

**Ontario Land Tribunal**  
Tribunal ontarien de l’aménagement  
du territoire



**ISSUE DATE:** Wednesday, May 22, 2024

**CASE NO.:** OLT-23-000656

**PROCEEDING COMMENCED UNDER** subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Lifetime Panda Mrkm Inc.
Subject:	By-law No. 2023-85
Description:	To permit the development of a high-rise mixed-use development
Reference Number:	By-Law 2023-85
Property Address:	8200 Warden Ave
Municipality/UT	City of Markham
OLT Case No.:	OLT-23-000656
OLT File No.:	OLT-23-000656
OLT Case Name:	Lifetime Panda Mrkm Inc. v. Markham (City)

**BEFORE:** )  
                       )                                 Wednesday, the  
F. LAVOIE         )  
                       )                                 22<sup>nd</sup> day of May, 2024

**THIS MATTER**, in respect of the lands at 8200 Warden Ave in the City of Markham, having come for a Case Management Conference on January 10, 2024 before the Ontario Land Tribunal (the “Tribunal”) and the Tribunal having issued a Decision on January 26, 2024; and

**THE TRIBUNAL** having been advised by the Parties on February 28, 2024 that a full uncontested settlement had been reached, on consent;

**AND THE TRIBUNAL** having conducted a settlement hearing, in writing, on March 8, 2024;

**AND THE TRIBUNAL** having read the materials filed, on consent of the Parties, including the sworn affidavit of Kate Cooper, MCIP, RPP, qualified to give opinion evidence in the area of land use planning and the draft version of the Zoning By-law Amendment attached hereto as Attachment 1 to this Order;

**AND THE TRIBUNAL** having reviewed and accepted the uncontradicted land use planning opinion evidence of Ms. Cooper, is satisfied the settlement proposal aids in encouraging growth and intensification generally throughout existing built-up areas, further optimizes the use of land and infrastructure on the Subject Site, and provides greater community benefits than the Approved Development, namely, more affordable housing units, parkland, and infrastructure improvements. The appealed issues from Zoning By-Law 2023-85 were the maximum permitted units of 1,962 units and a requirement for the Appellant to enter into a Community Benefit

Charges Agreement with the City of Markham. The settlement proposal addresses these issues by, among other things, increasing to 2930 the permitted maximum units, increasing the number of affordable housing units from 20 to 50, removing the requirement that the Appellant enter into a Community Benefit Charges Agreement with the City of Markham, and providing for off-site parkland dedication of up to 1.09 hectares at 8250 Warden Avenue.

**AND THE TRIBUNAL** having found on the basis of the foregoing, that the Zoning By-Law Amendment has regard for matters of provincial interest as set out in s. 2 of the *Planning Act*, is consistent with the Provincial Policy Statement, 2020, conforms with the Growth Plan for the Greater Golden Horseshoe, 2020, the 2010 Region of York Official Plan, the City of Markham Official Plan (1987), the Markham Centre Secondary Plan, and represents good planning.

**NOW THEREFORE**

**THE TRIBUNAL ORDERS THAT:**

1. The appeal of the Zoning By-law Amendment is allowed, in part;
2. The City of Markham Zoning By-law 165-80 and the Markham Centre Zoning By-law 2004-196 are amended in accordance with the Zoning By-law Amendment attached hereto as Attachment 1;
3. The municipal clerk is authorized to format, as may be necessary, and assign a number to the by-law for record keeping purposes;
4. The Draft Plan of Subdivision appeal (OLT-23-000657) remains adjourned in accordance with the decision issued on January 26, 2024; and
5. The Tribunal may be spoken to in the event that the Parties have any difficulty in implementing this Order.

*"Euken Lui"*

EUKEN LUI  
ACTING REGISTRAR

**Ontario Land Tribunal**

Website: [olt.gov.on.ca](http://olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal ("Tribunal"). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.



