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May 4, 2011

Via Email and Courier

Chair and Members of Regional Council
Regional Municipality of York
17250 Yonge Street, 4th Floor
Newmarket, ON L3Y 6Z1

Attention: Planning and Development Committee

Dear Sirs/Mesdames:

**Re: Report of the Commissioner of Planning and Development Services
respecting the Richmond Hill Official Plan (2010)**

We are the solicitors for Sanmike Construction Limited. Our client has made submissions respecting the proposed new official plan for the Town of Richmond Hill which are referred to in the above-captioned report. In this respect, for your convenience we enclose copies of our letters to Richmond Hill and the Region dated July 6, 2009, June 9, 2010, June 23, 2010, July 5, 2010 and October 8, 2010

Our client continues to submit that the concerns expressed in its submissions to date remain valid and have not been addressed by either Richmond Hill nor in the modifications recommended by Regional staff. We therefore request that this matter should be remitted back to staff with a view towards properly addressing the identified concerns before finalizing the Region's position.

As a final comment, please note that our client's concerns include general matters as well as site specific concerns.

Thank you for your attention in this regard. Our client would be pleased to participate in discussions aimed at addressing its issues. Please do not hesitate to contact us in this respect.

Yours very truly,

McCarthy Tétrault LLP

Per:

A handwritten signature in black ink, appearing to read 'John A. R. Dawson', with a long horizontal flourish extending to the right.

John A. R. Dawson

JARD/skf

Barristers & Solicitors
Patent & Trade-mark Agents

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July 6, 2009

VIA FACSIMILE, E-MAIL AND FIRST CLASS MAIL

Mayor and Members of Council
Town of Richmond Hill
225 East Beaver Creek Road
Richmond Hill, Ontario
L4B 3P4

Attention: Committee of the Whole

Dear Sirs/Mesdames:

**Re: Official Plan Review
Agenda Item 14, Committee of the Whole Meeting July 6, 2009
File No. D10-ST-UR**

We are the solicitors for Sanmike Construction Limited, the owner of land located on the east side of Bayview Avenue, a short distance south of Elgin Mills. We would like to take this opportunity to provide a few preliminary comments on the above-captioned staff report (the "Report") on behalf of our client.

At the outset, we would respectfully submit that the process recommended in the Report is inappropriate. Neither Committee nor Council should be asked to "endorse" an urban structure in the absence of the implementing policy framework. It is not possible to understand the implications of a proposed urban structure without some understanding of how that structure is intended to be used. Therefore, no consultation on the topic can be meaningful and any decision would be premature.

Accordingly, at this juncture we can only provide comments on the Report, not the proposed urban structure.

The Report recommends a very simple urban structure, with only a single Local Corridor. In the absence of an implementing policy framework to suggest otherwise, this simple structure seems unlikely to engender the efficient use of land and infrastructure as directed by the Provincial Policy Statement and the Growth Plan for the Greater Golden Horseshoe. For example, it fails to identify opportunities for greater intensity afforded by either existing

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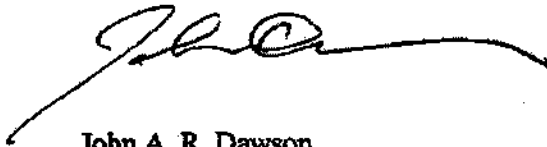
We respectfully submit that the Report should be received only, and not adopted, and that staff should be directed to produce a draft policy document to enable all the interested parties to understand and comment upon the overall and comprehensive growth management direction intended.

Thank you for your kind consideration.

Yours very truly,

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June 9, 2010

VIA FACSIMILE, E-MAIL AND FIRST CLASS MAIL

Mayor and Members of Council
Town of Richmond Hill
225 East Beaver Creek Road
Richmond Hill, Ontario
L4B 3P4

Attention: Committee of the Whole

Dear Sirs/Mesdames:

Re: Proposed New Official Plan ("Draft OP")

We are the solicitors for Sanmike Construction Limited, the owner of approximately 3.9 hectares of land located generally just south and east of the intersection of Elgin Mills Road East and Bayview Avenue. Although our client has previously set out its concerns in this process with aspects of the proposed urban structure of the Town, at this juncture it would like to reiterate those concerns and briefly raise some additional preliminary issues arising from the Draft OP.

