification Areas have been identified. VOP 2010 has identified Intensification Areas, including Regional Centres (i.e. Vaughan Metropolitan Centre), Primary Centres, Local Centres, Regional Intensification Corridors, and Primary Intensification Corridors.

The Subject Lands are not located within a Centre but are located on a Primary Intensification Corridor (‘Corridor’) being Jane Street (Policies 2.1.3.2, 2.2.1.2 and 2.2.5). As noted above, the role of the Corridor is to link primary centres. In this case, the Corridor links Vaughan Health Care Campus, the Vaughan Cortellucci Hospital located at Jane Street and Major Mackenzie Drive and Vaughan Mills Centre Secondary Plan together. The planned Primary Centre is located on the south side of Rutherford Road in the Vaughan Mills Centre Secondary Plan between Weston Road and Jane Street and does not include the Subject Lands. The Corridor may accommodate mixed-use intensification or employment intensification (Policy 2.2.5) provided for the existing uses permitted under OPA 626 and VOP 2010.

As identified above, the highest built form should be located in intensification areas such as the primary centre located south of Rutherford and identified as the Vaughan Mills Centre Secondary Plan (‘VMCSP’). The VMCSP identifies the highest heights at the intersection of Rutherford Road and Jane Street, stepping down further away from the intersection. The heights range from 30 storeys at the corner and decrease to 16-storeys within the primary centre.

The Development includes two 36-storey high-rise residential apartment buildings on 5-storey podiums, with an FSI of 4.2 times the area of lot. The Development is not

located at the intersection, is 20-storeys higher than the existing building, is located in an area that contains a 4-storey office building to the north, where there should be reduced height transition, a car dealership to the west and 4-storey office south of the dealership. The Development represents a significant level of intensification that is inappropriate, was not considered by the OLT approved OPA 626, nor is appropriately located within the 150/115 m setback from the CN pullback tracks.

The policies speak to the long-term protection of employment lands, recognizing the importance of goods movement and the separation of sensitive land uses from rail yards. The Development is not compatible with the surrounding land uses, does not protect the existing employment and does not achieve a complete community that supports healthy, active, and safe living community (Policies 4.4.1.5, 5.1.2.3, 5.2.1.2 and 9.2.2.10). The hierarchy of intensification areas identified through the VOP 2010 growth strategy provides for other areas with land use designations that support the achievement of a complete community and a healthy environment within the City. The proposed high-rise Development does not meet the requirements of the above noted policies. Therefore, the Development does not comply to the policies of VOP 2010.

### ***Section 37 Community Benefits will be required***

The Development proposed by the Owner exceeds the current building height and density permissions set out in OPA 626 and VOP 2010. Section 37 of the *Planning Act* (density bonusing) allows municipalities to secure services, facilities or other matters (i.e., community benefits) as a condition of approval for development applications, where the proposed increase in building height and /or density is above the existing planning permissions and in accordance with the Section 37 provisions of the VOP 2010 (Volume 1 – Section 37 *Planning Act*).

Policy 10.1.2.9 a) of VOP 2010 states (in part) “In accordance with Section 37 of the *Planning Act*, Council may authorize an increase in the building height and/or density of development otherwise permitted in areas of the City, as contained in Volume 1 or Volume 2 of this Plan, or as contained in a site-specific zoning by-law, in return for the provision of community benefits in the form of facilities, services or matters provided:

- ii. the development represents good planning, is consistent with the other objectives of this Plan and consistent with applicable built form and neighbourhood compatibility objectives;”

The Development does not represent good planning and is not consistent with the objectives of OPA 626 nor VOP 2010 and is not consistent with applicable built form and neighbourhood compatibility objectives.

Should the OLT approve the Applications, the Owner will be required to provide Section 37 benefits in accordance with the City’s policies and Section 37 guidelines. A condition is included in the Recommendations in this report in this regard.

