

大成 DENTONS

Katarzyna Sliwa
Partner

kat.sliwa@dentons.com
D 416.863.4628

Dentons Canada LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON, Canada M5K 0A1

dentons.com

October 6, 2022

File No.: 127446-1260

The Honourable Steve Clark
Minister of Municipal Affairs and Housing
College Park, 17th Floor
777 Bay Street
Toronto, Ontario
M7A2J3

Dear Mr. Clark:

**Re: Canadian National Railway Company (“CN”)
Halton Region 2051 Official Plan**

We are counsel for CN, with respect to the above-noted matter. On June 15, 2022, Halton Region (the “**Region**”) adopted its new Official Plan (the “**ROP**”). We respectfully ask that the Ministry of Municipal Affairs and Housing (“**MMAH**”) take into consideration the below comments, in reviewing and approving the ROP. The below comments are intended to strengthen the Region’s growth management and land use compatibility policies.

CN appreciates both the established and growing Provincial emphasis on promoting the movement of people and goods by rail and integrating multimodal goods movement into land use and transportation system planning. CN owns and operates a number of freight rail yards (inclusive of intermodal terminals) throughout the Region, across the Province of Ontario and beyond, with railway lines which run across Canada, and to the United States. These railway lines and freight yards are used to support the frequent bulk transfer of cargo, including dangerous goods, throughout Canada. The goods moving through the Region are essential to Ontario’s economy, as well as the economies of Canada and our neighbours to the south, more broadly.

CN appreciates the importance of housing, and the Province’s commitment to providing affordable housing through the More Homes for Everyone Plan. CN understands that there is an established and growing emphasis on providing and creating more affordability in the housing market. CN is concerned with compatibility issues as between rail and residential uses, and in ensuring that proper mitigation of noise, vibration and safety is addressed. Developers across Ontario have an obligation to protect future purchasers and homeowners when it comes to compatibility, and issues related to noise, vibration and safety, and should ensure that purchasers have access to a safe and enjoyable living environment. Mitigation measures must be properly implemented and compatibility between sensitive uses and the rail operations must be addressed.

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The coordination of land uses along railway corridors poses a unique set of challenges. The development of sensitive uses beside railway lines and rail yards, which experiences high traffic of train operations, leads to increased potential for conflict between the rail operations and adjacent land uses, and may result in safety issues on both sides. The Federation of Canadian Municipalities and The Railway Association of Canada Guidelines for New Development in Proximity to Railway Operations recommends that municipalities take a proactive approach to identifying potential land use conflicts. Sensitive uses should not be permitted within 300 metres of railway lines and within 1000 metres of rail yards.

CN actively participated in the ROP review process, leading to the adoption of the ROP and submitted the enclosed letters to the Region on July 6, 2021 and May 13, 2022, that identified CN's concerns with the draft ROP.

However, a number of key references to provincial policies were not included in the final draft, leaving the ROP open to interpretation in the lower-tier municipal Official Plans. This could result in inconsistencies in the application of the Province's direction throughout the Region and subsequently, the Province. We are concerned that the lack of clear direction in the ROP can create conflicts in land uses and potentially impede the efficient movement of goods throughout the Region.

The below are CN's comments on the growth management, land use and rail-specific policies, as they appear in the ROP, as adopted.

We are concerned that the revised policies did not implement the "needs and alternatives test" established by the Provincial Policy Statement, 2020 (the "PPS") when addressing land use compatibility, as CN had emphasized. As a result, the onus is placed on lower-tier municipalities to strengthen the land use compatibility policies in the lower tier Official Plans, and implement the needs and alternatives test from the PPS in these policy documents, rather than having a uniform approach across the Region laid out in the ROP. We have identified specific policies below that require further consideration in this regard. Where specific revisions are recommended, they are provided in red.

1. As it currently reads, policy 81.(6) provides direction to protect existing significant employment uses within Major Transit Station Areas ("MTSA") by ensuring land use compatibility with adjacent new developments. While this policy provides a good foundation to ensure that land use compatibility is achieved, land use compatibility is not specifically defined, nor is it clear how to address Employment areas adjacent to MTSA's. As such, this policy can be further strengthened by being modified as follows:

81.(6) To protect existing employment uses within **and adjacent to** Major Transit Station Areas by ensuring land use compatibility with adjacent new development is achieved. **New developments are required to meet the Provincial Policy Statement, 2020 requirements for land use compatibility and strong consideration should be given to non-sensitive land uses that provide a buffer to sensitive land uses.**