The Growth Plan for the Greater Golden Horseshoe (the "Growth Plan") sets out a clear policy direction for optimizing the use of land and infrastructure, as well as a related direction to ensure the viability of existing and planned transit service levels. In general, we submit that the overly restrictive approach set out in the Draft OP to the relationship between intensification, urban structure and urban design will result in opportunities for contextually appropriate intensification being lost, contrary to that direction. For example, the Draft OP does not acknowledge that lands adjacent to Bayview Avenue, identified by the Region as part of its Transit Priority Network, should be accorded different treatment from those lands abutting roads without that designation. As another example, key urban design parameters, such as building height, building form and density are set arbitrarily, with contextually based principles relegated to a notably subordinated role.

Our client's lands, and a couple of adjacent smaller sites, represent the last undeveloped parcels within a much larger existing secondary plan area. Given the size and configuration of our client's lands, they also represent a unique opportunity for a transit-supportive

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Mayor and Members of Council

development which can address the issue of compatibility with the surrounding area, which we submit should be recognized by the Draft OP. The existing secondary plan was premised on a housing mix and population which included high density units: we submit that when viewed in its total context, the application of Growth Plan principles would call for the reinforcement of that policy direction.

We would respectfully request that the Draft OP not be approved at this time and that staff be directed to meet with our client to understand its concerns generally, and particularly as it relates to its property, and to report back to Council after such meeting.

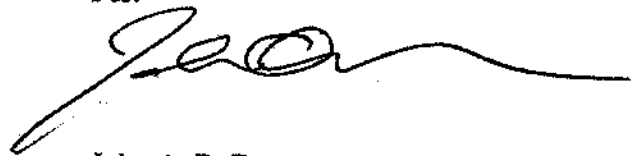
Our client is prepared to have its planning consultants attend any such meeting with staff, at which time some of the other concerns of our client, related to matters which we would characterize as related to implementation, would be tabled.

Thank you for your kind consideration.

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June 23, 2010

VIA FACSIMILE, E-MAIL AND FIRST CLASS MAIL

Mayor and Members of Council
Town of Richmond Hill
225 East Beaver Creek Road
P.O. Box 300
Richmond Hill ON L4C 4Y5

Attention: Donna McLarty

Dear Sirs/Mesdames:

Re: Proposed New Official Plan ("Draft OP")

We are the solicitors for Sanmike Construction Limited. Our client is the owner of approximately 3.9 hectares of land located just south and east of the intersection of Elgin Mills Road East and Bayview Avenue. On behalf of our client, and further to our previous correspondence in this regard, we would like to take this opportunity to outline in greater detail some of our client's preliminary concerns.

At the outset, our client submits that the general approach in the draft OP represents an incomplete or incorrect interpretation of the Growth Plan for Greater Golden Horseshoe (the "Growth Plan"). That this is the case is perhaps most explicit in section 3.1.3.6, but it would appear to be necessarily implicit in a number of the Draft OP's provisions.

Section 3.1.3.6 would purport to set out as a matter of policy that the Draft OP conforms to the Growth Plan. We would submit that Growth Plan conformity is a question of fact and that purporting to cloak fact with a policy purpose serves to obfuscate any policy intent. Notwithstanding the foregoing, there would seem to be no purpose to this provision unless it is to suggest that an application involving an intensified land use in a location not contemplated by the Draft OP must be rejected, as a matter of policy, as undermining the Growth Plan. The only way to justify this would be on the basis that the Draft OP's locational allocation of potential development serves to define the Growth Plan's intent. This, we submit, is an error.

That this is an error is apparent from both the legislative framework and from the Growth Plan itself. The *Planning Act* provides that all *Planning Act* decisions must conform (or not conflict with) Provincial Plans such as the Growth Plan. This provision would be meaningless if the

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Mayor and Members of Council

Town's implementation of the Growth Plan effectively defined Growth Plan conformity, since the *Planning Act* already requires decisions thereunder to conform to the official plan and the *Places to Growth Act* provides for official plans to conform to provincial plans. Therefore, any proposition that a municipality's implementation of the Growth Plan prevents the independent application of Growth Plan directives, such as is found in section 3.1.3.6, is contrary to provincial policy as expressed in legislation.

