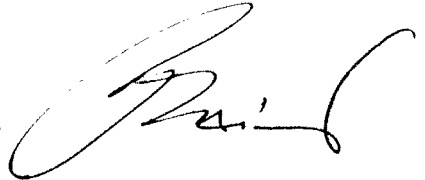




TO: Mayor and Members of Council

FROM: Jim Baird, Commissioner of Development Services 

PREPARED BY: Geoff Day, Senior Planner - West Development District

DATE: March 1, 2011

RE: Implementing Zoning By-law Amendment  
Proctor Investments Ltd.  
ZA 10-121404

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## **BACKGROUND**

A Public Meeting was held by the Development Services Committee on December 13, 2010 to consider the proposed rezoning of 34 Proctor Avenue to permit the future siting of 3 single detached dwellings on the subject lands. During the meeting, the Ward Councillor expressed concerns with respect to CN Rail noise and safety as well as potential risks to the Town. The Development Services Committee resolved that an implementing Zoning By-law could be brought forward once, among other matters, a development agreement had been executed by the applicant and the Town to address outstanding CN Rail noise and safety issues as well as to indemnify the Town if a derailment event were ever to occur affecting the subject lands.

Legal and Planning Staff met with the Ward Councillor on February 3, 2011 to discuss the risk factors involved and the need for entering into the agreement noted above. It was noted that the Town has approved other residential developments within close proximity to railways, including in the immediate vicinity of the subject lands, without requiring an indemnity and release in favour of the Town to be registered on title. The normal practice is to rely on standards and conditions recommended by the railway authority at the time of development approval. In this instance, there is also a restrictive covenant previously registered on title to the subject lands, by CN Rail.

Staff have reviewed the restrictive covenant (the "1994 Agreement") which was registered on the title of the land by CN Rail, at the time that CN sold this surplus land to the original private purchaser. This covenant contains detailed requirements for residential development to mitigate noise and safety concerns caused by the proximity of the railway to the property. CN has also indicated in a letter addressed to the applicant dated June 15, 2010 the following:

“In light of the 1994 Agreement and the 2004 Noise and Vibration report by J.E. Coulter Associates, CN requirements for the said development are as follows:

- (a) No habitable buildings or associated enclosed outdoor amenity areas shall be constructed on the Owner Lands within a distance closer to the CN Lands, than 20 metres.
- (b) No alterations to the existing drainage pattern affecting the CN Lands are to be made on the Owner Lands without receiving prior written concurrence from CN.
- (c) The Owner shall construct and maintain a chain link security fence of minimum height of 6 feet along the common property line of the Owner Lands and CN Lands.

In view of the terms of the above noted Agreement, for development of up to 3 new dwellings at 34 Proctor Avenue, CN will not pursue construction of a 2.5 metre safety berm in this instance.”

## **CONCLUSION**

Staff are of the opinion that as the “1994 Agreement”, which runs with the title of the lands, identifies the development constraints on site and applies specific standards and warning clauses as they relate to noise, vibration and safety matters, a development agreement is not warranted. Staff have also included in the zoning by-law a minimum 20 metre rear yard setback requirement for single detached dwellings as required by CN Rail. Therefore, in consultation with the Ward Councillor, Staff recommend that the amending by-law attached hereto, proceed to enactment as outlined.

## EXPLANATORY NOTE

BY-LAW NO. 2011-XXX

### **A by-law to amend By-law 2237, as amended**

Proctor Investments Limited

Registered Plan Number 2368, Part of Lots 28, 29 and 30, Concession 1

### **LANDS AFFECTED**

The By-law applies to a 0.375 ha (0.93 acres) vacant lands are at the northwest corner of Henderson Avenue and Proctor Avenue within the Thornhill Community Secondary Plan Area.

### **EXISTING ZONING**

The lands subject to this By-law are presently zoned (HOLD) First Density Multiple Family Residential [(H)RM1] under By-law 2237, as amended. Townhouses would be permitted following the removal of the holding provisions.

### **PURPOSE AND EFFECT**

The purpose and effect of this by-law is to zone the lands R3 by By-law 2237, as amended to only permit 3 single detached dwellings on the subject lands.

