



2022-10-07

The Honourable Steve Clark  
Minister of Municipal Affairs and Housing

Ministry of Municipal Affairs and Housing  
College Park 17th Floor  
777 Bay Street  
Toronto, Ontario  
M7A 2J3

**Via Environmental Registry of Ontario (ERO) Number: 019-5732**

**Re: Hamilton Official Plan Amendment**

Dear Mr. Clark,

WSP has been retained and is acting on behalf of CN Rail (CN) and are pleased to have this opportunity to provide comments on the Hamilton Official Plan Review. On June 10<sup>th</sup>, 2022, WSP provided comments on the Official Plan Review with respect to matters of land use compatibility in relation to rail facilities and sensitive land uses. Comment submitted requested that consideration be given to the inclusion of policy language and definitions that specifically reflect the Provincial Policy Statement 2022 (PPS), which requires that new development on adjacent lands be compatible with, and supportive of, the long-term viability of the rail corridor, and should be designed to avoid, mitigate or minimize negative impacts on and from the corridor. On June 8, 2022, the City of Hamilton adopted By-law 22-145, the Urban Hamilton Official Plan Amendment (OPA No. 167) as part of the City's Official Plan Review, which represents the completion of the City's Phase 1: Conformity Review – Urban Focused Review and the GRIDS1/Municipal Comprehensive Review process. Following adoption, the City of Hamilton forwarded the Amendment to the Ministry of Municipal Affairs and Housing (MMAH) for approval.

We respectfully ask that the Ministry take into consideration CN's comments in reviewing and approving the OPA. Our comment letter to the City of Hamilton dated June 10<sup>th</sup>, 2022, is appended to this letter. The comments include recommended policy language that is intended to ensure that planning for land uses in the vicinity of rail facilities be undertaken in such a way that the economic function and long-term operation of rail systems is

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protected. Provincial policy sets out that sensitive land uses be appropriately designed, buffered and/or separated from rail facilities. The comments provided are intended to strengthen the City's growth management and land use compatibility policies.

Per comments provided to the City in our initial letter, we request further consideration be given to definitions and policies that specifically reflect the Provincial Policy Statement, 2020 (PPS).

We note the importance of including key definitions found directly in the PPS, including *Major Facilities*, *Rail Facilities*, and *Sensitive Land Uses*. By incorporating these terms into the glossary of the City of Hamilton's Official Plan, more clarity will be given with respect to developments surrounding rail lines, facilities, and yards.

Furthermore, we have request that all rail facilities along with their areas of influence (300 metres for a rail line, 1 kilometre for a rail yard) be included in certain OP schedules and appendices. Specifically, we recommend identifying all rail yard facilities and delineating buffer areas in "Appendix B – Major Transportation and Routes" and "Schedule E – Urban Structures". It is our opinion that the requested inclusions are an important step toward avoiding potential land use planning conflicts between Rail Facilities and sensitive land uses.

Following a review of the adopted Official Plan Amendment No. 167, we note that while E.5.2.7.1 includes some of our suggested policy language we recommend the inclusion of additional policy language per our initial comment letter to the City.

We note that the term "Heavy Industrial Use", which is referenced in policy E.5.2.7.1.b i), is not a defined term in the adopted OPA. As such, it is not clear what uses would be included under that term. We suggest that the defined term "major facilities", as utilized in the PPS, be used in-lieu. Furthermore, we continue to recommend that policy E.5.2.7.1 b) be relocated to "Chapter B – Communities" where the other land use compatibility policies are located, and that other policies relating to rail should be updated to ensure that any new development complies with PPS requirements for land use compatibility.

Section 4, subsections c), d) and e) of our initial letter to the City underscore the importance of incorporating the Ministry of the Environment, Conservation and Parks (MECP) D-6 Compatibility Between Industrial Facilities Guidelines. This includes the implementation of a 300-metre development setback from a rail yard for new or expanded residential development or other sensitive land uses, with study requirements from other land uses with 300 metres in accordance with the Federation of Canadian Municipalities and the Railway Association of Canada (FCM-RAC) Guidelines.