2. Policy 81.2(4)(f) should be amended to also reference the PPS policies to satisfy land use compatibility. The policy requires that the local municipality prepare detailed Official Plan policies or an Area-Specific Plan for an MTSA. The plan must achieve land use compatibility by ensuring that the development of sensitive land uses or major office uses, avoids, or where

avoidance is not possible, minimizes and mitigates adverse impacts on industrial, manufacturing, or other uses that are vulnerable to encroachment. Adding the additional reference to the PPS's land use compatibility policies will further enhance its conformity. As an example, the policy does not reference the 'Demonstration of Need' test and the alternatives test as required by the PPS. Suggested language is as follows:

81.2(4)(f) achieves land use compatibility, by ensuring that the planning and development of sensitive land uses or major office uses, avoids, or where avoidance is not possible, minimizes and mitigates adverse effects and potential adverse impacts on industrial, manufacturing or other uses that are vulnerable to encroachment, in accordance with Sections 79.3(12) and 83.2(7) of this Plan. **Where development is proposed in the vicinity of a Major Facility, the applicant must prepare a Land Use Compatibility Study in accordance with the Provincial Policy Statement, 2020 that outlines a demonstration of need and an assessment of alternatives, including giving strong consideration to buffering major facilities with a transitional land use.**

3. While policy 83.2 makes mention of prohibiting residential and other non-employment/sensitive uses, including major retail uses, in Employment Areas, the new PPS land use compatibility policies should be referenced. This will ensure that the land use compatibility requirements in the PPS have been recognized and implemented within the MTSA. We suggest the following changes to Section 83.2(2):

83.2(2) Plan for, protect and preserve the Employment Areas for current and future use. **Development in proximity to Major Facilities, including but not limited to new developments, are required to meet the Provincial Policy Statement, 2020 requirements for land use compatibility and strong consideration should be given to non-sensitive land uses that provide a buffer to sensitive land uses.**

4. Policy 83.2(7)(b) seeks to provide an interface between an Employment Area and adjacent mixed-use areas to maintain land use compatibility within MTSA's. The wording "adjacent mixed use areas" is vague and could be interpreted in conflicting ways (for example, does this comprise a stand-alone office building, a purely residential building or a building with a mix of uses). The policy should be amended to specifically recognize non-sensitive land uses, as a stand-alone use, as an alternative in an MTSA transitional area. By including this provision, non-sensitive land uses can be used to provide transitional uses and/or buffering between mixed use development and rail facilities. The suggested language is as follows:

83.2(7)(b) provide an appropriate interface between the Employment Area and adjacent non-employment areas to maintain land use compatibility. **Strong consideration should be given to transitional land uses that buffer the employment area; and[...]**

5. Policy 79.3(12) is recommended to be amended to encourage the development of non-sensitive land uses as a transition between major facilities and sensitive uses. As written, the policy does not provide direction on approaches to mitigate adverse effects. Given the potential adverse effects that may occur in sensitive uses, a clear statement regarding the development

of non-sensitive land uses will further help avoid and mitigate these concerns. The following is suggested:

79.3(12) Ensure the long-term operational and economic viability of existing or planned major facilities, and achieve land use compatibility between major facilities and sensitive land uses within or adjacent to Strategic Growth Areas in accordance with Section 143(12) of this Plan. **Strong consideration should be given to transitional land uses that buffer the major employment uses.**

6. In policy 77(5)(f.1), the use of the word “consideration” is not sufficient given the importance of the land use compatibility policies within these areas and the *Planning Act* requirement to be consistent with PPS policies. The policy should be revised as follows:

77(5)(f.1) shall address land use compatibility in accordance with the Provincial Policy Statement, 2020, Regional guidelines and the Ministry of the Environment, Conservation and Park's D-Series Guidelines.

CN respectfully 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. We look forward to continuing to work with MMAH and the Region. Please do not hesitate to contact me if you have any questions.

Yours truly,

Dentons Canada LLP

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Katarzyna Sliwa
Partner

Copy: Client

Encl. Letter to Mr. Dan Tovey, Manager, Halton Region dated July 6, 2021
Letter to Curt Benson, Director, Halton Region dated May 13, 2022

May 13, 2022

File No.: 127446-628

Sent via Email to: ropr@halton.ca

Mr. Curt Benson
Director
Planning Services
Halton Region
1151 Bronte Road
Oakville, Ontario
L6M 3L1

Dear Mr. Benson:

**Re: Canadian National Railway Company (“CN”)
Regional Municipality of Halton (“Halton” or “Halton Region”)
Regional Official Plan Review: Growth Concepts**

We are counsel for CN with respect to the above noted matter.