***A Zoning By-law Amendment is required to permit the Development***

The Subject Lands are zoned “C1(H) Restricted Commercial Zone” subject to site-specific Exception 9(1246) by Zoning By-law 1-88. This zoning does not permit the Development. The Owner proposes to amend Zoning By-law 1-88 to rezone the Subject Lands to “RA3 Apartment Residential Zone” in the manner shown on Attachment 2 together with the following site-specific zoning exceptions to permit the Development shown on Attachments 2 to 5:

Table 1:

	<b>Zoning By-law 1-88 Standard</b>	<b>RA3 Apartment Residential Zone Requirements</b>	<b>Proposed Exceptions to the RA3 Apartment Residential Zone Requirements</b>
a.	Minimum Front Yard (Jane Street)	7.5 m	3.9 m
b.	Minimum Rear Yard Setback	7.5 m	Unknown*
c.	Minimum Amenity Area	350 One Bedroom Units x 20 m <sup>2</sup> /unit = 7,000 m <sup>2</sup>  402 Two Bedroom Units x 55 m <sup>2</sup> /unit = 22,110 m <sup>2</sup>  8 Three Bedroom Units x 90m <sup>2</sup> / units = 720 m <sup>2</sup>  Total required amenity area = 29,830 m <sup>2</sup>	Provide a total amenity area of 13,200 m <sup>2</sup>
d.	Minimum Lot Area	67 m <sup>2</sup> /unit x 760 units = 50,920 m <sup>2</sup>	14,700 m <sup>2</sup>
e.	Maximum Building Height	44 m	115 m
f.	Minimum Parking Requirements	<u>Residential</u> 1.5 spaces/unit x 760 units = 1,140 spaces	<u>Residential</u> 1.01 spaces/unit x 760 units = 768 spaces

	Zoning By-law 1-88 Standard	RA3 Apartment Residential Zone Requirements	Proposed Exceptions to the RA3 Apartment Residential Zone Requirements
		<p style="text-align: center;"><u>Visitor</u> 0.25 spaces/unit x 760 units = 190 spaces</p> <p style="text-align: center;">Total required parking = 1,330 spaces</p>	<p style="text-align: center;"><u>Visitor</u> 0.20 spaces/unit x 760 units = 152 spaces</p> <p style="text-align: center;">Total parking = 920 spaces</p>
g.	Maximum Permitted Driveway Width	7.5 m	12 m
h.	Minimum Front Yard Setback to the Nearest Part of a Building Below Finished Grade (underground garage)	1.8 m	0 m (Jane Street)
i.	Minimum Setback for Apartment Building from the North Lot Line	115.5 m (measured perpendicularly from the northerly lot line)	29 m (Building A and B north side)

\*The minimum rear yard setback from Tower A to the rear lot line is currently shown as 12.7 m however, the setback should be shown to the development limit (Attachment 2). The TRCA has requested that the valley lands and associated 10 m buffer area be recognized in an appropriate open space or environmental protection designation and zoning category. The TRCA requests that the zoning by-law amendment schedules be updated to identify the open space lands accordingly and convey the lands into public ownership. As the setback is not identified to the development limit, the minimum rear yard setback and compliance is unable to be determined at this time. Once the rear yard setback is identified to the development limit and should the Applications be approved, the exception in the implementing Zoning By-law will be identified.

The proposed RA3 Zone and site-specific exceptions are those of a “High-Rise” development. For the reasons and comments provided in this report, the proposed rezoning and site-specific exceptions would not adequately protect the Development from the existing employment use (CN pullback tracks) as it does not provide for appropriate setbacks, heights and scale. The proposed zoning does not facilitate a Development that is consistent with provincial policies, conforms with the policies or objectives of in-effect OPA 626 and approved by the OLT and not in-effect VOP 2010 for the Subject Lands, and therefore, the Zoning By-law Amendment application cannot be supported.

***Should the Applications be approved by OLT, Staff Recommend the Subject Lands be zoned with the Holding Symbol “(H)”***

Should OLT approved the Applications, it is recommended that the implementing Zoning By-law include a Holding Symbol “(H)” on the Subject Lands. The Holding Symbol “(H)” will not be removed from the Subject Lands (or portion thereof) until conditions have been addressed as outlined in the Recommendation section of this report.