We ask that new or expanded residential development or other sensitive land uses not be permitted within 300 metres of a rail yard. CN's preference would be that, where sensitive land uses are contemplated to be expanded or introduced within 300 metres of a freight rail yard, a local Official Plan Amendment be required. Study requirements for other land



uses within 300 metres should be completed in accordance with the FCM-RAC Guidelines and MECP D-6 Guidelines.

In addition, all residential development of other sensitive land uses located between 300 metres and 1 km from a rail yard would be required to undertake land use compatibility studies, to the satisfaction of the Municipality and the appropriate railway operator. CN is aware of past settlements within the West Harbour Secondary Plan which contain such policy considerations addressing some of the lands surrounding the Stuart Street freight railyard. However, it is important for matters of land use compatibility that all of the lands surrounding the yard meet the same PPS requirements.

Other concerns that are not addressed in the Official Plan Amendment include that development applications must address provincial policy requirements (highlighted in detail in our initial letter) for development in proximity to a major facility. Additionally, policy direction does not clarify that new developments would be required to meet the PPS requirements with a specific focus on the long-term protection of Rail Facilities. Per our attached letter, we have provided 9 potential policies which would strengthen the City of Hamilton's Official Plan with respect to these concerns.

### **Conclusion**

CN requests that MMAH amend the adopted policies to include specific references to provincial land use compatibility policies, as outlined above.

Thank you again for your consideration of this letter and review of the City of Hamilton Official Plan Amendment. We look forward to continuing to work with MMAH and the City of Hamilton to ensure that this important industry is properly managed by the Province's land use framework. Please do not hesitate to contact me if you have any questions.

Yours very truly,

**WSP CANADA INC.**

A handwritten signature in black ink that reads "C. B. John-Baptiste". The signature is written in a cursive, slightly slanted style.

Chad B. John-Baptiste, MCIP, RPP

Director, Planning – Ontario

Copy: Katarzyna Sliwa, Dentons  
Eric Harvey, CN Rail



2022-06-10

Andrea Holland  
City Clerk

City of Hamilton  
71 Main Street West, 1st Floor,  
Hamilton, Ontario  
, L8P 4Y5.

Via email: [clerk@hamilton.ca](mailto:clerk@hamilton.ca)

**Re: Hamilton Official Plan Review**

Dear Ms. Holland,

Canadian National Railway (CN) is pleased to have the opportunity to participate in the Hamilton Official Plan Review. WSP has been retained and is acting on behalf of CN and are pleased to have this opportunity to provide comments on the Hamilton Official Plan Review. It is our understanding that the Public Open Houses was held on May 3, 2022, and a Public Meeting was held on May 17, 2022. We request that the comments herein be considered.

We recognize and understand that there is a growing Provincial emphasis on promoting the movement of people and goods by rail and incorporating greater integration of multimodal transportation and goods movement into land use and transportation system planning. Our comments focus on policies and/or infrastructure initiatives as they relate to existing and/or future CN facilities, operations and infrastructure. Specifically, the Provincial Policy Statement, 2020 (PPS) requires that new development on adjacent lands to existing corridors and transportation facilities be compatible with, and supportive of, the long-term purposes of the corridor and should be designed to avoid, mitigate or minimize negative impacts on and from the corridor and transportation facilities

Additional provincial guidance regarding land use compatibility between industrial and sensitive land uses is provided in the D-6 Guidelines. It is our opinion that rail yards are considered a major facility per the PPS and would be classified by the D-6 Guidelines as Class III Industrial Facilities because of their scale, adverse effects from the facility, and

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continuous operations. Per Section 1.2.6 of the PPS, major facilities and sensitive land uses should be planned and developed to **avoid** (emphasis added) and where avoidance is not possible, to minimize and mitigate potential adverse effects from odour, noise and other contaminants. Sensitive uses should be located in proximity to the major facility only in circumstances when the need for the use is established and when there are no reasonable alternative locations for the proposed use. Moreover, the D-6 Guidelines recommend that **no incompatible development** (emphasis added) should occur within 300 metres of a Class III facility. Further to the provincial policy test above, a feasibility analysis is required for any proposed sensitive land use within 1 kilometer of a Class III facility.