Further, the terms of the Growth Plan don't support the Draft OP's attempt to tie official plan conformity on the question of the location for development to "undermining the Growth Plan". A "Guiding Principle" of the Growth Plan is "optimizing the use of existing and new infrastructure". It also speaks to optimizing the use of land. The identification of areas for intensification or infill represents an implementation of the principle: it cannot supercede this principle itself. Any site can, and should, be analysed to determine how well it implements this principle.

None of the foregoing is intended to suggest that the identification of intensification areas in an official plan is an inappropriate exercise. However, to purport to provide as a matter of policy, as set out in 3.1.3.6, that any deviation from official plan policy on the proper location for intensification is inappropriate as it undermines the Growth Plan is itself contrary to the Growth Plan and the explicit intent of the legislative framework, as it prima facie restricts the independent application of Growth Plan directives to all applications.

Our client's land represents one situation where the appropriate application of Growth Plan directives would engender a different result than is provided for in the Draft OP. The lands are currently part of a secondary area planned for a larger population than already exists, largely because the Town has incrementally been "down-designating" high density residential sites to lower intensity uses. By way of context, there are only a couple of other, smaller sites in the precinct south of Elgin Mills which are not built out. Bayview Avenue is part of the "Regional Transit Priority Network", is planned as a 36 metre arterial and is also linked to planned bicycle routes. The site is a short distance from employment districts to both the east and west. Finally, at 3.9 hectares the site is large enough to provide for appropriate built form relationships between apartment buildings and the surrounding physical context. All of these factors together indicate that a higher density of development would be necessary to optimize the use of this land and existing and new infrastructure, and to assist in ensuring the viability of planned transit, but the Draft OP contemplates lower intensity uses for the lands.

Another concern in the Draft OP is a prescriptive approach to urban design which is unnecessary and counter-productive. For example, limiting floor plates above the eight floor to 750 square metres may unnecessarily restrict design options in achieving transit-supportive densities. Another example is the mandatory direction to orient the primary entrances of a building to a public street in section 3.4.1.36. It limits the ability to respond to the constraints imposed by existing conditions which is particularly important for redevelopment or the build out of remnant parcels. This is unnecessary and counter-productive in light of other policies in the Draft OP which deal with building orientation.

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Mayor and Members of Council

A particular concern arises from section 3.4.1.43. A literal interpretation would appear to set a requirement for 5 hours of direct sunlight on the majority of adjacent sidewalks for all 4 seasons, therefore presumably 365 days each year, for all high rise buildings. It is difficult to understand the policy intent. As one approaches the winter solstice the shadow affects of mid-rise, and perhaps even low-rise development would make the standard unachievable in many circumstances, such as buildings located on the south side of east-west streets, in the absence of significant breaks in the built street frontage. Should the intent be to minimize or prevent development in these locations no matter what their other locational attributes might be? The prescriptive language engenders this result. It will certainly serve to discourage, in many instances, the provision of public walkways through a development site.

Similarly, section 3.4.1.48, with respect to wind studies, will limit development to that which can demonstrate absolutely no change to existing conditions or to development which actually lessens wind impact on pedestrians. It is a rare building which does not have some minor effect at at least one receptor point, so this policy will serve to preclude much "high rise" (defined as 9 storeys or higher) development.

We would submit that it is not a sufficient answer to say that judgment will be brought to bear notwithstanding the mandatory language of the Draft OP, and these policies will be subject to some flexibility in implementation, for two reasons. First, if flexibility will be imported into the interpretation of these policies, then the result will be arbitrary application. This is not good planning policy. Second, the courts have now set out that the interpretation of official plans is a matter of law, so the interpretation of Council or its land use planners on any given application is not determinative. Council's intent as set out in the words used in the document, given their ordinary meaning, will take on much greater significance as a matter of legal interpretation.

Housing policies within the Draft OP are also problematic. For example, the combination of mandatory wording and a definition of "affordable" based on a specific price, as opposed to a building form and/or density, creates a couple of difficulties. We submit that the direct regulation of price is not within the purview of a proper planning regime. Second, the policy may well be directly counter-productive: the costs associated with the mandatory target will discourage intensification generally, and particularly in the places where development is specifically otherwise encouraged.