***The Urban Design and Cultural Heritage Division has provided comments regarding the Development***

The Urban Design and Cultural Heritage Division (‘Urban Design’) has reviewed the proposed Development and have indicated that given the location of the Development next to the CN pullback tracks a detailed Architectural Noise and Feasibility Analysis Report is required that includes a detailed architectural response to the noise and vibration generated from the CN pullback tracks. The report must include but not limited to architectural elevations, cross-sections, and materiality of the building facades to clearly illustrate how the noise and vibration will be mitigated in the building design. The report should also explore more variation in floor plans, that is responsive to the context and the CN rail’s noise and vibration. The report must be peer reviewed to the satisfaction of the Urban Design Division. A condition to this effect shall be included in the Recommendations.

Urban Design notes that the Development as proposed is very car oriented and direct pedestrian access from Jane Street to the community is required as well as bike and pedestrian connections to the existing trails within the context area.

Should the Applications be approved by OLT a Site Development Application will be required to be submitted and will be further reviewed by Urban Design during the Site Plan process review.

***The Vaughan Design Review Panel reviewed the Development***

The Design Review Panel (‘DRP’) reviewed the proposed Development on January 28, 2021 and provided comments respecting the overall site organization, interconnectivity between the two phases and connections to the valley lands. The DRP does not review the Development for noise mitigation and air quality.

***The Development Engineering Department has provided comments regarding the Development***

The Development Engineering (‘DE’) Department has reviewed the Applications and supporting technical studies, and provided the following comments in addition to the additional comments provided on Attachment 8:

### Road Network

Access for the Development is proposed from Jane Street having an internal two-way driveway network along the north portion of the Subject Lands. A connection to the existing development located south of the Subject Lands is also proposed.

The DE Department have identified a number of concerns that should be addressed prior the approval of the Applications. The traffic operations in this area are of primary concern, more specifically several movements in the immediate area intersections either are operating at capacity or expected to operate near or above capacity in future. The Development along with other developments anticipated within this area and in Vaughan Mills Centre Secondary Plan area will add to the delay and vehicle queues in future as expected.

Proposed improvements by the Owner involves signal timing improvements at the Jane Street and Rutherford Road signalized intersection resulting in small to moderate improvements to the future intersection operations. However, there are still several movements operating over capacity. The primary sustainable solution to the traffic problem is promoting transit, Active Transportation ('AT') and Travel Demand Management ('TDM'). Therefore, it is imperative to align the timing of the developments in the area with the planned improvements in transit services along Jane Street and Rutherford Road similar to development thresholds identified at each horizon year within Vaughan Mills Centre Secondary Plan Area. These measures include, but are not limited to the following:

- VivaNext Quick Start rapid bus service on Jane Street, from Rutherford Road to the planned Spadina Subway extension station at Highway 7
- Transit signal priority and queue jump lanes on Jane Street, Weston Road and Rutherford Road
- Enhancement of YRT bus service on Rutherford Road and to the YRT Vaughan Mills bus terminal

In addition, robust TDM measures will be required at the site plan approval stage to further reduce auto dependency and support transit services.

### Water Supply

The Subject Lands are located within Pressure District 6 ('PD6') and will be serviced by two (2) water service connections to the existing municipal watermain on Jane Street. The watermain analysis concludes Jane Street provides adequate flows and pressures to service the Subject Lite.

The DE Department has also reviewed the water supply analysis and Preliminary Servicing Plan. Generally, they have no objections, subject to the Owner addressing

comments identified in Attachment 8. The Owner shall provide a detailed Site Servicing Plan at the site plan stage.