Furthermore, the Province of Ontario, through the Ministry of Transportation, has issued Freight-Supportive Guidelines that also speak to the need for appropriate land uses around freight facilities.

It is our opinion, supported by the PPS and the Ministry of Environment, Conservation and Parks' (MECP) D-6 Compatibility between Industrial Facilities Guidelines (D-6 Guidelines), that planning for land uses in the vicinity of *rail facilities* be undertaken in such a way that the economic function and long-term operation of rail systems is protected. Provincial policy sets out that sensitive land uses be appropriately designed, buffered and/or separated from rail facilities. It is our position that the City of Hamilton needs to incorporate policies that reflect the provincial guidelines pertaining to developments in proximity to rail corridors and facilities, and provide direction in the Official Plan to ensure a consistent implementation approach across municipalities.

The proposed policy document encompasses an area that contains CN rights-of-way . CN views these rights-of-way as Major Goods Movement Facilities and Transportation Corridors, as outlined in the PPS. In addition, CN has multiple freight rail yards within the City of Hamilton, including the Stuart Street Yard and Parkdale-Hamilton Yard These facilities are important to the Regional, Provincial and National economy. As such, the current and future operations of these facilities need to be protected from encroachment by sensitive land uses as per Provincial Policy. CN Rail views these freight rail yards as Major Facilities, as outlined in the PPS, and the Land Use Compatibility policies of the PPS apply to these facilities.

### **About CN, Railway Noise and other Adverse Effects**

CN is a federally regulated railway company, and is governed by various federal legislation, including the *Canada Transportation Act* (CTA) and the *Railway Safety Act* (RSA), among others. The CTA requires federally regulated railway companies to only make such noise and vibration as is reasonable. The test of reasonableness under the CTA takes into consideration the railway company's operational requirements and its level of service obligation under the Act, as well as the area where the construction or operation takes place. The Canadian Transportation Agency is the federal body that assesses the reasonableness of noise associated with the construction or operation of a federal railway company. In its decisions, the Canadian Transportation Agency has concluded that municipalities have a responsibility to assess compatibility issues before approving



housing developments in proximity to railway rights-of-way. The Canadian Transportation Agency also commented that where a municipality approves the development, it has a responsibility to ensure that the necessary mitigation measures are implemented. One example of such a decision is Decision No. 69-R-2014, dated February 27, 2014.

It is important to understand that there is no specific decibel limit for CN operations contained in federal guidelines related to the construction or operation of rail facilities. Those federal guidelines clearly state that, while the Agency may take provincial and municipal noise and vibration guidelines into account in its deliberations, the Agency is not bound by those guidelines.

Note that certain noises from a freight rail yard are stationary noise sources per the MECP Noise Guideline (NPC-300). In addition, the NPC-300 Class 4 area classification does not benefit federally regulated land uses as they are not subject to provincial regulation (see above) and as such should not be considered as the default approach for noise mitigation.

Rail Proximity Guidelines are available at the following: <https://www.proximityissues.ca/>

Guidelines for the Resolution of Complaints Over Railway Noise are available at the following: <https://otc-cta.gc.ca/eng/publication/guidelines-resolution-complaints-over-railway-noise-and-vibration/>

### **Preliminary Comments and Concerns**

In the City of Hamilton, CN operates several Freight Rail Yards that are an important component of the overall freight rail network in Canada. As such, any Official Plan policies relating to developments adjacent to or in proximity to rail rights-of-way are requested to incorporate reference to CN's infrastructure and the guidelines referenced above.