It is also our client's submission that the Draft OP's directions for "Integrating Land Uses", particularly respecting a mix and range of housing types require improvement. The only clear direction for this mix and range is to Centres and Corridors. This ignores for example the fact that existing areas not comprising a Centre or Corridor have been planned on the basis of a housing mix, and thus that the framework to accommodate the mix already exists. The removal of this opportunity for the efficient use of land and infrastructure and complete communities is contrary to Growth Plan directions. It also ignores the fact that sites not on Centres or Corridors may have locational attributes which make them desirable for an intensified form of housing.

Another broader policy concern is engendered to the proposed parkland dedication requirements. The imposition of such a requirement will serve to discourage intensification which is required by the Growth Plan.

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Mayor and Members of Council

As a general matter, it should also be noted that the Draft OP purports, in at least two instances, to restrict statutory rights of appeal respecting official plan amendments. The Draft OP indicates that certain policies pertaining to Regional and Local Corridors may only be amended by a municipally-initiated action at the time of a comprehensive review. We submit that as a matter of law it is not possible to restrict these statutory rights in this way. We further submit as a matter of policy it is inappropriate to restrict opportunities to respond to new circumstances by way of an application for official plan amendment. Accordingly, these policies should be deleted.

Again, as a general matter, we note that the Draft OP proposes to restrict Council's ability to interpret the intent and terms thereof in the absence of staff advice. Although it is interesting that staff would propose this, it is our client's submission that this is not the process contemplated by the *Planning Act* and that section 7.1.19 should be deleted.

As a final, overall comment, the Draft OP incorporates, in a number of instances, documents and/or instruments prepared by a third party. The intent behind this should be clarified: it would clearly be bad planning to have policies which effectively are subject to modification by a third party without the process required for an official plan amendment.

Unfortunately, the scope of the issues identified herein would make it unlikely that the matters could be satisfactorily addressed in the absence of further discussions. Accordingly, we respectfully request that Council defer its consideration of the Draft OP and direct staff to meet with our client and report back to you.

Thank you for your kind consideration. Should you have any questions with respect to the foregoing, please do not hesitate to contact us.

Yours very truly,

McCarthy Tétrault LLP

Per:



John A. R. Dawson
JARD/skf

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July 5, 2010

VIA FACSIMILE, E-MAIL AND FIRST CLASS MAIL

Mayor and Members of Council
Town of Richmond Hill
225 East Beaver Creek Road
P.O. Box 300
Richmond Hill ON L4C 4Y5

Attention: Donna McLarty

Dear Sirs/Mesdames:

Re: Proposed New Official Plan ("Draft OP")

We are the solicitors for Sanmike Construction Limited. Our client has had, at this juncture, only a preliminary opportunity to review the staff report and proposed changes to the Draft OP. However, on behalf of our client we would like to express its strong objection to this process, where numerous changes, at least one of which is a major change to the regulatory framework, are made without any policy analysis being provided or any real opportunity to comment thereon.

A major change can be seen in the proposed new policy 5.14.3 found at page 19 of Table 1. This provision would purport to give the Town an unlimited discretion to control exterior design, and in particular sustainable design, in the site plan approval process. However, there is no analysis provided to justify such, nor is there even any indication of what is expected to be regulated under the rubric of each of the terms therein, such as "character", "appearance", or "sustainable design". Is the Town purporting to regulate building materials? Will it purport to require green roofs? These matters need to be considered in concert with at least the proposed policies for intensification, affordable housing and parkland dedication if there is to be a rational and cohesive policy regime. The outcome of this exercise should then be reflected in a policy framework which provides the needed structure for the exercise of the Town's site plan approval powers.

We respectfully submit that the Draft OP should not be adopted until all interested parties have had a meaningful opportunity to consult on all the changes now proposed by staff and, at the least, there has been a full public consultation on the significant enhancement to the

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July 5, 2010

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Mayor and Members of Council

Town's site plan approval powers that staff are now proposing with demonstrably insufficient public notice.

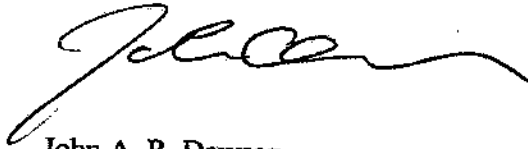
We respectfully request that staff be directed to provide notice of the proposed change to the public and to be directed to meet with interested parties before reporting back to Council.