### Sanitary Servicing

The Owner is proposing a sanitary sewer connecting to the existing municipal sanitary sewer on the west side of Jane Street, and ultimately to the regional Jane Rutherford Sanitary Trunk Sewer since there is no other municipal sanitary sewers adjacent to the Subject Lands. However, the location of the proposed sanitary sewer has not been approved by appropriate authorities. Also, the Functional Servicing Report ('FSR') recommends upsizing a section of the existing municipal sanitary sewer to ensure sufficient capacity for the proposed peak flow to be determined through further submissions.

### Lot Grading and Drainage

The Subject Lands are relatively flat. There is a slight drop in grade to the east. Approximately 0.94 ha of the Subject Lands drain east towards the existing open space/valley lands. The remaining lands drain southward, and any drainage would be picked up by existing area drains located within the abutting development to the immediate south of the Subject Lands.

### Stormwater Management

The Subject Lands are located within the Don River watershed and stormwater management is proposed to be discharge east to the existing valley. Based on the FSR, there is a storm sewer service connection available at the southwest corner of the Subject Lands provided by the development to the south with potential to allow for flow through the existing mechanical system. However, the site to the south has been developed as a separate property and connection from the Subject Lands to the existing pond through the lands to the south is not permitted.

A private bioretention facility is proposed downstream of the site's headwall location to meet the post to pre water balance. The Owner shall obtain all necessary approvals from the Toronto and Region Conservation Authority ('TRCA') for the proposed outlet to the existing creek.

### Noise, Vibration and Air Quality

In consideration of the close proximity of the Subject Lands to the CN pullback tracks and the idling locomotives as well as the nearby works yard, the Owner is required to submit an Air Quality Impact Study in conformance with Ministry of Environment Conservation and Parks ('MECP') D-6 Series guidelines and O. Reg. 419/05 (as applicable) to assess potential adverse impacts on the proposed Development. The Air Quality Impact Study will require review by the City's peer reviewer.

The Owner submitted an Environmental Noise Assessment Report and Railway Vibration Report prepared by Valcoustics Canada Ltd. dated November 23, 2020

(‘Noise Reports’) recommending the Subject Lands be reclassified as a Class 4 Acoustical Area in order to achieve a suitable noise environment for the proposed Development. CN Rail’s noise consultant, RWDI Air Inc, prepared a letter in response to the Noise Reports identifying a number of noise and vibration concerns in assessing land use compatibility. Given the request for a Class 4 designation and the technical items raised by RWDI Air Inc, the City in accordance with Policy 10.1.3.5. “That where a study has been submitted in support of a development application, and it is determined by the City that a peer review is required, the peer review shall be coordinated by the City but at the expense of the applicant”, hired a peer reviewer, Jade Acoustics Inc. to provide their opinion on:

- i. the submitted noise and vibration documentation and conformance to applicable noise related guidance
- ii. the appropriateness of the Class 4 area request, and
- iii. the feasibility of achieving a suitable acoustical environment for the future occupants of the Subject Land based on the proposed mitigation measures

Jade Acoustics Inc. (Attachment 11) identified a number of comments that should be addressed by the Owner’s noise consultant. Some notable items of concern include:

- The Noise Report assesses the existing configuration of two pull back tracks but needs to assess for CN’s future addition of two to three new tracks
- The Noise Report should assess the potential for a change in the number and size of the locomotives
- The Development does not meet the recommended setbacks outlined in the D-6 Guideline for a Class 3 industry nor does it comply with the reduced setback approved in the 2004 OLT decision
- Questions surrounding the design and mitigation measures utilized for the proposed development and whether an appropriate acoustical environment can be achieved considering other sources of sound generated by the CN pullback tracks that lack numerical sound level limits such as low frequency noise, warning devices, and intermittent sources, and
- Additional vibration measurements/analyses required to assess CN’s future addition of two to three new tracks

In addition, a significant item requiring further consideration and discussion is whether the proposed development would meet the intent of the City’s use of designating the Subject Lands as a Class 4 Acoustical Area. A Class 4 Acoustical Area designation requires formal designation from the land use planning authority and would permit the use of mitigation measures at the receptors (i.e., on the proposed development) that would otherwise not be permitted if it was a Class 1 Acoustical Area. The intent of the City’s use of the Class 4 designation in conjunction with the City’s noise by-law is only to be applied for sensitive land uses adjacent to industries that require a Ministry of the

Environment, Conservation, and Parks Environmental Compliance Approval (ECA). As CN is federally regulated, they do not require an ECA nor are they subject to any of the prohibitions in the City's noise by-law. As such, future occupants of the proposed development cannot obtain any relief from noise disturbance by the pullback track as the noise by-law would not apply to CN.