We note the following high-level comments and concerns with the Official Plan Review:

#### **1. General Acknowledgement**

Council acknowledges the importance of the rail infrastructure and recognizes its critical role in long-term economic growth and the efficient and effective movement of goods and people. Council shall ensure that the continued viability and ultimate capacity of the rail corridors and rail yards are protected and shall identify and support strategic infrastructure improvements such as targeted grade separations.

#### **2. Include a definition for Major Facilities, Major Goods Movement Facilities and Corridors, Rail Facilities and Sensitive Land Uses.**

We request that the following definitions found in the PPS be included in the Official Plan:

**Major facilities:** means facilities, which may require separation from sensitive land uses, including but not limited to airports, manufacturing uses, transportation infrastructure and corridors, rail facilities, marine facilities, sewage treatment facilities, waste management systems, oil and gas pipelines, industries, energy generation facilities and transmission systems, and resource extraction activities.

**Rail facilities:** means rail corridors, rail sidings, train stations, inter-modal facilities, rail yards and associated uses, including designated lands for future rail facilities.

**Sensitive land uses:** We note that sensitive land use is already a defined term in the Official Plan. We support the continued use of this term as defined in the Hamilton Official Plan.

**Major goods movement facilities and corridors:** means transportation facilities and corridors associated with the inter- and intra-provincial movement of goods. Examples include: inter-modal facilities, ports, airports, rail facilities, truck terminals, freight corridors, freight facilities, and haul routes and primary transportation corridors used for the movement of goods. Approaches that are freight supportive may be recommended in guidelines developed by the Province or based on municipal approaches that achieve the same objectives.

We note that this definition is intended to be added to the Official Plan. We are supportive of the decision to define 'Major goods movement facilities and corridors' within the Official Plan.

### **3. Add rail facilities and influence areas to a schedule.**

We recommend identifying rail facilities and the areas of influence (300 metres for a rail line, 1 km for a rail yard) in a schedule. Identifying the boundaries will reduce the uncertainty for planning and developing sensitive land uses, and it will help to identify and avoid land use conflicts for those areas.

While Appendix B – Major Transportation Facilities and Routes shows certain railyard facilities, proposed Schedule E - Urban Structure does not. Both Appendix B – Major Transportation Facilities and Routes and Schedule E - Urban Structure, should be amended to include the location of all the railyards within the City of Hamilton, including a delineation of the 300m buffer required for the Minimum Separation Distance and the 1km buffer for the Area of Influence.

### **4. Policy direction should clarify that new developments would be required to meet the Provincial Policy Statement requirements for land use compatibility with respect to major facilities.**

The PPS requires that sensitive land uses be developed in a way that avoids or mitigates the adverse effects of odour, noise, and other contaminants. We have reviewed policy E.5.2.7.1 b) related to land use compatibility and have concerns that it is not consistent with the PPS. Initially, the proposed policy is not located in the correct location in the Official Plan, it should be located in “Chapter B – Communities” where the other land use compatibility policies are located. Other concerns include as an example, the term “Heavy Industrial uses” is not a defined term. As such, it is not clear what uses would be considered a “heavy industrial use”. We suggest that the defined term “major facilities” as utilized in the PPS be used in-lieu. We are also concerned about the references to the land use designations in the draft policy. It is not clear whether a sensitive land use and/or major facility that is not located in the designations identified, would be subject to the land use compatibility policies.