## **BY-LAW 2011-XXX**

A By-law to amend Zoning By-law 2237, as amended  
(lands comprising Registered Plan Number 2368, Part of Lots 28, 29 and 30, Concession 1)

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THE COUNCIL OF THE CORPORATION OF THE TOWN OF MARKHAM HEREBY ENACTS AS FOLLOWS:

1. THAT By-law 2006-312, amending By-law 2237, as amended, is hereby repealed in its entirety.
2. THAT By-law 2237, as amended is hereby further amended as it applies to the lands outlined on Schedule 'A' attached hereto as follows:

2.1. By zoning the lands: Third Density Single Family Residential (R3)

3. Notwithstanding any other provision of By-law 2237, as amended, the provisions in this By-law shall apply to those lands denoted on the Schedule 'A' attached hereto. All other provisions of By-law 2237 as amended, unless specifically modified/amended by this By-law, continue to apply to the lands subject to this By-law.

3.1. Only Uses Permitted

The following are the only uses permitted:

- a) single detached dwellings

3.2. Zone Standards

The following specific zone standards apply:

- a) Minimum REAR YARD setback for single detached dwellings – 20 metres
- b) Minimum FRONT YARD setbacks:
  - i) Lot 1, as shown on schedule 'A' – 3.0 metres
  - ii) Lot 2, as shown on schedule 'A' – 4.5 metres

4. All other provisions of By-law 2237, as amended, not inconsistent with the provisions of this by-law shall continue to apply.

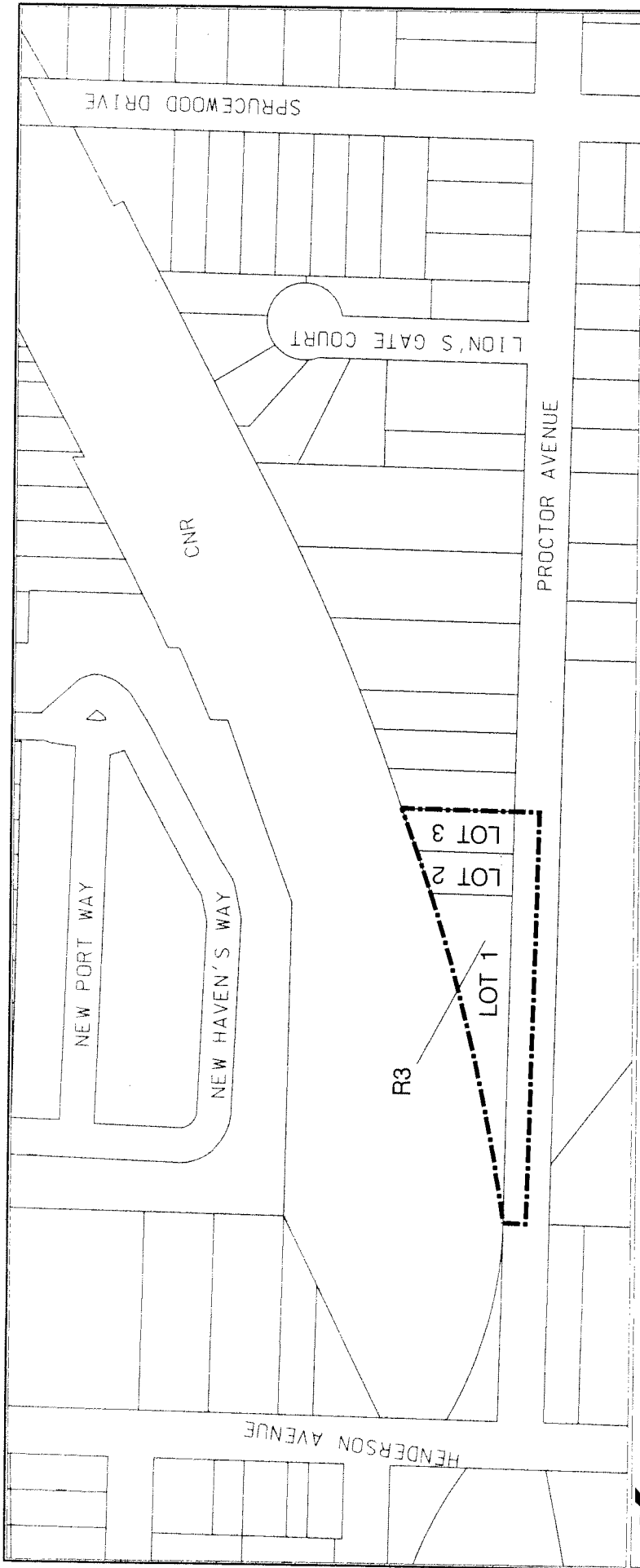
READ A FIRST, SECOND, AND THIRD TIME AND PASSED THIS  
1<sup>ST</sup> DAY OF MARCH 2011.