Based on the above items of concern, the City's noise peer review could not conclude the proposed development is acoustically feasible as currently located and designed.

The Owner shall be required to provide the DE Department a cheque in the amount of \$15,000 to cover the costs for undertaking all the necessary peer reviews. At the conclusion of the peer review, any remaining funds shall be refunded back to the Owner. Alternatively, should the peer reviewer require additional funds, the Owner will be required to submit a cheque to cover the additional costs.

#### Environmental Site Assessment

The Owner submitted the Site Screening Questionnaire and Phase One Environmental Site Assessment ('ESA') report prepared by Soil Engineers Ltd., dated September 9, 2019. The DE Department requires the Owner to confirm their intention and timing for obtaining a MECP Record of Site Condition ('RSC'). Also, the Owner is required to provide a copy of the Phase Two ESA report dated August 7, 2020.

Should the OLT approve the Applications, the Owner shall address DE comments and conditions as identified in Attachment 8.

#### ***The Parks Infrastructure Planning and Development Department have reviewed and provided comments on the Applications***

The Parks Infrastructure Planning and Development Department ('PIPDD') have noted that the Subject Lands are surrounded by significant barriers and obstacles affecting pedestrian circulation and access to park facilities and open spaces. Considering the projected population, it is anticipated the existing parks on the west side of Jane Street, bounded by Highway 400 to the west, Rutherford Road/Vaughan Mills to the south and Canada Wonderland to the North, in Block 32 East will be impacted by the Development.

These parks include Julliard Park, Komura Road Park and Open Space/ trails abutting Deepsprings Pond. While these parks and open spaces/trails may be perceived to provide servicing for the Development, based on simple radius distancing, the servicing will be limited given the aforementioned obstacles, and being across a major arterial road (Jane Street). The Owner is to demonstrate in detail improved pedestrian connectivity to existing park facilities and open spaces.

In addition, the Owner shall provide information regarding any existing easements connecting the Subject Lands with the existing residential buildings to the south. PIPDD

previously noted that a pedestrian pathway connection should be explored from the southeast corner of the Subject Lands, connecting to the pathways east of the existing residential buildings to the south. The pathways on the lands to the south provide access to Bellaria Pond and open space.

A revised submission including a Community Service Facility Impact Study, plans illustrating pedestrian connectivity to parks, open spaces and to the existing development to the south of the subject lands is required.

Should the Applications be approved by OLT a Site Development Application will be required to be submitted and will be further reviewed by PIPDD at the Site Plan process review stage.

***Cash-in-Lieu of Parkland Dedication will be applicable for the Development, if approved***

Should the Applications be approved, the Owner shall convey land at the rate of 1 ha per 300 units and/or pay to Vaughan by way of certified cheque, cash-in-lieu of the dedication of parkland at the rate of 1 ha per 500 units, or at a fixed unit rate, prior to the issuance of a Building permit, in accordance with the *Planning Act* and the City's cash-in-lieu Policy.

***The Policy Planning and Special Projects Department ('PPSP')***

The Subject Lands directly abut a tributary (valley corridor) of the Don River Watershed and a contiguous vegetation being a woodland feature to the east. In accordance with VOP 2010, valley/stream corridors and woodland are considered to be "Core Features" of the Natural Heritage Network ('NHN') and are subject to the policies within Chapter 3.

