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File: C14-60/230003  
March 13, 2023

Garett Stevenson  
Manager of Development Review  
City of Kitchener  
City Hall, P.O. Box 1118  
200 King Street West  
Kitchener, ON N2G 4G7

Dear Mr. Stevenson:

Re: **Removal of Holding Provision – 90H**  
Re: ZBA Application ZBA23/0003/F/CD  
IN8 Developments  
30 Francis Street  
City of Kitchener

In accordance with By-law No. 17-035 of the Regional Municipality of Waterloo, please accept the following recommendation regarding the above-noted application on behalf of the Council of the Regional Municipality of Waterloo.

In 2021, the applicant submitted an Official Plan Amendment and Zoning by-law amendment application to rezone the entirety of the lands to facilitate the construction of a residential tower consisting of 44 storeys. The applicant secured a secured a Section 37.1 agreement in exchange for Community Benefits; therefore, the Official Plan Amendment was no longer required. Zoning By-law Amendment 2022-039 was adopted with Holding Provision 90H. Holding Provision 90H required the submission of a Record of Site Condition and Ministry Acknowledgement Letter to be filed on the entirety of the subject lands and it also required the submission of a Traffic, Railway and Stationary Noise Study both to the satisfaction of the Regional Municipality of Waterloo.

The applicant has submitted a request to lift the holding provision for the site. Holding Provision 90H is as follows:

Document Number: 4333015  
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Version: 1

*Notwithstanding Section 17 of this By-law, within the lands zoned D-6 and shown as being affected by this Subsection on Schedule 84 of Appendix 'A':*

- i) No residential use shall be permitted until such time as a Record of Site Condition is submitted and approved to the satisfaction of the Ministry of Environment, Conservation and Parks or any successor Ministry ("MECP"). This Holding Provision shall not be removed until the Region of Waterloo is in receipt of a letter from the Ministry of the Environment, Conservation and Parks advising that a Record of Site Condition has been completed to the satisfaction of the MECP*

**The Region received a copy of the Record of Site Condition (RSC) and Ministry Acknowledgement Letter for the entirety of the subject lands; therefore, this letter provides Regional Release of the Holding Provision related to the RSC.**

- ii) No residential use shall be permitted until such time as a Traffic, Railway and Stationary Noise Study is submitted and approved to the satisfaction of the Regional Commissioner of Planning, Housing and Community Services, if necessary. This Holding Provision shall not be removed until the City of Kitchener is in receipt of a letter from the Regional Commissioner of Planning, Housing and Community Services advising that such noise study or studies has been approved and an agreement, if necessary, has been entered into with the City and/or Region, as necessary, providing for the implementation of any recommended noise mitigation measures.*

**The Region received a noise study and is satisfied with the conclusions and implementation measures contained in the noise study; therefore, this letter provides Regional release of Holding Provision 90H relating to the Noise Study.**

**In addition, Regional staff release the holding provision applying to site as the City of Kitchener has confirmed that the following shall be implemented through the current site plan and through the registered condominium agreement between the Owner/Developer and the City of Kitchener:**

1. All units along the western building façade of the residential tower must be constructed with a balcony barrier having minimum barrier heights as follow:
  - a) 6<sup>th</sup> and 7<sup>th</sup> floors                      minimum 1.4 metres;
  - b) 8<sup>th</sup> floor                                      minimum 1.3 metres; and
  - c) 9<sup>th</sup> thru 30<sup>th</sup> floors                      minimum 1.1 metres.
  
2. All units along the southern building façade of the residential tower must be constructed with a balcony barrier having minimum barrier heights as follow:
  - a) 12<sup>th</sup> floor                                      minimum 1.3 metres; and
  - b) 13<sup>th</sup> thru 31<sup>st</sup> floors                      minimum 1.1 metres.

3. Alternatively, if rooftop mechanical equipment on the adjacent Tannery facility, situated to the south of the subject development, is replaced with quieter models such that sound levels at the proposed residential building are below the applicable noise criteria outlined in the Study, the balcony barrier heights in Clauses 1 and 2 may be revised.
4. The outdoor amenity area located on the 6<sup>th</sup> floor must be constructed with a minimum 1.07 metre high solid parapet wall.
5. The balcony barriers must have a minimum surface density of 20 kg/m<sup>2</sup> and be without gaps within and beneath their extent.
6. All residential units on all levels within the podium and tower of the development be constructed with central air conditioning.
7. The following warning clause be included in all offers to purchase and/or rental agreements for all condominium units, and condominium declaration:

For all residential units on all levels within the podium and tower of the development,

*“Purchasers/tenants are advised that due to the proximity of nearby commercial facilities and despite the inclusion of noise control features within the development and the individual building units, sound from those facilities may at times be audible and their operations may change in the future.”*

*“This dwelling unit has been supplied with a central air conditioning system which will allow windows and exterior doors to remain closed, thereby ensuring that the indoor sound level limits are within the sound level limits of the Municipality and the Ministry of the Environment, Conservation and Parks.”*

*“The Developer agrees to preserve the function of and to maintain the acoustic balcony barrier located upon the lands. The purpose of the balcony barrier is to attenuate noise from nearby commercial facilities. The Developer agrees that the City, through its employees and agents has the right to enter into the unit to inspect the balcony barrier. The Developer agrees to repair or, if necessary replace the balcony barrier. Should the Developer fail to repair or replace the balcony barrier upon receipt of a written notice from the City, as the City deems necessary, the Developer agrees that the City may undertake such work upon the expiration of the time set out in the notice. If such work is undertaken by the City, the Developer hereby agrees to permit entry upon the lands for this purpose and agrees to reimburse the City fully for all costs of undertaking such work.”*

8. That prior to the issuance of any building permit(s), an acoustical Engineer licensed in the Province of Ontario, certify that the noise attenuation measures are incorporated in the building plans and upon completion of construction, an acoustical

Engineer also certify (by way of acoustic audit) that the dwelling units have been constructed in accordance with the accepted noise study, and the development meets the MECP NPC-300 noise guideline noise level criteria prior to building occupancy.