## By-law 2023-xx

**A By-law to amend By-law 165-80, as amended**  
*(to delete lands from the designated area of By-law 165-80)*  
**and to amend By-law 2004-196, as amended**  
*(to incorporate lands into the designated area of By-law 2004-196)*

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The Council of The Corporation of the City of Markham hereby enacts as follows:

1. That By-law 165-80, as amended, are hereby further amended by deleting the lands shown on Schedule 'A' attached hereto, from the designated area of By-law 165-80, as amended.
2. That By-law 2004-196, as amended, is hereby further amended as follows:
  - 2.1 By expanding the designated area of By-law 2004-196, as amended, to include additional lands as shown on Schedule 'A' attached hereto.
  - 2.2 By zoning the lands outlined on Schedule 'J1' attached hereto:

from:  
**Select Industrial with Limited Commercial - M.C (60%)**

to:  
**Markham Centre Downtown Two\*Exception 36 (Hold) - MC-D2\*36(H1)**
3. Notwithstanding any other provisions of By-law 2004-196, as amended, is further amended as it applies to the lands outlined on Schedule 'A', attached hereto.
  - 3.1 For the purposes of this By-law, the following definitions apply:

Gross Floor Area means the aggregate of the areas of each floor of a *building* or *structure* above or below grade, measured between the exterior faces of the exterior walls of the *building* or *structure*, or where there are common walls between *uses* or *buildings* or *structures*; measured to the centre-line of a common wall. The calculation of gross floor area excludes the areas of each floor used, or designed or intended for the parking of *motor vehicles*, unless the parking of *motor vehicles* is the principal *use* of a *building* or *structure*.

Stepback means a portion of a *building* that is set back further from a *lot line* than any other portion of a *building*.

- 3.2 By amending the following subsection 6.36 (\*36) to Section 6 - Exceptions to By-law 2004-196:

**6.36 MC-D2 zoned lands on the south side of Cedarland Drive, between Warden Avenue and South Town Centre Boulevard**

Notwithstanding any other provisions of this By-law, the following provisions shall apply to the lands denoted by the symbol \*36 (Exception 36) on the Schedules to this By-law. All other provisions, unless specifically modified/amended by this section, continue to apply to the lands subject to this section.

### 6.36.1 Special Site Provisions

The following special site provisions shall apply:

- a) *Dwelling* units are permitted on any *storey*, including the first *storey* of an *apartment building*.
- b) Special Provision (2), (3) and (7) to Table A1 shall not apply.
- c) In the case of a *corner lot* with a daylighting triangle, the *exterior side lot line* shall be deemed to extend to its hypothetical point of intersection with the extension of the *front lot line* for the purposes of calculating minimum and maximum *setbacks* from *streetlines*. Notwithstanding the above, in no case shall any *building* or *structure* extend into the *public street* right of way.
- d) Awnings are permitted to extend to any *streetline* or *lot line*.
- e) A minimum setback of 0.3 metres will be required for any portion of a parking garage to the lot line if it is constructed below the established grade. This exemption shall also apply to ventilation shafts and housings, stairways, portions of the parking garage projecting above established grade, and other similar facilities above established grade associated with below grade parking garages.
- f) Outdoor amenity space or terraces, retaining walls, building cornices, parapets, eaves, guardrails, balustrades, green roof elements, wind mitigation, porches, ornamental elements, architectural cladding, window sills, wheel chair ramps, railings, balconies, canopies, awnings, vents, window washing equipment, light fixtures, stairs, stair enclosures and privacy screens may encroach into the required front, rear, north interior, or south exterior yard setbacks up to the lot line.
- g) Mechanical features, such as structures containing the equipment necessary to control an elevator, are permitted to project a maximum of 8.5 metres above the heights shown on Schedule "J2" of this By-law.
- h) A mezzanine shall be permitted in the first storey, and shall not be considered an additional storey.
- i) Notwithstanding the definition of storey in Section 3, any floor containing a rooftop mechanical penthouse and no living space shall not be deemed a storey. Any storey greater than 4.2 metres in height shall not be deemed an additional storey.
- j) The minimum height of the first storey of a mixed-use building for residential and residential-related uses shall be 3.3 metres non-inclusive of dropped bulkheads;

### 6.36.2 Special Parking Provision

The following special parking provision shall apply:

- a) A minimum of 0.6 parking spaces per dwelling unit and a maximum of 1 parking space per dwelling unit plus 0.1 parking spaces per dwelling unit for visitors.
- b) A minimum of 1 parking space per 30 square metres of Net Floor Area ("NFA") for non-residential uses.