A bioretention facility (and associated grading) has been proposed within the 10 m Vegetation Protection Zone ('VPZ') from the staked feature. In accordance with Policy 3.3.1.1 and 3.3.3.1 of the VOP 2010, development and site alteration in a valley/stream corridor or woodland and their VPZ is prohibited. In order to meet this policy requirement, the Owner must explore opportunities to remove the bioretention facility and any associated grading from the VPZ. In addition, a planting plan for the VPZ is required to the satisfaction of the City and TRCA.

Tower A of the Development (Attachment 2) as well as the underground parking garage will be located in close proximity to the VPZ. The purpose of the VPZ is to protect the adjacent natural feature, the Owner should provide confirmation that encroachment into the VPZ will not be required during construction and for future maintenance. As such, PPSP are concerned that significant encroachment into the VPZ and natural feature may be required to construct and maintain this portion of the proposed Development.

Policy 3.2.3.10 of the VOP 2010 notes that “Core Features and their related Vegetation Protection Zone will be conveyed to the City and/or Toronto and Region Conservation Authority (‘TRCA’). To enable comprehensive management, such features shall not be fragmented but shall be brought into public ownership to ensure their continued protection and management. In order to meet this policy, the Owner shall provide confirmation that the valley/woodland and associated VPZ will be conveyed into public ownership. Further, this portion of the property must also be placed in a protective zoning category to ensure long-term protection.

The Owner is advised that the City has Species at Risk within its jurisdiction that are protected under the *Endangered Species Act 2007*, S.O.2007 (‘the Act’). PPSP note that the onus is on the Owner to ensure the provisions of the Act are not contravened. As such, it is the responsibility of the Owner to comply with any Ministry of Environment, Conservation and Parks (‘MECP’) regulations and guidelines to protect Species at Risk and their habitat.

As noted above the plans and technical reports submitted in support of the Applications require modifications in order to satisfy the requirements of the PPSP Department.

***Should the Development be approved, the Applications will have to meet the Source Protection Plan Requirements***

The Source Protection Plan under the *Clean Water Act, 2006*, developed for the Credit Valley, Toronto and Region and Central Lake Ontario (‘CTC’) Source Protection Region took effect on December 31, 2015 and the Subject Lands are subject to the policies listed in the CTC Source Protection Plan (‘SPP’). The Development is located in a vulnerable area referred to as a Wellhead Protection Area - Q2 (‘WHPA-Q2’). In accordance with the REC-1 policy of the CTC SPP, new development and site alteration under the *Planning Act* is required to implement best management practices, such as Low Impact Development (‘LID’), with the goal of maintaining predevelopment recharge. PPSP defers the technical review of any proposed LID measures to the satisfaction of DE Department and the TRCA.

Should the respective Official Plan Amendment and Zoning By-law Amendment Applications be approved by the OLT, the Owner is required to satisfy any conditions of approval imposed by TRCA and the DE Department for a future Site Development application.

***The Toronto and Region Conservation Authority ('TRCA') is unable to support the current Applications***

The eastern portion of the Subject Lands are located within TRCA's Regulated Area due to a valley corridor associated with a tributary of the Don River. As such, a TRCA permit pursuant to Ontario Regulation 166/06 will be required for any development or site alteration within the Regulated Area on the Subject Lands.

The *Planning Act* dictates that agencies involved in planning, including the TRCA, shall be consistent with the PPS when reviewing development applications. The TRCA has reviewed the Development to ensure consistency with the PPS as it relates to the valley corridor (natural feature). In accordance with Policy 3.1 of the PPS, development, including a change of land use, and site alteration are to be directed away from areas of natural hazards unless the effects and risk to public safety are minor, could be mitigated in according to provincial standards and where the four (4) tests of Policy 3.1.7 could be met.

Furthermore, Policies 2.1.5 and 2.1.8 of the PPS identify that the development and site alteration are not permitted within, or on adjacent lands to natural heritage features, including significant valleyland, woodland, wetlands and wildlife habitat in Ecoregions 6E and 7E, unless it has been demonstrated that there will be no negative impacts on the natural features or their ecological function.

