METROLINX

To: Mark Johnson, Senior Planner, City of Burlington

From: Luka Medved, Project Manager
Adjacent Development
Third Party Projects Review – GO (Heavy Rail)
Metrolinx

Date: March 12, 2024

Re: **City of Burlington – 720-740 Oval Court and 5135 & 5155 Fairview Street – Pre-Consultation Application Draft Plan of Subdivision Metrolinx Submission Response**

Metrolinx has reviewed the Pre-Consultation Draft Plan of Subdivision application for 720-740 Oval Court and 5135 & 5155 Fairview Street, Burlington. It is our understanding that the proposed project involves the construction of eight mixed use towers (ranging in height between 19 and 34 storeys). The proposed buildings would be constructed over 7 blocks based on the Draft Plan of Subdivision that was submitted for review.

Metrolinx notes that an OPA/OZ approval was obtained following an OLT approval on November 24, 2023. Initial comments on the proposed development were provided during the OPA/OZ review on July 23, 2021. Within these initial comments, it was noted that appropriate rail safety mitigation measures (e.g., safety barrier) would need to be provided to support the proposed development application. It is understood that a berm has been proposed, however no rail safety assessment has been submitted to Metrolinx for review to date.

It should be noted that a rail safety assessment identifying the proposed conceptual design is required to be completed prior to the initiation of a detailed design review. The conceptual design review should have been completed during the OZ/OPA review stage to confirm the proposed safety feature and location; however, it is understood that this did not occur.

In review of the proposed berm identified in OLT settlement minutes, it is noted that it does not span the entire property with appropriate returns as per the Metrolinx adjacent development guidelines. Within the northwest corner of the site, it is understood that there may be limiting factors due to the floodplain and nearby valley slope. If these limiting factors restrict the ability to extend the berm the entire length of the property, an analysis must be completed assessing this exposed area to determine whether the nearby building may need to be structurally reinforced. At this time, it has not been demonstrated that the proposed berm design is sufficient and that the nearby building is protected from the direct exposure to the railway.

Completion of the conceptual design and detailed design reviews may be required at the Draft Plan of Subdivision stage dependent on the proposed sequencing of the development. A phasing plan identifying the proposed construction of buildings will need to be shared for review to determine if this is a matter to be addressed at this stage or

whether it can be deferred to site plan approval. Please note that these are two separate reviews, where the conceptual design must first be approved before detailed design can begin. The proponent will be required to engage Metrolinx to initiate this review process.

On March 11, 2024, Metrolinx, the City of Burlington and Branthaven (i.e., the proponent) met to discuss the Draft Plan of Subdivision pre-consultation submission and aspects of the development proposal. Metrolinx advised that based on the current proposed berm plan shown in OLT settlement minutes that it may not be supported as identified. A qualified rail safety professional would be required to complete a rail safety assessment demonstrating the proposed design could be supported. It was suggested to Branthaven that this rail safety assessment occur as early as possible to confirm whether the current design proposed during the OZ/OPA review stage could be supported moving forward. This review could occur at this stage to provide further clarity on the proposed design moving forward.

Also, in the March 11, 2024, meeting Metrolinx raised concerns with the proposed underground parking design noting potential concerns with impacts on the rail corridor and active train operations, as well as potential impacts to the construction of the proposed berm. Branthaven was advised that a geotechnical investigation would be required to determine whether the proposed design could be supported based on the GO Transit Track Standard. If demonstrated to not comply with the GO Transit Track Standard, then the underground parking design adjacent to the rail corridor would need to be revised and demonstrated through technical review to comply.

In addition to the rail safety concerns, it is also noted that a pedestrian bridge connecting the development and the nearby Appleby GO station is proposed. It is understood that Branthaven has engaged Metrolinx for a commercial agreement to move forward this proposal. Please note that the Draft Plan of Subdivision should at a minimum identify the conceptual location of the proposed infrastructure to ensure it can be supported and is not in conflict with other proposed infrastructure. It is understood that Branthaven and Metrolinx are working on an agreement to facilitate the proposed design and technical review in a separate process.