Thank you for your attention.

Yours very truly,

McCarthy Tétrault LLP

Per:

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John A. R. Dawson
JARD/skf

John A. R. Dawson
Direct Line: 416-801-8300
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Email: jdawson@mccarthy.ca

October 8, 2010

VIA E-mail and Overnight Courier

Region of York
c/o Planning and Development Services
17250 Yonge Street, 4th Floor
Newmarket, ON L3Y 6Z1

**Attention: Augustin Ko
Senior Planner and Richmond Hill Official Plan Team Lead**

Dear Sirs/Mesdames:

**Re: Notice of Objection to the Official Plan for the Town of Richmond Hill, as adopted by
By-law No. 85-10 (the "OP") and Request for Notice of Decision**

We are the solicitors for Sanmike Construction Limited, the owner of approximately 3.9 hectares of land located on the east side of Bayview Avenue, just south of Elgin Mills Road in the Town of Richmond Hill. Our client has previously set out its concerns with various aspects of draft versions of the OP through its correspondence to the Town of Richmond Hill. However, those concerns have not been adequately addressed by the Town of Richmond Hill in the OP as adopted.

Background and Issues of Concern

Our client has provided reasons for its objection to the OP to the Town of Richmond Hill, as per the attached correspondence, dated July 6, 2009, June 9, 2010, June 23, 2010 and July 5, 2010. These reasons include:

- The OP fails to adequately acknowledge relationship between intensification, urban structure, urban design and infrastructure, including a failure to recognize existing and proposed transit conditions, and therefore provides an insufficient framework for achieving the policy directions of the Growth Plan for the Greater Golden Horseshoe.
- The OP grants discretion with few limits to the Town to control exterior design, and in particular sustainable design, in the site plan approval process.

- The OP purports to set out as a matter of policy that it conforms to the Growth Plan, which would appear to be an attempt to pre-empt the determination of conformity required of the approval authority and an attempt to prevent the independent application of Growth Plan policy to subsequent applications under the Planning Act.
- The OP contains counter-productive policy directions, such as: down-designating lands suited for intensification, overly prescriptive urban design and housing standards which limit the ability to respond to existing conditions, a failure to promote a mix and range of housing types outside of Centres and Corridors, and a parkland dedication policy that discourages intensification.
- Finally, the OP also purports, in at least two instances, to restrain statutory rights of appeal respecting official plan amendments, when as a matter of both law and policy it is inappropriate to do so.

Despite our submissions as set out above, no changes were made to materially address these matters. These previously stated concerns include fundamental matters that affect a number of policies and provisions throughout the OP. Therefore, in order that these concerns are addressed our client objects to the entirety of the OP.

On behalf of our client, we request that we be provided with notice of any meeting of Regional Council or any Committee thereof at which the OP is to be considered. We further request that we be provided with notice of any decision made as a result of such consideration.

Please do not hesitate to contact us if you have any questions in this regard. Our client would also be happy to meet to discuss any of the foregoing.

Yours very truly,

McCarthy Tétrault LLP

Per:



John A.R. Dawson
JARD/skf
Encl.

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July 6, 2009

VIA FACSIMILE, E-MAIL AND FIRST CLASS MAIL

Mayor and Members of Council
Town of Richmond Hill
225 East Beaver Creek Road
Richmond Hill, Ontario
L4B 3P4

Attention: Committee of the Whole

Dear Sirs/Mesdames:

**Re: Official Plan Review
Agenda Item 14, Committee of the Whole Meeting July 6, 2009
File No. D18-ST-UR**

We are the solicitors for Sanmike Construction Limited, the owner of land located on the east side of Bayview Avenue, a short distance south of Elgin Mills. We would like to take this opportunity to provide a few preliminary comments on the above-captioned staff report (the "Report") on behalf of our client.

At the outset, we would respectfully submit that the process recommended in the Report is inappropriate. Neither Committee nor Council should be asked to "endorse" an urban structure in the absence of the implementing policy framework. It is not possible to understand the implications of a proposed urban structure without some understanding of how that structure is intended to be used. Therefore, no consultation on the topic can be meaningful and any decision would be premature.