- c) The required parking for visitors and the required parking for non-residential uses may be shared on a non-exclusive basis.

#### **6.36.4 Special Holding Provisions**

The following special holding provisions shall apply:

Holding provision 'H\*' shall only be lifted on all or part of the lands shown on Schedule 'X8' attached hereto when all of the following criteria outlined have been met:

1. A subdivision agreement has been entered into that satisfies all of the conditions of the City for Areas 1 and 2.
  
2. Sanitary Capacity for Area 1
  - i. The Owner shall prepare and submit a sanitary capacity analysis to determine what is required to provide sanitary services for the development of the lands without causing adverse impacts in the sanitary sewer system;
  - ii. The Owner shall identify the recommendations and the necessary works to mitigate any impacts identified in the sanitary capacity analysis; and,
  - iii. The Owner shall execute an agreement with the City to design, construct and secure the provision of, sanitary service infrastructure improvements identified by the above-noted sanitary capacity analysis related to the development of the lands.
  
3. Storm Capacity for Area 1:
  - i. The Owner shall prepare and submit a storm sewer design analysis to determine the upgrades required to the existing storm sewer infrastructure related to the development of the lands.
  - ii. The Owner shall identify the recommendations and the necessary works to mitigate any impacts identified in the Storm Sewer Design Analysis; and,
  - iii. The Owner shall execute an agreement with the City to design, construct and secure the provision of, storm service infrastructure improvements identified by the above-noted storm sewer design analysis related to the development of the lands and to obtain all the required permit approvals from all other applicable external agencies.
  
4. Transportation Assessment for Area 1:
  - i. The owner shall prepare and submit an updated Transportation Impact Study, Phasing Assessment, and an enhanced Transportation Demand Management Plan to the satisfaction of the Director of Engineering or their designate.
  
5. Functional Servicing Report Area 1:
  - i. The owner shall prepare and submit an updated Functional Servicing Report and Stormwater Management Study to the satisfaction of the Director of Engineering or their designate.
  
6. Sanitary Capacity for Areas 2:
  - i. The Owner shall prepare and submit a sanitary capacity analysis to determine what is required to provide sanitary services for the

development of the lands without causing adverse impacts in the sanitary sewer system;

- ii. The Owner shall identify the recommendations and the necessary works to mitigate any impacts identified in the sanitary capacity analysis; and,
- iii. The Owner shall execute an agreement with the City to design, construct and secure the provision of, sanitary service infrastructure improvements identified by the above-noted sanitary capacity analysis related to the development of the lands.

7. Storm Capacity for Areas 2:

- i. The Owner shall prepare and submit a storm sewer design analysis to determine the upgrades required to the existing storm sewer infrastructure related to the development of the lands.
- ii. The Owner shall identify the recommendations and the necessary works to mitigate any impacts identified in the Storm Sewer Design Analysis; and,
- iii. The Owner shall execute an agreement with the City to design, construct and secure the provision of, storm service infrastructure improvements identified by the above-noted storm sewer design analysis related to the development of the lands and to obtain all the required permit approvals from all other applicable external agencies.

8. Transportation Assessment for Area 2:

- i. The owner shall prepare and submit an updated Traffic impact Study, Phasing Assessment and an enhanced Transportation Demand Management Plan, to the satisfaction of Director of Engineering or their designate. The Transportation Impact Study shall address the appropriate number of units that can be supported in advance of that the IBM flyover can be used by the owner or becomes public, to the satisfaction of the Director of Engineering or their designate.
- ii. That the IBM Road and the South Town Centre Boulevard Extension shall be conveyed to the City, or alternatively that other means of access to Area 2 are provided to the satisfaction of the Commissioner of Development Services, or their designate, prior to subdivision registration.

9. Functional Servicing Report Area 2:

- i. The owner shall prepare and submit an updated Functional Servicing Report and Stormwater Management Study to the satisfaction of the Director of Engineering or their designate.