Based on the requirements that must be met for approval, it is recommended that items such as the rail safety assessment, geotechnical investigation and other applicable technical reviews be initiated as early as possible to confirm whether the proposed development design can be supported. The proponent should be aware of the timelines associated with applicable reviews and the items to be provided as it will impact their schedule. Resolving these items as early as possible will help to ensure concerns are addressed in a timely manner.

Comments on both the Draft Plan of Subdivision and forthcoming site plan application have been identified below.

Draft Plan of Subdivision

General Comments:

- Please note that as more information becomes available (e.g., additional plans, revised technical reports, etc), additional comments may be provided.
- From the discussion held on March 11, 2024, with Branthaven and the City of Burlington it is understood that a phasing plan will be submitted. Branthaven has indicated that the proposed building sequencing may differ from what was identified in previous submissions. Please submit a phasing plan identifying the proposed order of construction for each of the blocks. Depending on the proposed

sequencing of the works, the rail safety feature (e.g., berm) may need to be constructed before site plan approval. Sequencing of the works will need to be confirmed to determine whether rail safety will need to be addressed at this stage or can be deferred to site plan approval. Additional comments will be provided following receipt and review of the proposed phasing plan.

- The draft Plan of Subdivision identifies multiple blocks which we understand will each have their own building. It is unclear how ownership and maintenance of a safety barrier will be managed through the block plan submitted. Please confirm the proposed ownership of the rail safety feature and future maintenance. Proposed ownership of blocks should be made clear to inform how applicable agreements may apply.

Noise & Vibration Study Comments:

- The property is subject to a Noise & Vibration Study, prepared by a qualified consultant. It is understood that a Noise and Vibration Feasibility Study was prepared in 2021, however please note that Metrolinx rail forecast data was recently updated. The proponent shall submit a revised study reflecting updated rail forecast data for review and to the satisfaction of Metrolinx. The proponent may obtain Metrolinx's most up to date rail forecast data by submitting a request to raildatarequests@metrolinx.com.
- The Proponent shall provide confirmation to Metrolinx, that the following warning clause will be inserted into all Development Agreements, Offers to Purchase, and Agreements of Purchase and Sale or Lease of each unit within 300 metres of the Railway Corridor:
    - **Warning**: Metrolinx and its assigns and successors in interest has or have a right-of-way within 300 metres from the subject land. There may be alterations to or expansions of the rail or other transit facilities on such right-of-way in the future including the possibility that Metrolinx or any railway entering into an agreement with Metrolinx to use the right-of-way or their assigns or successors as aforesaid may expand or alter their operations, which expansion or alteration may affect the environment of the occupants in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual lots, blocks or units.

Pedestrian Bridge Comments:

- Please provide a concept plan identifying the proposed pedestrian bridge location. It is understood that the proponent has engaged Metrolinx to execute a commercial agreement, however it should be demonstrated through the Draft Plan of Subdivision review that the proposed pedestrian bridge is not in conflict with other infrastructure (e.g., safety barrier, buildings, etc).

Metrolinx Work Permit Comments:

- The proposed development is adjacent to the Metrolinx Rail Corridor Right-of-Way and may be subject to a work permit and review. Dependent on the scope of related works which may be subject to a work permit, additional agreements, fees, scheduling and corresponding processing time may be required and will need to be accounted for. Please note that all work within 10 m (30 ft) of the rail corridor will need to be reviewed by Metrolinx and its technical advisor Aecom to determine whether a work permit will be required. For any demolition and/or creek restoration/reconstruction works that may be proposed during this stage, please note that it will need to be demonstrated whether any work and/or activities may occur within 10 m (30 ft) of the rail corridor. If so, a technical review and work permit may be required.

Site Plan Application

General Comment:

- Please note that at this stage not enough information is available for all Metrolinx stakeholders to provide comments. As more information becomes available, additional comments may be provided. Dependent on the site plan application received some comments may not be applicable.