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July 6, 2009

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We respectfully submit that the Report should be received only, and not adopted, and that staff should be directed to produce a draft policy document to enable all the interested parties to understand and comment upon the overall and comprehensive growth management direction intended.

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Attention: Committee of the Whole

Dear Sirs/Mesdames:

Re: Proposed New Official Plan ("Draft OP")

We are the solicitors for Sanmike Construction Limited, the owner of approximately 3.9 hectares of land located generally just south and east of the intersection of Elgin Mills Road East and Bayview Avenue. Although our client has previously set out its concerns in this process with aspects of the proposed urban structure of the Town, at this juncture it would like to reiterate those concerns and briefly raise some additional preliminary issues arising from the Draft OP.

The Growth Plan for the Greater Golden Horseshoe (the "Growth Plan") sets out a clear policy direction for optimizing the use of land and infrastructure, as well as a related direction to ensure the viability of existing and planned transit service levels. In general, we submit that the overly restrictive approach set out in the Draft OP to the relationship between intensification, urban structure and urban design will result in opportunities for contextually appropriate intensification being lost, contrary to that direction. For example, the Draft OP does not acknowledge that lands adjacent to Bayview Avenue, identified by the Region as part of its Transit Priority Network, should be accorded different treatment from those lands abutting roads without that designation. As another example, key urban design parameters, such as building height, building form and density are set arbitrarily, with contextually based principles relegated to a notably subordinated role.

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Mayor and Members of Council

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We would respectfully request that the Draft OP not be approved at this time and that staff be directed to meet with our client to understand its concerns generally, and particularly as it relates to its property, and to report back to Council after such meeting.

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We are the solicitors for Sanniks Construction Limited. Our client is the owner of approximately 3.9 hectares of land located just south and east of the intersection of Elgin Mills Road East and Bayview Avenue. On behalf of our client, and further to our previous correspondence in this regard, we would like to take this opportunity to outline in greater detail some of our client's preliminary concerns.

At the outset, our client submits that the general approach in the draft OP represents an incomplete or incorrect interpretation of the Growth Plan for Greater Golden Horseshoe (the "Growth Plan"). That this is the case is perhaps most explicit in section 3.1.3.6, but it would appear to be necessarily implicit in a number of the Draft OP's provisions.

Section 3.1.3.6 would purport to set out as a matter of policy that the Draft OP conforms to the Growth Plan. We would submit that Growth Plan conformity is a question of fact and that purporting to cloak fact with a policy purpose serves to obfuscate any policy intent. Notwithstanding the foregoing, there would seem to be no purpose to this provision unless it is to suggest that an application involving an intensified land use in a location not contemplated by the Draft OP must be rejected, as a matter of policy, as undermining the Growth Plan. The only way to justify this would be on the basis that the Draft OP's locational allocation of potential development serves to define the Growth Plan's intent. This, we submit, is an error.

That this is an error is apparent from both the legislative framework and from the Growth Plan itself. The *Planning Act* provides that all *Planning Act* decisions must conform (or not conflict with) Provincial Plans such as the Growth Plan. This provision would be meaningless if the

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Town's implementation of the Growth Plan effectively defined Growth Plan conformity, since the *Planning Act* already requires decisions thereunder to conform to the official plan and the *Places to Grow Act* provides for official plans to conform to provincial plans. Therefore, any proposition that a municipality's implementation of the Growth Plan prevents the independent application of Growth Plan directives, such as is found in section 3.1.3.6, is contrary to provincial policy as expressed in legislation.

Further, the terms of the Growth Plan don't support the Draft OP's attempt to tie official plan conformity on the question of the location for development to "undermining the Growth Plan". A "Guiding Principle" of the Growth Plan is "optimizing the use of existing and new infrastructure". It also speaks to optimizing the use of land. The identification of areas for intensification or infill represents an implementation of the principle: it cannot supercede this principle itself. Any site can, and should, be analysed to determine how well it implements this principle.