---

KIMBERLEY KITTINGHAM  
TOWN CLERK

---

FRANK SCARPITTI  
MAYOR



DEVELOPMENT SERVICES COMMISSION

# A BY-LAW TO AMEND BY-LAW 2237

THIS IS SCHEDULE 'A' TO BY-LAW  
PASSED THIS ..... DAY .....

MAYOR

CLERK

--- BOUNDARY OF AREA COVERED BY THIS BY-LAW

[ R3 ] THIRD DENSITY SINGLE FAMILY RESIDENTIAL

NOTE: 1) DIMENSIONS ARE IN METRES  
2) REFERENCE SHOULD BE MADE TO  
THE ORIGINAL BY-LAW LODGED IN  
THE OFFICE OF THE CLERK

SCALE 1:

**OFFICIAL PLAN**  
**of the**  
**TOWN OF MARKHAM PLANNING AREA**  
**AMENDMENT NO. XXX**

To amend the Official Plan (Revised 1987), as amended, and to incorporate  
Amendment No. 15 to the Thornhill Secondary Plan (PD 3-1)  
for the Thornhill Planning District (Planning District No. 3)

**(Proctor Investments Limited)**  
(Registered Plan 2368, Part of Lots 28, 29 and 30, Concession 1)

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PART I – INTRODUCTION  
(This is not an operative part of Official Plan Amendment No. XXX)



## **PART I – INTRODUCTION**

### **1.0 GENERAL**

- 1.1 PART I – INTRODUCTION, is included for information purposes and is not an operative part of this Official Plan Amendment.
- 1.2 PART II- THE OFFICIAL PLAN AMENDMENT constitutes Official Plan Amendment No. XXX to the Official Plan (Revised 1987), as amended and is required to enact Amendment No.15 to the Thornhill Secondary Plan (PD 3-1) for the Thornhill Planning District (Planning District No. 3). Part II is an operative part of this Official Plan Amendment.
- 1.3 Part III –THE SECONDARY PLAN AMENDMENT, including Schedule 'A', constitutes Official Plan Amendment No. XXX to Thornhill Secondary Plan (PD 3-1) for the Thornhill Planning District (Planning District No. 3). This Secondary Plan Amendment may be identified by the symbol PD3-1-15. Part III is an operative part of this Official Plan Amendment.

### **2.0 LOCATION**

The land subject to this Official Plan Amendment is 0.375 hectares (0.93 acres) in area and is located on the north side of Proctor Avenue, south of the CN Rail lands, west of Bayview Avenue and east of Henderson Avenue. The lands are legally known as Part of Lots 28, 29 and 30, Registered Plan Number 2368, Concession 1 and are municipally referred to as 34 Proctor Avenue.

### **3.0 PURPOSE**

The purpose of this Official Plan Amendment is to:

- Redesignate the subject lands from 'MEDIUM DENSITY HOUSING' to 'LOW DENSITY HOUSING' in the Thornhill Secondary Plan (PD 3-1).

### **4.0 BASIS OF THIS OFFICIAL PLAN AMENDMENT**

This Official Plan Amendment is intended to provide for the following development of the subject lands:

- Three single detached dwellings;
- A 20.0 metre wide open space buffer between the units and the CN Rail lands.

The proposed development is consistent with the policy intent of the Provincial "Places to Grow – Growth Plan for the Greater Golden Horseshoe 2006", as well as Regional, municipal and community goals including:

- Efficient use of existing municipal services and infrastructure;

- Housing types compatible with existing forms within the established neighbourhood;
- Connectivity with the existing transportation network;
- Efficient access to public services and amenities.

Furthermore, the proposed 'LOW DENSITY HOUSING' designation facilitates a site design which creates a pedestrian friendly streetscape and is compatible with adjacent residential development. The proposed development is considered to be acceptable on the subject lands for the following reasons:

- Conforms to the residential intensification policies of Section 2.13.1 (m) and (n) in the Official Plan (revised 1987) including:
  - Providing infill residential development on vacant land or underutilized lands in an existing neighbourhood;
  - The type, size and scale of the proposed development is compatible with adjacent development;
  - Infrastructure can support the development, and
  - The required parking can be accommodated on site.
- The proposal conforms to the policies of Section 5.4.3 of the Thornhill Secondary Plan with respect to the compatibility with the character of the surrounding community. The proposed development will be compatible in terms of density, height, built form, parking capacity and landscaping.