To further strengthen the Official Plan’s conformity with these policies in the PPS, we recommend that policy E.5.2.7.1 b) be relocated in the Official Plan and revised completely to ensure that all new developments are required to meet the PPS requirements for land use compatibility. In addition, other policies related to rail contained in Chapter B should be updated as well. Suggested policy language is as follows:

- a) “*Major facilities and sensitive land uses* shall be planned and developed to avoid, or if avoidance is not possible, minimize and mitigate any potential adverse effects from odour, noise and other contaminants, minimize risk to public health and safety, and to ensure the long-term operational and economic viability of major facilities in accordance with provincial guidelines, standards and procedures and the Ministry of the Environment, Conservation and Parks guidelines. (PPS 1.2.6.1) as amended”
- b) “Where avoidance is not possible in accordance with the policy above, planning authorities shall protect the long-term viability of existing or planned industrial, manufacturing or other uses that are vulnerable to encroachment by ensuring that the planning and development of proposed adjacent sensitive land uses are only permitted if the following are demonstrated in accordance with provincial guidelines, standards and procedures:
  - a. there is an identified need for the proposed use;
  - b. alternative locations for the proposed use have been evaluated and there are no reasonable alternative locations;
  - c. adverse effects to the proposed sensitive land use are minimized and mitigated; and



- d. potential impacts to industrial, manufacturing or other uses are minimized and mitigated. (PPS 1.2.6.2).”
- c) Requiring that the planning and development of a sensitive land use near or adjacent to a major facility be done in accordance with the PPS and provincial guidelines, standards and procedures. Note that CN considers Freight Rail Yards to be a Class 3 Industrial Use as per the MECP’s D-6 Guidelines.
- d) New or expanded residential development or other sensitive land uses will not be permitted within 300 metres of a rail yard. An Official Plan Amendment shall be required to introduce or expand a sensitive land use within 300 metres of a freight rail yard. Study requirements for other land uses within 300 metres are to be completed in accordance with the Federation of Canadian Municipalities and the Railway Association of Canada (FCM-RAC) Guidelines and the MECP D-6 Guidelines.
- e) All residential development or other sensitive land uses located between 300 metres and 1000 metres of a rail yard will be required to undertake land use compatibility studies, to the satisfaction of the Municipality and the appropriate railway operator, to support the feasibility of development and, if feasible, shall undertake appropriate measures to mitigate any adverse effects that were identified.

## **5. West Harbour Secondary Plan Area**

While we recognize that the City wants to intensify the area surrounding the West Harbour GO Station, it’s located within the minimum separation distance of the Stuart Street freight railyard. As such, any development within the 300m distance of the railyard needs to address the PPS requirements for land use compatibility per Section 1.2.6 of the PPS, including the needs and alternatives requirements, and development within 1000 m needs to complete land use compatibility studies. CN is aware of the past settlements related to the West Harbour Secondary Plan, however, that settlement in CN’s opinion only applies to a portion of the lands around the yard and not all lands around the yard. In addition, the settlement does not eliminate the requirement to address the PPS obligations related to major facilities, major goods movement facilities and land use compatibility.

CN is supportive of development around the freight rail yard, provided that it is compatible with the rail facility and operations and any future expansions of the facility as permitted per federal legislation. As a result, it is CNs opinion that sensitive land uses should be prohibited in the vicinity of the yard, and that development applications must address provincial policy requirements for development in proximity to a major facility.

It should be noted that Volume 2 – Chapter B-6 Hamilton Secondary Plans in the draft Official Plan Review provides a version of the West Harbour Secondary Plan, dated September 2013, that is missing a number of policy amendments approved by the OMB. It was confirmed with City Staff via email correspondence on April 26, 2022, that the version of West Harbour (Setting Sail) Secondary Plan that is found within the Official Plan is not in force and effect and is meant as a placeholder.