Rail Safety Comments:

- As per Metrolinx's Adjacent Development Guidelines, sensitive uses (i.e., commercial and residential) must be set back 30 metres from the rail corridor (measured from the Metrolinx property line to the nearest commercial and residential unit). A reduction to the setback (of up to 5 metres) may be contemplated when a higher order safety barrier (such as a crash wall or larger earthen berm) is considered. For further information please reference Section 5.1.1 in the guidelines related to building setback requirements.
- A safety barrier to protect the development in the event of a train derailment scenario is required in accordance with Metrolinx's Adjacent Development Guidelines. Standard form is a 2.5-metre-high earthen berm. If an earthen berm is not practicable, an alternative safety barrier (e.g., crash wall) may be proposed, but must provide an equivalent level of protection. The safety barrier design must be reviewed and to the satisfaction of Metrolinx and Metrolinx's Technical Advisor, AECOM, and be supported with a Rail Safety Study. Note that the Rail Safety Study must be approved by Metrolinx and AECOM prior to Metrolinx providing clearance to the City at the Site Plan stage. The applicant is advised to contact Metrolinx Project Manager, Third Party Projects Review – Adjacent Development Review (Luka.Medved@metrolinx.com) to initiate coordination between the applicant and AECOM for their technical review.
- A 2.43 metre high-security fence (anti-trespass barrier) is to be provided along the Metrolinx property line where direct access to the rail corridor is afforded (standard form is non-cut-able/non-climbable high-security fencing). The proposed fencing should address key considerations identified in Section 5.2.1 of the Adjacent Development Guidelines.
- Please submit a geotechnical evaluation demonstrating how the proposed underground parking works comply with the GO Transit Track Standard. All excavation/drilling works impacting MX Track's Zones of Influence (per Appendix W of GO Transit Track Standard) require a track monitoring plan to be submitted for Metrolinx Stakeholder review. The potential of impacting the GO Transit track should be identified to determine whether the current identified proposal can be supported. Please note that no activities encroaching into Zone 3 will be supported.

Stormwater Management Comments:

- Metrolinx would like to note that additional drainage from the proposed development is not permitted onto Metrolinx-owned lands, without prior approval from Metrolinx and our Technical Advisor (AECOM). Please provide a stormwater management report for review. This report should account for any proposed safety barrier feature to ensure no additional drainage occurs.

Landscaping Comments:

- Please note that as per Metrolinx's Adjacent Development Guidelines a 3.5 metre low-vegetation buffer has been established as part of the Metrolinx GO Expansion program

(specifically relating to electrification infrastructure clearances). The buffer is measured from the mutual property line. Only low-lying vegetation, such as shrubs and grasses, are permitted in this area. The proponent will be required to submit a final Landscaping Plan identifying planting details for review and satisfaction of Metrolinx. As such, it must be demonstrated that any proposed landscaping within 3.5 m of the mutual property line contains only low-lying vegetation.

Tiebacks and Crane Swing:

- Depending on the construction method, additional agreements and/or technical reviews will be required (e.g., shoring, tiebacks, and crane swing).
    - Please confirm the proposed shoring method and whether tiebacks into Metrolinx owned property may be required. The shoring plan shall be submitted for review. If tiebacks are proposed, please provide a tieback plan detailing the tieback locations and the number of tiebacks proposed.
    - Please provide a crane swing plan identifying the location of the proposed crane(s) that may be utilized and the associated crane swing radius. This information is required to ensure no swing over Metrolinx land which must be demonstrated through the requested drawings and related geotechnical details.
    - Depending on the manner of construction, the Owner may be required to enter into Construction Agreements (i.e., Crane Swing Agreement and Tieback Agreement) with Metrolinx. Any construction activity including shoring, tiebacks, crane swing within or immediately adjacent to Metrolinx property and/or rail corridor must be reviewed and coordinated with our Technical Advisor (AECOM).
    - As appropriate, the final development design will need to be reviewed by our Technical Advisor (AECOM), and to the satisfaction of Metrolinx.