The proposed development presents a compatible development in an established residential neighbourhood by providing a consistent building form which is pedestrian friendly and promotes the efficient use of underutilized land.

**PART II – THE OFFICIAL PLAN AMENDMENT**  
(This is an operative part of Official Plan Amendment No. XXX)

## **PART II-THE OFFICIAL PLAN AMENDMENT**

### **1.0 THE OFFICIAL PLAN AMENDMENT**

- 1.1** Section 1.1.2 of Part II of the Official Plan (Revised 1987), as amended, is hereby amended by the addition of the number XXX to the list of amendments, to be placed in numerical order including any required grammatical and punctuation changes.
- 1.2** Section 1.1.3 (c) of Part II of the Official Plan (Revised 1987) as amended, is hereby amended by the addition of the number XXX to the list of amendments listed in the second sentence of the bullet item dealing with the Thornhill Secondary Plan PD3-1, for the Thornhill Planning District, to be placed in numerical order including any required grammatical and punctuation changes prior to the words "to this Plan".
- 1.3** Section 9.2.25 of Part II of the Official Plan (Revised 1987) as amended, is hereby amended by the addition of the number XXX to the list of amendments, to be placed in numerical order including any required grammatical and punctuation changes prior to the words "to this Plan".
- 1.4** No additional changes to the text or schedules of the Official Plan (Revised 1987), as amended, are being made by this Amendment. This Amendment is also being made to incorporate changes to Schedule 'AA' and the text of the Thornhill Secondary Plan (PD 3-1) for Thornhill Planning District (Planning District No. 3). These changes are outlined in Part III which comprises Amendment No.15 to the Thornhill Secondary Plan (PD 3-1).

### **2.0 IMPLEMENTATION AND INTERPRETATION**

The provisions of the Official Plan, as amended, regarding the implementation and interpretation of the Plan, shall apply in regard to this Amendment, except as specifically provided for in this Amendment.

This Amendment to the Official Plan (Revised, 1987) is exempt from the approval by the Region of York. Following adoption, notice of Council's decision will be given in accordance with the Planning Act, and the decision of Council is final, if a notice of appeal is not received before or on the last day for filing an appeal.

Prior to Council's decision becoming final, this Amendment may be modified to incorporate technical amendments to the text and schedule(s). Technical amendments are those minor changes that do not affect the policy or intent of the Amendment. For such technical amendments, the notice provisions of Section 7.13(c) of Part II of the Official Plan (Revised, 1987) shall not apply.

**PART III – THE SECONDARY PLAN AMENDMENT (PD 3-1-15)**  
**(This is an operative part of Official Plan Amendment No. XXX)**

### PART III – THE SECONDARY PLAN AMENDMENT (PD 3-1-15)

#### 1.0 THE SECONDARY PLAN AMENDMENT

(Amendment No.15 to the Thornhill Secondary Plan PD3-1)

The Secondary Plan (PD3-1) for the Thornhill Planning District is hereby amended as follows:

1.1 Schedule 'AA' – LAND USE PLAN is hereby amended by redesignating the lands on the north side of Proctor Avenue, south of CN Rail and east of Henderson Avenue from MEDIUM DENSITY HOUSING to LOW DENSITY HOUSING, as shown on Schedule 'A' attached hereto.