None of the foregoing is intended to suggest that the identification of intensification areas in an official plan is an inappropriate exercise. However, to purport to provide as a matter of policy, as set out in 3.1.3.6, that any deviation from official plan policy on the proper location for intensification is inappropriate as it undermines the Growth Plan is itself contrary to the Growth Plan and the explicit intent of the legislative framework, as it *prima facie* restricts the independent application of Growth Plan directives to all applications.

Our client's land represents one situation where the appropriate application of Growth Plan directives would engender a different result than is provided for in the Draft OP. The lands are currently part of a secondary area planned for a larger population than already exists, largely because the Town has incrementally been "down-designating" high density residential sites to lower intensity uses. By way of context, there are only a couple of other, smaller sites in the precinct south of Elgin Mills which are not built out. Bayview Avenue is part of the "Regional Transit Priority Network", is planned as a 36 metre arterial and is also linked to planned bicycle routes. The site is a short distance from employment districts to both the east and west. Finally, at 3.9 hectares the site is large enough to provide for appropriate built form relationships between apartment buildings and the surrounding physical context. All of these factors together indicate that a higher density of development would be necessary to optimize the use of this land and existing and new infrastructure, and to assist in ensuring the viability of planned transit, but the Draft OP contemplates lower intensity uses for the lands.

Another concern in the Draft OP is a prescriptive approach to urban design which is unnecessary and counter-productive. For example, limiting floor plates above the eight floor to 750 square metres may unnecessarily restrict design options in achieving transit-supportive densities. Another example is the mandatory direction to orient the primary entrances of a building to a public street in section 3.4.1.36. It limits the ability to respond to the constraints imposed by existing conditions which is particularly important for redevelopment or the build out of remnant parcels. This is unnecessary and counter-productive in light of other policies in the Draft OP which deal with building orientation.

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A particular concern arises from section 3.4.1.43. A literal interpretation would appear to set a requirement for 5 hours of direct sunlight on the majority of adjacent sidewalks for all 4 seasons, therefore presumably 365 days each year, for all high rise buildings. It is difficult to understand the policy intent. As one approaches the winter solstice the shadow affects of mid-rise, and perhaps even low-rise development would make the standard unachievable in many circumstances, such as buildings located on the south side of east-west streets, in the absence of significant breaks in the built street frontage. Should the intent be to minimize or prevent development in these locations no matter what their other locational attributes might be? The prescriptive language engenders this result. It will certainly serve to discourage, in many instances, the provision of public walkways through a development site.

Similarly, section 3.4.1.48, with respect to wind studies, will limit development to that which can demonstrate absolutely no change to existing conditions or to development which actually lessens wind impact on pedestrians. It is a rare building which does not have some minor effect at at least one receptor point, so this policy will serve to preclude much "high rise" (defined as 9 storeys or higher) development.

We would submit that it is not a sufficient answer to say that judgment will be brought to bear notwithstanding the mandatory language of the Draft OP, and these policies will be subject to some flexibility in implementation, for two reasons. First, if flexibility will be imported into the interpretation of these policies, then the result will be arbitrary application. This is not good planning policy. Second, the courts have now set out that the interpretation of official plans is a matter of law, so the interpretation of Council or its land use planners on any given application is not determinative. Council's intent as set out in the words used in the document, given their ordinary meaning, will take on much greater significance as a matter of legal interpretation.

Housing policies within the Draft OP are also problematic. For example, the combination of mandatory wording and a definition of "affordable" based on a specific price, as opposed to a building form and/or density, creates a couple of difficulties. We submit that the direct regulation of price is not within the purview of a proper planning regime. Second, the policy may well be directly counter-productive: the costs associated with the mandatory target will discourage intensification generally, and particularly in the places where development is specifically otherwise encouraged.

It is also our client's submission that the Draft OP's directions for "Integrating Land Uses", particularly respecting a mix and range of housing types require improvement. The only clear direction for this mix and range is to Centres and Corridors. This ignores for example the fact that existing areas not comprising a Centre or Corridor have been planned on the basis of a housing mix, and thus that the framework to accommodate the mix already exists. The removal of this opportunity for the efficient use of land and infrastructure and complete communities is contrary to Growth Plan directions. It also ignores the fact that sites not on Centres or Corridors may have locational attributes which make them desirable for an intensified form of housing.

Another broader policy concern is engendered to the proposed parkland dedication requirements. The imposition of such a requirement will serve to discourage intensification which is required by the Growth Plan.