10. The following provisions shall apply to all lands zoned with a Holding Symbol, until the Holding Symbol is removed from the lands shown on Schedule 'A' or portion thereof pursuant to Subsection 36(3) or (4):

- i. Lands zoned with the Holding Symbol shall be used only for a use legally existing as of the date of the enactment of this By-law. Notwithstanding the foregoing, the following uses are permitted prior to the removal of the Holding Symbol:
  - i. site services, driveways and below grade parking structures

4. By adding the following schedules to By-law 2004-196, as amended: Schedule A, J1, J2, J4 and X8
5. All other provisions of By-law 2004-196, as amended, not inconsistent with the provisions of this By-law shall continue to apply.

Read a first, second, and third time and passed on

\_\_\_\_\_  
Kimberley Kitteringham  
City Clerk

\_\_\_\_\_  
Frank Scarpitti  
Mayor



## **EXPLANATORY NOTE**

### **BY-LAW NO. 2023 - XX**

A By-law to amend By-laws 165-80 and 2004-196, both as amended.

### **Lifetime 8200 Warden Avenue GP Inc. (Lifetime Developments) 8200 Warden Avenue**

#### **Lands Affected**

This by-law applies to a 2.35 hectares (5.82 acres) of land located south of Cedarland Drive, between Warden Avenue and South Town Centre Boulevard, municipally known as 8200 Warden Avenue.

#### **Existing Zoning**

The lands are currently *zoned*, under By-law 165-80, as amended:

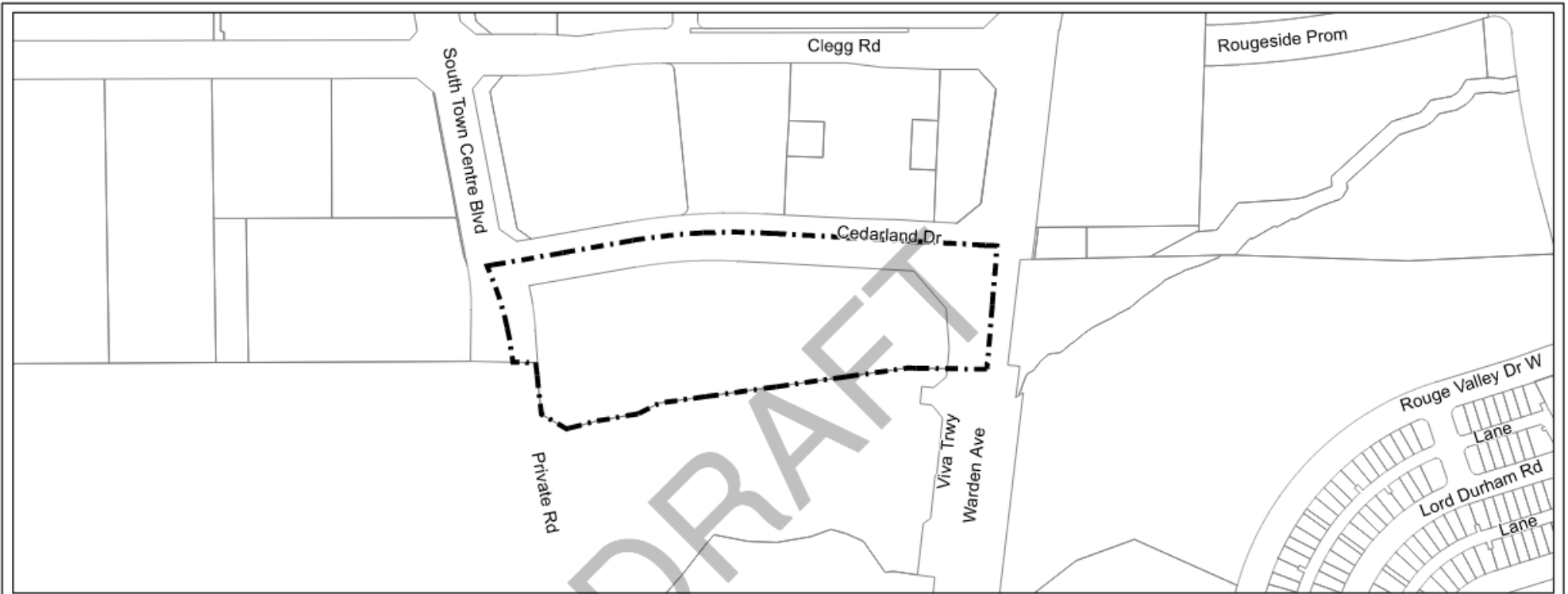
- Select Industrial with Limited Commercial - M.C (60%)