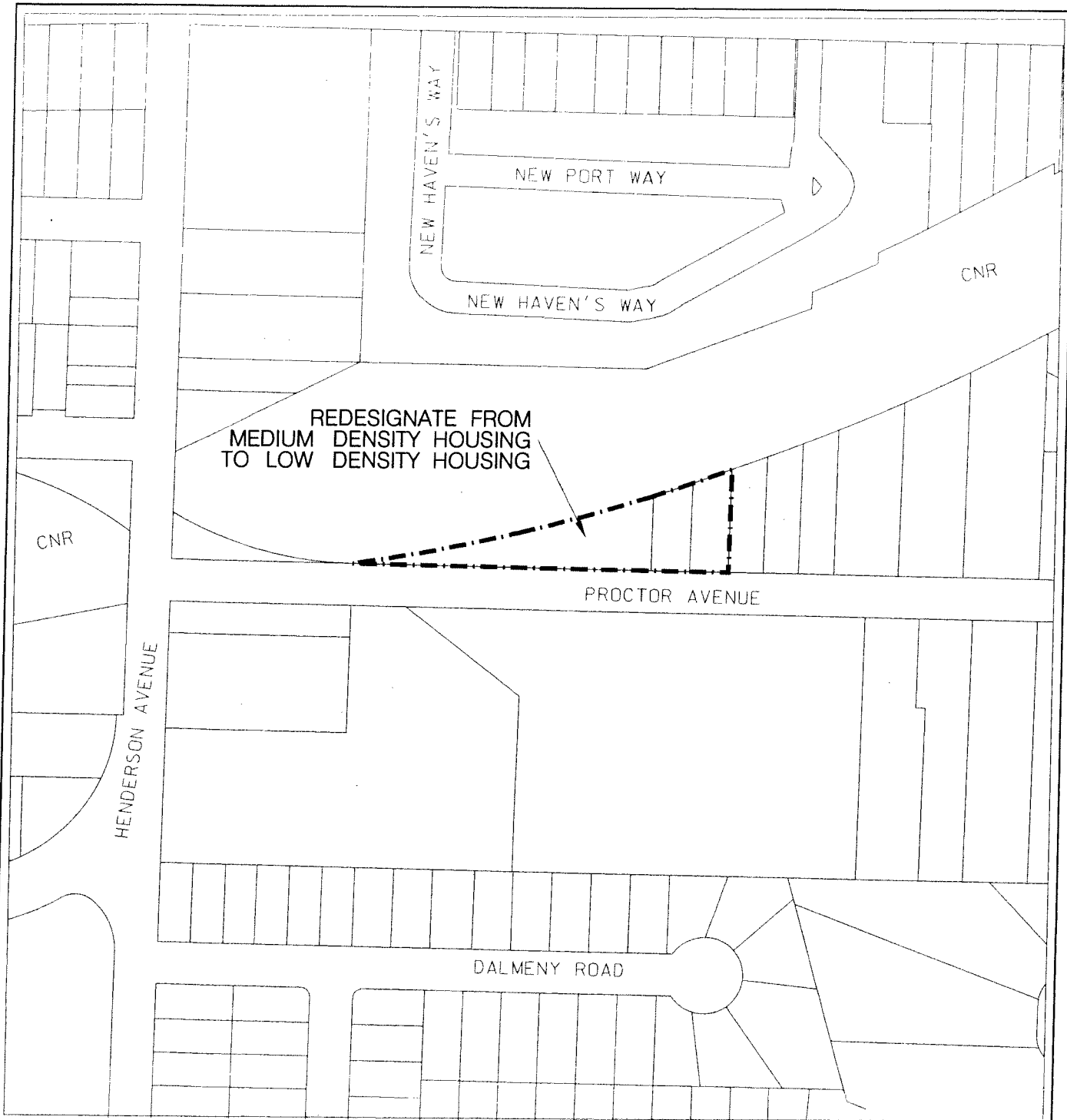
1.2 Section 5.6.7 (created by OPA No. 158) is hereby deleted in its entirety.

#### 2.0 IMPLEMENTATION AND INTERPRETATION

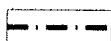
The provisions of the Official Plan, as amended, regarding the implementation and interpretation of the Plan, shall apply in regard to this Amendment.

This Amendment to the Official Plan (Revised, 1987) is exempt from the approval by the Region of York. Following adoption, notice of Council's decision will be given in accordance with the Planning Act, and the decision of Council is final, if a notice of appeal is not received before or on the last day for filing an appeal.

Prior to Council's decision becoming final, this Amendment may be modified to incorporate technical amendments to the text and schedule(s). Technical amendments are those minor changes that do not affect the policy or intent of the Amendment. For such technical amendments, the notice provisions of Section 7.13(c) of Part II of the Official Plan (Revised, 1987) shall not apply.



**AMENDMENT TO SCHEDULE 'AA'— LAND USE PLAN  
OF THE THORNHILL SECONDARY PLAN PD 3-1 FOR  
THE THORNHILL PLANNING DISTRICT No. 3**



BOUNDARY OF AREA COVERED BY THIS AMENDMENT



DEVELOPMENT SERVICES COMMISSION

SCHEDULE 'A' TO OPA No. XXX PD 3-1-15

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CHECKED BY:GD

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DATE:02/14/11

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