**6. Policy direction should clarify that new developments would be required to meet the Provincial Policy Statement requirements for the long-term protection of Rail Facilities.**

While there are some existing policies in the Official Plan that reference rail and speak to matters such as adverse effects, there is no reference to the Federation of Canadian Municipalities and the Railway Association of Canada (FCM-RAC) Guidelines. The policies proposed below are recommended to be included in the City of Hamilton Official Plan to address requirements for developments in proximity to rail facilities:

- a) Evaluating, prioritizing and securing grade separation of railways and major roads, in cooperation with Transport Canada and the railways;
- b) Development in proximity to rail facilities shall be developed in accordance with the Guidelines for New Development in Proximity to Railway Operations prepared by the Federation of Canadian Municipalities and the Railway Association of Canada;
- c) Ensuring that noise, vibration and safety issues are addressed for all developments adjacent and in proximity to rail facilities;
- d) Sensitive land uses will not be encouraged adjacent or in proximity to rail facilities;
- e) All proposed residential or other sensitive use development within 300 metres of a railway right-of-way will be required to undertake noise studies, to the satisfaction of the Municipality, in consultation with the appropriate railway operator, and shall undertake appropriate measures to mitigate any adverse effects from noise that were identified. All available options, including alternative site layouts and/or attenuation measures, will be thoroughly investigated and implemented to ensure appropriate sound levels are achieved;
- f) All proposed developments within 75 metres of a railway right-of-way will be required to undertake vibration studies, to the satisfaction of the Municipality in consultation with the appropriate

railway operator, and shall undertake appropriate measures to mitigate any adverse effects from vibration that were identified;

- g) All proposed building setbacks shall be in accordance with the Federation of Canadian Municipalities and Railway Association of Canada Guidelines. As a general guideline, buildings shall be setback 30 metres with an appropriate berm abutting the rail right-of-way. Reduced setbacks can be considered in certain circumstances dependant on the proposed use and in conjunction with additional study and alternative safety measures, to the satisfaction of the Municipality in consultation with the appropriate railway operator;
- h) All proposed development adjacent to railways shall ensure that appropriate safety measures such as setbacks, berms, crash walls and security fencing are provided, to the satisfaction of the Municipality in consultation with the appropriate railway operator. Where applicable, the Municipality will ensure that sightline requirements of Transport Canada and the railway operators are addressed; and
- i) Implementation and maintenance of any required rail noise, vibration, and safety impact mitigation measures, along with any required notices on title such as warning clauses and/or environmental easements, will be secured through appropriate legal mechanisms, to the satisfaction of the Municipality and the appropriate railway operator.

## **7. Existing Rail Policies**

In addition to the general comments above that can be incorporated into the Hamilton Official Plan, further specific comments are noted below.

- a) Policy 3.6.3.14 of the current Official Plan prescribes that as determined by the City, a noise feasibility study or detailed noise study, or both, shall be submitted prior to or at the time of application submission for development of residential or other noise sensitive land uses on lands within 400 metres of a rail yard.

This policy is not consistent with the Provincial D-6 Guidelines. As noted above, the D-6 Guidelines recommend that no incompatible development should occur within 1km of a Class III facility.

- b) While CN is generally supportive of existing Policy 3.6.3.15, the use of the term proximity to railway lines or yards is vague. The Policy should be revised to include the 300 metre distance for the



Minimum Separation Distances and the 1 kilometre distance required for Area's of Influence.

- c) Policy 3.6.3.16 references appropriate safety measures such as setbacks, berms and security fencing. While positive, this Policy should include a reference to the 30 metres building setback, and not solely being directly adjacent to the rail facility.

### **Conclusion**

We would like to thank you again for the opportunity to participate in the City of Hamilton Official Plan Review. We look forward to continuing to work with the City of Hamilton throughout this process to ensure that this important industry is protected in the land use framework in Ontario. Please forward all future documents to [proximity@cn.ca](mailto:proximity@cn.ca) and the undersigned.

Thank your time and we look forward to receiving further information on this initiative.

Yours very truly,

**WSP CANADA INC.**

*C. B. John-Baptiste*

Chad B. John-Baptiste, MCIP, RPP

Director, Planning – Ontario

Copy: Katarzyna Sliwa, Dentons  
Eric Harvey, CN Rail