Agreements:

- The proponent shall satisfy all Metrolinx rail safety requirements and the Owner shall enter into an "Adjacent Development Agreement" with Metrolinx stipulating how applicable concerns will be addressed. The agreement will include an environmental easement for operational emissions, to be registered on title for all uses within 300 metres of the rail corridor and in favour of Metrolinx. The Adjacent Development Agreement will have to be executed with Metrolinx prior to Metrolinx providing clearance for Site Plan Approval to the City. The applicant is advised to contact Metrolinx Project Manager, TPPR – Adjacent Development Review (Luka.Medved@metrolinx.com) to initiate the process.
- The Owner shall grant Metrolinx an environmental easement for operational emissions, which is to be registered on title for all uses within 300 metres of the rail right-of-way. Included is a copy of the form of easement for the Proponent's information. The Proponent may contact Luka.Medved@metrolinx.com with questions and to initiate the registration process. Registration of the easement will be required prior to clearance of Site Plan Approval. (It should be noted that the registration process can take up to 6 weeks).
- The proposed development is adjacent to the Metrolinx Rail Corridor Right-of-Way and may be subject to a work permit and review. Dependent on the scope of related works which may be subject to a work permit, additional agreements, fees, scheduling and corresponding processing time may be required and will need to be accounted for. Please note that all work within 10 m (30 ft) of the rail corridor will need to be reviewed by Metrolinx and its technical advisor Aecom to determine whether a work permit will be required.

- As required, the Owner may also enter into additional agreements and/or technical reviews, including, but not limited to, shoring, crane swing and tie-back agreements.
- The Owner shall be responsible for all costs for the preparation and registration of agreements/undertakings/easements/warning clauses as determined appropriate by Metrolinx, to the satisfaction of Metrolinx. They shall also consider the timelines required to advance such agreements and reviews in their schedule accordingly.
- The Owner shall be responsible for all costs associated with the review completed by Metrolinx's technical advisor (AECOM). Fees will be confirmed once the Level of Effort by our technical advisor has been determined. Additional time and cost for technical review will need to be accounted for the by the owner/proponent.

Should you have any questions or concerns, please do not hesitate to contact me.

Best regards,

Luka Medved

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Third Party Projects Review – GO (Heavy Rail)
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Form of Easement

WHEREAS the Transferor is the owner of those lands legally described in the Properties section of the Transfer Easement to which this Schedule is attached (the "**Easement Lands**").

IN CONSIDERATION OF the sum of TWO DOLLARS ($2.00) and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Transferor, the Transferor transfers to the Transferee, and its successors and assigns, a permanent and perpetual non-exclusive easement or right and interest in the nature of a permanent and perpetual non-exclusive easement over, under, along and upon the whole of the Easement Lands and every part thereof for the purposes of discharging, emitting, releasing or venting thereon or otherwise affecting the Easement Lands at any time during the day or night (provided that doing so is not contrary to law applicable to Metrolinx) with noise, vibration and other sounds and emissions of every nature and kind whatsoever, including fumes, odours, dust, smoke, gaseous and particulate matter, electromagnetic interference and stray current but excluding spills, arising from or out of, or in connection with, any and all present and future railway or other transit facilities and operations upon the lands of the Transferee and including, without limitation, all such facilities and operations presently existing and all future renovations, additions, expansions and other changes to such facilities and all future expansions, extensions, increases, enlargement and other changes to such operations.

THIS Easement and all rights and obligations arising from the above easement shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective officers, directors, shareholders, agents, employees, tenants, sub-tenants, customers, licensees and other operators, occupants and invitees and each of its or their respective heirs, executors, legal personal representatives, successors and assigns. The covenants and obligations of a party hereto, if such party comprises more than one person, shall be joint and several.

Easement in gross.