TRCA policies require the following setbacks from the greater of the noted natural features and associated hazards:

- Valley and Stream Corridors: 10 m from the long-term stable top of bank, stable toe of slope, and any contiguous natural features and areas that contribute to the conservation of land

The long-term stable top of slope ('LTSTOS') and dripline of contiguous vegetation for the Subject Lands are the limiting factors. Based on the current plans, the Development is located outside of the 10 m buffer from the valley corridor. However, the Development currently identifies private infrastructure (i.e., bioretention facility) directly adjacent to the LTSTOS and dripline.

The TRCA does not support the proposed encroachment into the buffer area. The location of the facility within the buffer nullifies the intent of the buffer (i.e., to buffer the valley corridor for disturbance). Furthermore, TRCA have concerns with the proposed location of the facility directly adjacent to the top of slope/LTSTOS, as it may aggravate/create erosion and slope instability issues over the long-term. The location of the infrastructure in the buffer would also obstruct the erosion access allowance area on the

tableland. The TRCA's position is that all applicable reports and plans should be updated to relocate the bioretention facility and any site alteration outside of the 10 m buffer area.

In addition, the TRCA advised that the valley lands and associated 10 m buffer area be recognized in an appropriate open space or environmental protection designation zone for protection and to prohibit development. The TRCA requests that the Applications and associated draft Official Plan and Zoning By-law amendment schedules be updated to identify the open space lands, accordingly, should the Applications be approved.

The TRCA also recommend that consideration be given to conveying the valley lands and associated buffer area into public ownership to allow for long term protection and maintenance of the natural system.

***Canadian National Railway ('CN') does not support the proposed residential Development adjacent to the rail yard***

CN is the Owner of the MacMillan Yard located to the north of Highway 7, north and south of Rutherford Road, east of Jane Street and west of Keele Street on the main east west rail corridor in Eastern Canada.

The MacMillan Yard is 1,300 acres in size and was established approximately 56 years ago in 1964. The MacMillan Yard employs approximately 1,000 employees and is one of the most important transportation terminals in Canada and North America.

The Development is located immediately to the south of and abutting the MacMillan Yard's pullback track. The CN pullback track is an important component of the yard. The yard could not function without the pullback track. Currently, the CN pullback track contains 2 tracks located within the MacMillan Yard property boundaries. CN participated in a lengthy hearing before the Ontario Municipal Board in 2004 (now known as OLT). In the decision, the OLT established a 150m setback in its decision to residential development from the nearest most southerly track located within the CN pullback track.

WSP on behalf of CN, has provided additional site-specific comments on the Applications and supporting material as shown on Attachment 9.

CN has plans to develop an additional 2 tracks within the MacMillan Yard's pullback track in the near to intermediate term. A fifth track is also contemplated between the Subject Lands and the most southerly existing track. These additional tracks will facilitate significantly increased volumes of rail cars processed by the MacMillan Yard and increase the volume of traffic in the pullback track.

The proposed residential Tower A is setback 30.4 m and Tower B is setback 29 m from the property line to the north and 65 m from the most southerly existing track. The parking structure is set back 0 m from the property boundary. The addition of an additional fifth track in the CN pullback track between the Subject Lands and the existing most southerly track will reduce these setbacks further an additional 6 - 10 m.

CN believes that the proposed setbacks are inadequate from a land use compatibility perspective and insufficient separation from the existing tracks, let alone the proposed 5th track in the event there is a derailment in the Yards pullback track.

When CN presented its case before the OLT in 2004 and 2005 it wanted to protect for the possibility of additional trackage within the pullback track property boundaries. There was however at that time no specific proposal or design for additional tracks within the pullback track area. CN has now designed additional tracks for the pull back track from the existing two to four and has even costed out the construction costs of building out additional trackage.

CN is now protecting for up to 3 additional tracks within the MacMillan Yard's pullback track property meaning there will be ultimately 5 tracks located within the MacMillan Yard in the area of the pullback track.