#### **Purpose and Effect**

The purpose of this by-law amendment is to incorporate the Subject Lands into the designated area of the Markham Centre Zoning By-law No. 2004-196 and *zone* them to “Markham Centre Downtown Two \* Exception 36 (Hold) – MC-D2\*36(H1)” as shown on Schedule ‘A’ to the by-law, incorporating site specific *use* permissions and development standards.

The effect of this by-law amendment is to permit the development of mixed use high rise buildings on the Subject Lands.



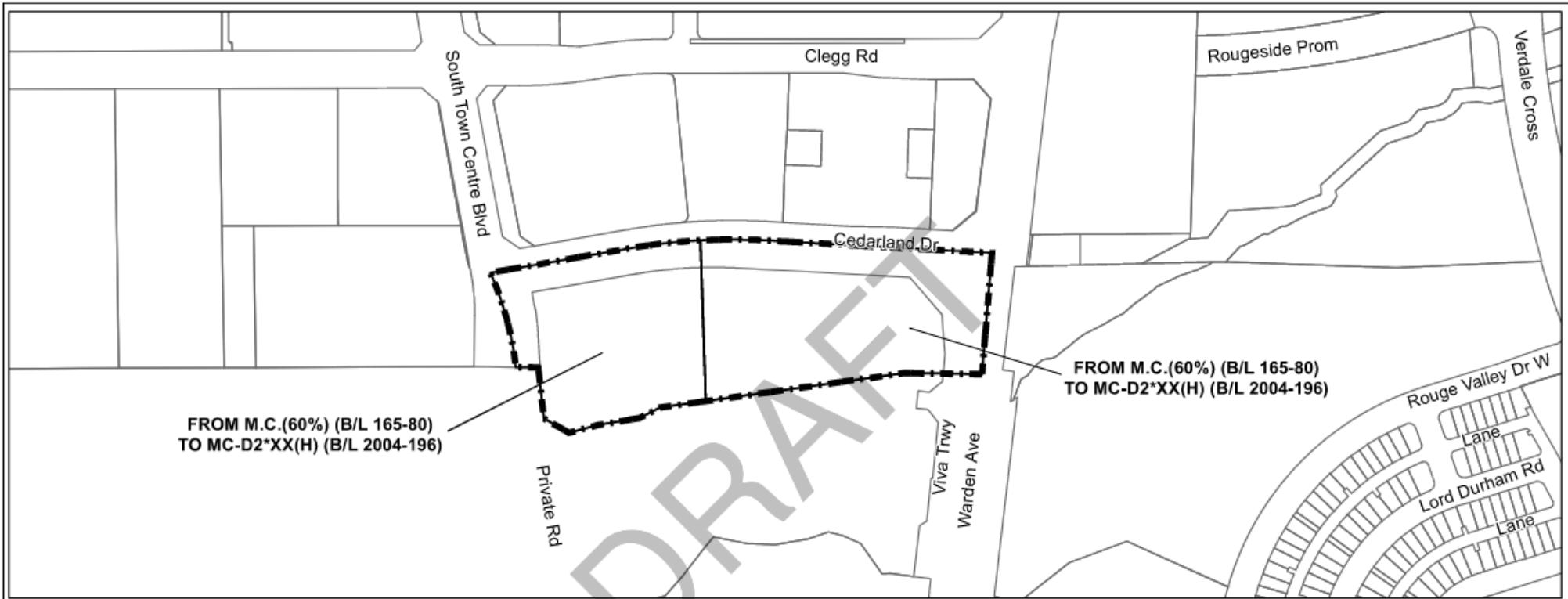


## SCHEDULE 'A' TO BY-LAW AMENDING BY-LAWS 165-80 AND 2004-196

BOUNDARY OF AREA COVERED BY THIS SCHEDULE TO BE DELETED FROM BY-LAW 165-80 AND ADDED TO BY-LAW 2004-196



THIS IS NOT A PLAN OF SURVEY. Zoning information presented in this Schedule is a representation sourced from Geographic Information Systems. In the event of a discrepancy between the zoning information contained on this Schedule and the text of zoning by-law, the information contained in the text of the zoning by-law of the municipality shall be deemed accurate.