**Items 1) to 8) above shall be completed to the satisfaction of the City of Kitchener in consultation with the Region of Waterloo. The Region requires a copy of the draft condominium agreement (when the condominium application has been made and the agreement is drafted) for review and comment prior to the signing of this agreement by all parties and prior to the registration of the agreement on title.**

**The following shall also be implemented through the current site plan and through the Registered Development Agreement between the Owner/Developer and the Regional Municipality of Waterloo through the future condominium application:**

1. The external building details (e.g. the 1.07m solid parapet wall) shall be implemented through the current site plan application;
2. The Owner/Developer shall enter into a registered development agreement with the Region of Waterloo through a condition of approval for the future consent or Plan of Condominium to implement the recommendations contained in the report entitled "Noise Feasibility Study, Proposed Residential Development, 30 Francis Street, Kitchener, Ontario" (HGC, March 1, 2023)" including special building components (e.g. air conditioning and the 1.07m solid parapet wall on the edge of the 6<sup>th</sup> floor amenity space) and the incorporation of the following noise warning clauses within the Condominium Declaration and all offers of purchase and sale/lease/tenant agreements:

*"The Developer agrees to preserve the function of and to maintain the parapet wall along the edge of the outdoor amenity area located on the 6 floor of the building. The purpose of the parapet wall is to attenuate noise from King Street West, Victoria Street South, Francis Street and Charlies Street West. The Developer agrees that the Region, through its employees and agents has the right to enter onto the lands to inspect the parapet wall. The Developer agrees to repair or, if necessary replace the parapet wall. Should the Developer fail to repair or replace the parapet wall upon receipt of a written notice from the Region, as the Region deems necessary, the Developer agrees that the Region may undertake such work upon the expiration of the time set out in the notice. If such work is undertaken by the Region, the Developer hereby agrees to permit entry upon the lands for this purpose and agrees to reimburse the Region fully for all costs of undertaking such work."*

*"Purchasers/tenants are advised that despite the inclusion of noise control features in the development and within the building units, sound levels due to increasing road and rail traffic may continue to be of concern, and may occasionally interfere with*

*some activities of the dwelling occupants as the sound levels exceed the sound level limits of the Municipality and the Ministry of the Environment, Conservation and Parks noise criteria.”*

*“This dwelling unit has been supplied with a central air conditioning system which will allow windows and exterior doors to remain closed, thereby ensuring that the indoor sound level limits are within the sound level limits of the Municipality and the Ministry of the Environment, Conservation and Parks.”*

*“Warning: Canadian National Railway Company or its assigns or successors in interest has or have a right-of-way within 300 metres from the land the subject hereof. There may be alterations to or expansions of the railway facilities on such rights-of-way in the future including the possibility that the railway or its assigns or successors as aforesaid may expand its operations, which expansion may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual dwelling(s). CNR will not be responsible for any complaints or claims arising from use of such facilities and/or operations on, over or under the aforesaid rights-of-way.”*

*“Warning: Metrolinx, carrying on business as GO Transit, and its assigns and successors in interest are the owners of lands within 300 metres from the land which is the subject hereof. In addition to the current use of the lands owned by Metrolinx, there may be alterations or expansions of the rail and other facilities on such lands in the future including the possibility that GO Transit or any railway assigns or successors as aforesaid may expand their operations, which expansion may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual dwellings. Metrolinx will not be responsible for any complaints or claims arising from use of such facilities and/or operations on, over or under its lands.”*

3. The balcony barriers must have a minimum surface density of 20 kg/m<sup>2</sup> and be without gaps within and beneath their extent.
4. That prior to the issuance of any building permit(s), an acoustical Engineer licensed in the Province of Ontario, certify that the noise attenuation measures are incorporated in the building plans and upon completion of construction, an acoustical Engineer also certify (by way of acoustic audit) that the dwelling units have been constructed in accordance with the accepted noise study, and the development meets the MECP NPC-300 noise guideline noise level criteria.

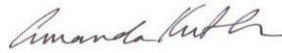
Regional staff acknowledge receipt of the Zoning By-law Amendment fee of \$3,000.00 (paid March 3, 2023).

Through the circulation of the zoning by-law application Region staff noted the requirement to consult with Nav Canada regarding the application. **Nav Canada has**

**issued an objection to the application as it relates to the crane height for the construction of this building and Region staff has significant concerns that the crane height could impact airport operations. Regional staff will be providing a further letter, under separate cover, that outlines the specific concerns relating to the airport as it relates to this and other development applications and will be reaching out to City staff to set up a meeting in order to discuss the best approach to protect airport operations.**

Should you have any questions, please do not hesitate to contact Melissa Mohr, Senior Planner, at [mmohr@regionofwaterloo.ca](mailto:mmohr@regionofwaterloo.ca).

Yours truly,

A handwritten signature in cursive script, appearing to read "Amanda Kutler".

Amanda Kutler, MCIP, RPP  
Manager, Community Planning

cc. Craig Dumart, Senior Planner, City of Kitchener  
30 Francis Kitchener Incorporated (Owner)  
Darryl Firsten, IN8 Developments (Owner)