This additional trackage together with changes in technology and configuration could lead to an ultimate increase in rail cars processed in the pullback track from 1 million rail cars a year currently to double that a year with a significant increase in the number of locomotives operating in the pullback track.

RDWI Consulting Engineers was retained by CN to review the submitted noise and vibration reports, a design for this 4 track scenario is found in their comments on Attachment 10. Their attached findings include: insufficient separation distance as per the D-6 Guidelines from the pullback track to the Development; the Class 4 cannot apply as CN is not a provincially-regulated entity; and that the Class 4 classification is not consistent with the City of Vaughan Noise By-law 062-2018. In addition, RDWI also recommended that the Development would experience a high risk of adverse effects from the MacMillan Yard that may not be readily mitigated without significant modifications and limitations, particularly given the Yard's future expansion plans. CN is of the opinion that the Development does not appear to be reasonable or feasible.

***The York Region Catholic District School Board has no comment***

The York Region Catholic District School Board have no comment or objection to the approval of the Applications. The York Region District School Board and the French School Board have not provided comments.

***Other Agencies having no comment to the Development***

The following agencies have no comment to the approval of the Applications: Rogers, Alectra and Canada Post. Enbridge has not provided comments.

**Financial Impact**

There are no requirements for new funding associated with this report.

**Broader Regional Impacts/Considerations**

York Region has no objection to the Development subject to their comments included in Attachment 12. York Region on May 25, 2021, exempted Official Plan Amendment File OP.20.017 (Eastwood Holdings Corp.) from Regional approval on the basis this Development does not adversely affect Regional planning policies or interests and is of local significance.

Should the OLT approve the Applications, the Owner is required to satisfy all requirements of York Region as indicated in the Recommendations of this report.

**Conclusion**

Official Plan and Zoning By-law Amendment Files OP.20.017 and Z.20.044 have been reviewed in consideration of the policies of the *Planning Act*, the Provincial Policy Statement, 2020, the Provincial Growth Plan, 2020, as amended, YROP, in-effect OPA 626, VOP 2010, Transportation-Freight Supportive Guidelines, the Guidelines for New Development in Proximity to Railway, Ministry of Environment, Conservation and Parks, Environmental Noise and Land Use Compatibility Guidelines, the City Noise By-law 062-2018, the requirements of Zoning By-law 1-88, comments from area residents, City departments and external public agencies, and the area context as discussed in this report.

The Development Planning Department in comprehensively assessing the merits of the Applications has evaluated the planning framework in its entirety and has balanced the many objectives of these documents, as identified in the body of this report. Based on this review, staff is not supportive of the Applications consisting of two 36-storey residential apartment buildings with 760 dwelling units, as they are not consistent with the Provincial Policies and guidelines, YROP, in-effect OPA 626 and VOP 2010.

The Development will result in residential uses in close proximity to the CN pullback tracks being an employment use which should be protected from incompatible sensitive

land uses in consideration of the Provincial, Regional, and municipal policy and guidelines framework as discussed in this report. The McMillan Yard is an employment use that is vital to Vaughan's economy, to the broader Provincial and national economies and has been granted the highest level of protection by the Province through the McMillan Yard's designation as a Provincially Significant Employment Zone. In addition, the level of intensification proposed is not appropriate for the area and not supported by the policies of VOP 2010.

The Development is not in the public interest, is not compatible with the surrounding land uses and does not represent good planning. In consideration of the applicable policies and the existing surrounding land use context, as outlined in this report the Development Planning Department recommends that the Applications be refused.

**For more information**, please contact: Margaret Holyday, Senior Planner, Development Planning Department, at extension 8216.

### **Attachments**

1. Context and Location Map
2. Proposed Site Plan and Zoning
3. Landscape Plan
4. Building Elevations - West and North
5. Building Elevations - South and East
6. Provincially Significant Employment Zone
7. Provincial Policy Statement, 2020 Section 6 - Definitions
8. Conditions from Development Engineering
9. CN Comments
10. CN Noise and Vibration Comments
11. City Noise Peer Review Comments
12. York Region Comments

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