## SCHEDULE 'J1' TO BY-LAW 2004-196

 BOUNDARY OF AREA COVERED BY THIS SCHEDULE

 BOUNDARY OF ZONE DESIGNATION(S)

 SELECT INDUSTRIAL WITH LIMITED COMMERCIAL

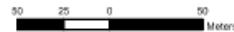
 HOLDING PROVISION

 MARKHAM CENTRE - DOWNTOWN TWO

 EXCEPTION NUMBER

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 MARKHAM DEVELOPMENT SERVICES COMMISSION



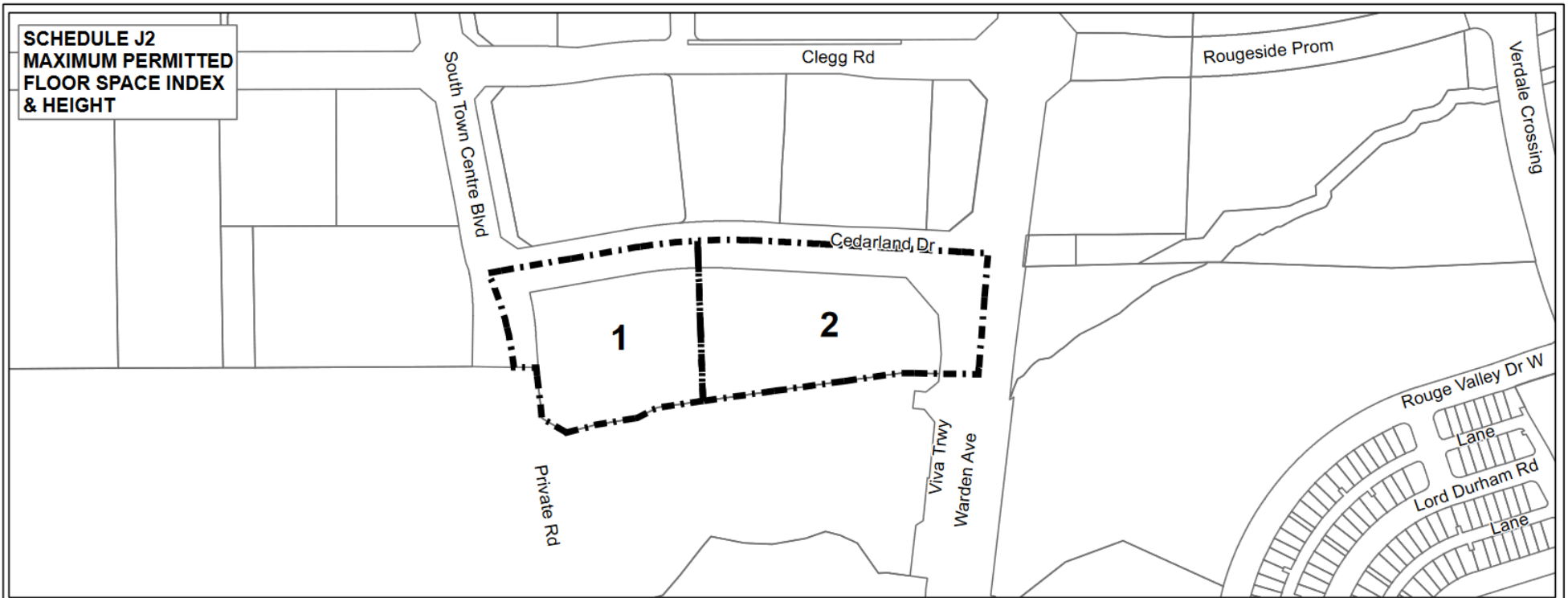
Drawn By: RT

Checked By: DP

DATE: 22/11/2022

NOTE: This Schedule should be read in conjunction with the signed original By-Law filed with the City of Markham Clerk's Office

