



August 17, 2023

Municipal Services Office - Central Ontario
777 Bay Street, 16th Floor
Toronto, Ontario
M7A 2J3

Attn: Mr. Andy Doersam

Dear Mr. Doersam,

Re: Comments in Response to Adopted Durham Region Official Plan
935 & 945 Taunton Road East, 3557 and "0" Garrard Road
Icon Taunton Limited

Evans Planning acts on behalf of Icon Taunton Limited, the Owner of the lands municipally known as 935 and 945 Taunton Road East, 3557 Garrard Road and an adjacent unaddressed property, in the Town of Whitby (collectively, the 'subject property'). The subject property is located at the southwest corner of the intersection of Taunton Road East and Sebastian Street and possesses a frontage of approximately 95 metres along Taunton Road East, 109 metres along Sebastian Street, and 48 metres along Garrard Road (refer to Appendix 1).

We write to you today to reiterate our client's concerns and issues related to the New Durham Region Official Plan (the 'DROP'). Similar comments were provided to Council for the Region of Durham as part of their consideration of the adoption of the DROP at its meeting of May 17, 2023. At the conclusion of this letter, we have outlined a suggested approach to addressing those concerns.

Background

An initial pre-application consultation submission was provided to Town Staff and circulated for review in June 2021. Comments and a submission requirements checklist outlining materials required to constitute a 'complete' application were received from Staff on July 26th, 2021. It was determined that applications for Zoning By-law Amendment, Draft Plan of Subdivision, Draft Plan of Condominium, and Site Plan Control were required to permit the proposed development, contemplated to consist of 129 stacked townhouse dwellings, 32 traditional townhouse dwellings, and 330 square metres of non-residential floor area.

On the basis of the checklist provided, our Client commenced the preparation of the requisite materials to constitute a complete submission for all applications but Site Plan Control, which was to be deferred to a later stage.

Subsequently, a revised pre-consultation submission was provided to the Town in July 2022 at Staff's request. Comments on this revised submission were received in September 2022, along with an updated submission requirement checklist. The required applications to facilitate the development were not changed.

Applicable fees were confirmed with Town Staff on November 23rd, 2022 in anticipation of a submission prior to the end of 2022. Town Staff were advised of the intended submission on December 14th in order to confirm the appropriate protocol for delivery which was to have occurred on December 16th, 2022.

However, on the eve of the submission of the application, after receiving written notice that our Client would be submitting its application pursuant to the pre-application meeting memorandum, the Town of Whitby confirmed that it had, without notifying our Client, implemented a new, multi-stage pre-submission process in response to the new requirement to refund application fees (the "New Whitby Protocol") which were to take effect on January 1, 2023. Our Client was also advised that the new protocol was to take effect immediately, and thus would apply to their applications, even though said applications would have been submitted prior to January 1, 2023.

The New Whitby Protocol requires that materials in support of an application be provided to the Town for review and circulation by internal departments and external agencies, including the Region of Durham, prior to the submission of a formal application.

On December 23, 2022 our Client provided a submission package for the 2nd stage of review required as part of the New Whitby Protocol. As noted, our Client had prepared, and had intended to submit, the formal applications for Zoning By-law Amendment, Draft Plan of Subdivision, and Draft Plan of Condominium (common element) on December 16, 2022. It is our belief that should our Client have been permitted to submit the application package per the checklist provided by the Town the application would have met the requirements of a complete application.

Since submission of the 2nd stage review, our Client received substantive comments between February and March 2023. In particular, the Region of Durham provided comments as part of this process from both Planning and Public Works departments on February 8, and February 7, respectively.

At present, our Client is in the process of revising the supporting materials to address comments received through the 2nd pre-submission review, including those applicable to the submitted Environmental Impact Study (EIS).

Recommended Solutions

In reviewing the recommended form of the DROP, we note there are no transition provisions. This presents an issue as it leaves the questions open as to how the DROP will apply to our Client's application. On a substantive basis, it is not known if the new policies and definitions will have an impact on the application. On a process basis, the lack of transition policies raise the question of whether – and what form of – the DROP should be addressed in application materials.

The DROP will only come into force and effect when the Minister approves the instrument and there will be no right of appeal. With that said, we have observed that the official plans and amendments recently



approved by the Minister typically include transition provisions to increase both the transparency and fairness of the application of new policies.

In our Client's case, but for the desire to work with the Town of Whitby and its new, multi-stage pre-application process, said application would have been submitted and deemed complete prior to the approval of the new DROP, thus no transition clause would have been required. While we are sympathetic to the intent of the Town vis-à-vis its new pre-submission policy, it was introduced without advance notice to any party or applicant – including those who had been working for months on preparing applications based on the Town's previous written confirmation as to what would constitute a complete application.

Accordingly, in the interest of certainty, fairness, transparency and natural justice, we suggest the new DROP should be modified to include a transition policy addressing the issues created by the New Whitby Protocol. In consideration of the specific timing applicable to our Client's applications, we suggest that the policies of the new DROP should not apply to the subject property, and rather the provisions of the prior version of Plan will remain in effect. Potential text of this transition policy may read as follows:

"The policies of this Plan shall not apply to any application made pursuant to the Planning Act in respect of the lands municipally known in 2023 as 935 and 945 Taunton Road East, 3557 Garrard Road and the adjacent unaddressed property, in the Town of Whitby. The provisions of the previous Regional Official Plan, as amended, shall continue to apply."

Should you have any other questions regarding this submission, please do not hesitate to contact the undersigned.

Yours truly,

Adam Layton RPP, MCIP

cc. Icon Taunton Limited
Aaron Platt, Loopstra Nixon LLP