McCarthy Tétrault

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As a general matter, it should also be noted that the Draft OP purports, in at least two instances, to restrict statutory rights of appeal respecting official plan amendments. The Draft OP indicates that certain policies pertaining to Regional and Local Corridors may only be amended by a municipally-initiated action at the time of a comprehensive review. We submit that as a matter of law it is not possible to restrict these statutory rights in this way. We further submit as a matter of policy it is inappropriate to restrict opportunities to respond to new circumstances by way of an application for official plan amendment. Accordingly, these policies should be deleted.

Again, as a general matter, we note that the Draft OP proposes to restrict Council's ability to interpret the intent and terms thereof in the absence of staff advice. Although it is interesting that staff would propose this, it is our client's submission that this is not the process contemplated by the *Planning Act* and that section 7.1.19 should be deleted.

As a final, overall comment, the Draft OP incorporates, in a number of instances, documents and/or instruments prepared by a third party. The intent behind this should be clarified: it would clearly be bad planning to have policies which effectively are subject to modification by a third party without the process required for an official plan amendment.

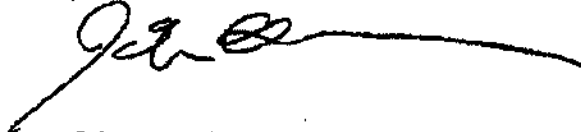
Unfortunately, the scope of the issues identified herein would make it unlikely that the matters could be satisfactorily addressed in the absence of further discussions. Accordingly, we respectfully request that Council defer its consideration of the Draft OP and direct staff to meet with our client and report back to you.

Thank you for your kind consideration. Should you have any questions with respect to the foregoing, please do not hesitate to contact us.

Yours very truly,

McCarthy Tétrault LLP

Per:



John A. R. Dawson
JARD/skf

Barristers & Solicitors
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VIA FACSIMILE, E-MAIL AND FIRST CLASS MAIL

Mayor and Members of Council
Town of Richmond Hill
225 East Beaver Creek Road
P.O. Box 300
Richmond Hill ON L4C 4Y5

Attention: Donna McLarty

Dear Sirs/Mesdames:

Re: Proposed New Official Plan ("Draft OP")

We are the solicitors for Sanmike Construction Limited. Our client has had, at this juncture, only a preliminary opportunity to review the staff report and proposed changes to the Draft OP. However, on behalf of our client we would like to express its strong objection to this process, where numerous changes, at least one of which is a major change to the regulatory framework, are made without any policy analysis being provided or any real opportunity to comment thereon.

A major change can be seen in the proposed new policy 5.14.3 found at page 19 of Table 1. This provision would purport to give the Town an unlimited discretion to control exterior design, and in particular sustainable design, in the site plan approval process. However, there is no analysis provided to justify such, nor is there even any indication of what is expected to be regulated under the rubric of each of the terms therein, such as "character", "appearance", or "sustainable design". Is the Town purporting to regulate building materials? Will it purport to require green roofs? These matters need to be considered in concert with at least the proposed policies for intensification, affordable housing and parkland dedication if there is to be a rational and cohesive policy regime. The outcome of this exercise should then be reflected in a policy framework which provides the needed structure for the exercise of the Town's site plan approval powers.

We respectfully submit that the Draft OP should not be adopted until all interested parties have had a meaningful opportunity to consult on all the changes now proposed by staff and, at the least, there has been a full public consultation on the significant enhancement to the

McCarthyTétrault

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Town's site plan approval powers that staff are now proposing with demonstrably insufficient public notice.

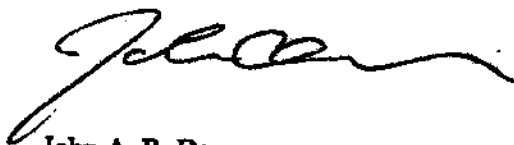
We respectfully request that staff be directed to provide notice of the proposed change to the public and to be directed to meet with interested parties before reporting back to Council.

Thank you for your attention.

Yours very truly,

McCarthy Tétrault LLP

Per:

A handwritten signature in black ink, appearing to read 'John A. R. Dawson', written over a horizontal line.

John A. R. Dawson
JARD/skf