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**SCHEDULE J2  
MAXIMUM PERMITTED  
FLOOR SPACE INDEX  
& HEIGHT**

Area 1  
 Maximum FSI = 8.61  
 Maximum Building Height = 34 storeys and 313m (C.G.D.)  
 Maximum number of residential units shall be 1,270  
 Minimum GFA of non-residential uses 1071.04 m2

# SCHEDULE 'J2' TO BY-LAW 2004-196

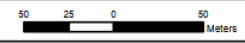
BOUNDARY OF AREA COVERED BY THIS SCHEDULE

Area 2  
 Maximum FSI = 10.20  
 Maximum Building Height = 46 storeys and 352m (C.G.D.)  
 Maximum number of residential units shall be 1,660  
 Minimum GFA of non-residential uses 524.51 m2

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**MARKHAM** DEVELOPMENT SERVICES COMMISSION



Drawn By: RT

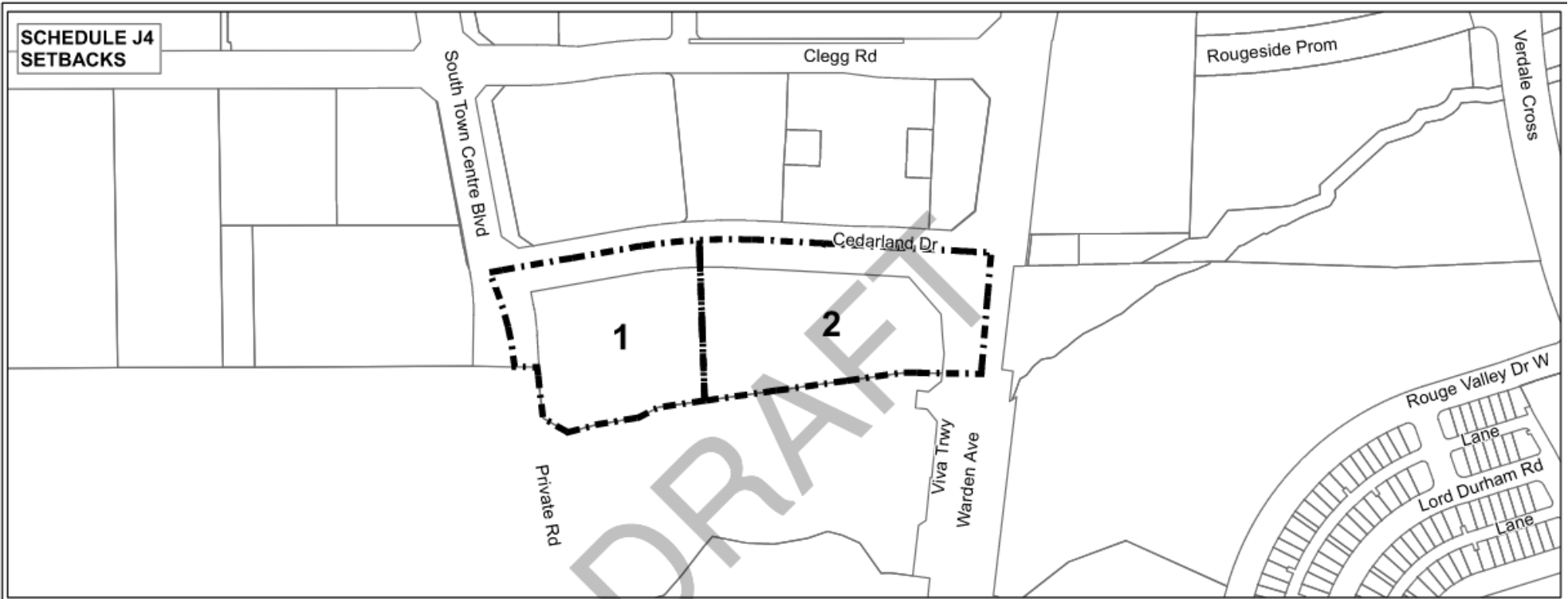
Checked By: DP

DATE: 22/11/2022


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**SCHEDULE J4  
SETBACKS**



**SCHEDULE 'J4' TO BY-LAW 2004-196**

 BOUNDARY OF AREA COVERED BY THIS SCHEDULE



Area 1 - minimum setback shall be:  
 · NORTH: 0.405 metres  
 · SOUTH: 2 metres  
 · WEST: 0.795 metres  
 · EAST: 0.405 metres

Area 2 - minimum setback shall be:  
 · NORTH: 1.935 metres  
 · SOUTH: 2.1 metres  
 · WEST: 0.595 metres  
 · EAST: 0.055 metres

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 DEVELOPMENT SERVICES COMMISSION



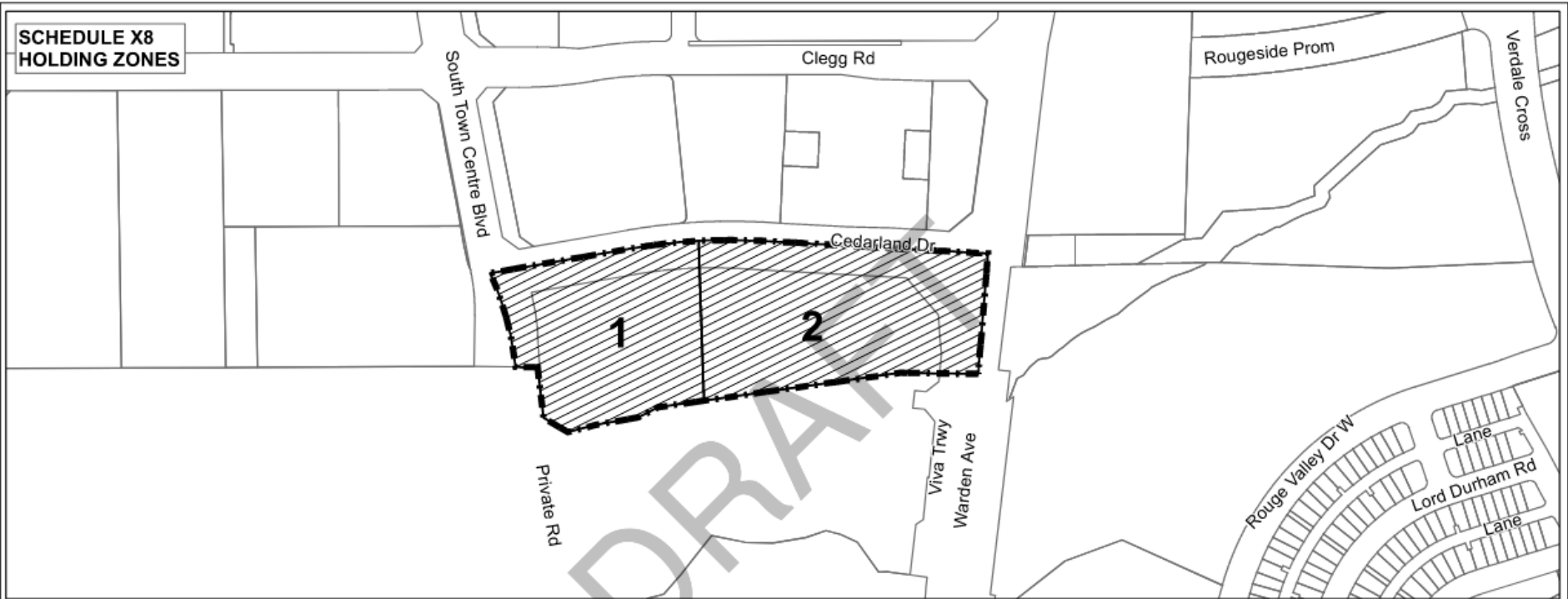
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**SCHEDULE X8  
HOLDING ZONES**

## SCHEDULE 'X8' TO BY-LAW 2004-196

 BOUNDARY OF AREA COVERED BY THIS SCHEDULE

 HOLDING ZONE

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**MARKHAM** DEVELOPMENT SERVICES COMMISSION



Drawn By: RT

Checked By: DP

DATE: 22/11/2022

NOTE: This Schedule should be read in conjunction with the signed original By-Law filed with the City of Markham Clerk's Office

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