On April 21, 2021, Halton Regional Council passed a motion to develop its next Growth Concept that could accommodate growth to the year 2051, without expanding Halton’s existing settlement area boundary. The Preferred Growth Concept will be part of the Integrated Growth Management Strategy.

Regional Official Plan Amendment 49 (“**ROPA 49**”) will update the current Regional Structure to identify a hierarchy of strategic growth areas. The Growth Concepts will determine where and how the Halton Region will grow. The majority of population and growth will occur in these locations, including near the Milton GO Major Transit Station Area/Urban Growth Concept. Growth in these areas is reflected in each Growth Concept by varying rates of intensification of densification. Part of the framework for evaluating Growth Concepts is transit-supportive development.

Halton is aware that CN intends to build an Intermodal Logistics Hub (the “**Logistics Hub**”) on the CN lands in the Town of Milton (the “**Lands**”). In addition to the lands where the Logistics Hub is to be located, CN owns lands in the surrounding area of the approved Logistics Hub, including lands to the south of Britannia Road and west of Regional Road 25, in addition to lands south of the hub in the vicinity of Tremaine Road and Lower Base Line (the “**Land Holdings**”).

Halton is currently in the process of updating their Regional Official Plan (“**ROP**”), and the CN Logistics Hub is currently designated as an employment area in the ROP. The surrounding Land Holdings are currently designated as Agricultural, and are identified as Future Strategic Employment Areas.

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The current draft of ROPA 49 no longer proposes to expand the urban boundary until a future date. Despite this and based on the background work provided, approximately 1,000 hectares of new Employment land is being identified as required to address 2051 employment growth targets. All of the employment growth is currently proposed to be deferred until 2041. It is CN's position that lands around the Logistics Hub, and specifically the CN Land Holdings should be designated as Employment Area now, versus during a subsequent review process. That designation would not be necessary for CN's use of the lands for railway purposes but could be required for potential future third party uses.

Conclusion

A strong regulatory framework within the Regional Official Plan is necessary now to ensure land uses in proximity to the Logistics Hub and Land Holdings are compatible and to provide for the future growth of employment lands that have been identified by the Region. Furthermore, the designation of employment land uses on the CN Land Holdings and surrounding lands will benefit the Region's economy and be consistent with provincial policy objectives. Deferring the potential designation of the lands until a later timeframe in our opinion is unnecessary and will only serve to limit employment growth opportunities in the Region.

We look forward to continuing to work with the Region throughout this process. If you have any questions regarding the above, please do not hesitate to contact the undersigned.

Yours truly,

Dentons Canada LLP

DocuSigned by:

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Mary Ellen Bench
Counsel

MB/kv

Copy: Client



2021-07-06

Dan Tovey, Manager, Halton Region
Oakville, ON
1151 Bronte Road, L6M 3L1

Re: Draft Amendment No.48 to the Regional Official Plan – Preliminary Comment Letter on Behalf of CN Rail

Dear Mr. Tovey,

We are pleased to have the opportunity to participate in Halton Region's Regional Official Plan Review. It is our understanding that the Statutory Public Meeting was held on June 16, 2021 and comments are currently being received until June 23, 2021. While this deadline has passed, we believe that these comments should still be provided to Halton Staff and Council.

There is a growing Provincial emphasis on promoting the movement of people and goods by rail, and integrating multimodal goods movement into land use and transportation system planning. In particular, our focus is on policy and/or infrastructure initiatives with potential implications to our existing and/or future operations and infrastructure components. Provincial policy indicates that any planning for land uses in the vicinity of *rail facilities* (as defined in the Provincial Policy Statement, 2020) be undertaken so that the economic function and long-term operation of rail systems is protected. Provincial policy also sets out that sensitive land uses be appropriately designed, buffered and/or separated from rail facilities. More specifically, the 2020 Provincial Policy Statement (PPS) requires that sensitive land uses be planned and developed to avoid *major facilities*, which by definition includes *rail facilities*, and where avoidance is not possible, to minimize and mitigate potential adverse effects from odour, noise and other contaminants.

Provincial guidance on ensuring land use compatibility between industrial and sensitive land uses is provided by the D-6 Guidelines (developed by the Ontario Ministry of Environment, Conservation and Parks (MCEP)). It is our opinion that rail yards would be classified by the D-6 Guidelines as Class III Industrial Facilities because of their scale, sound profile and continuous operation. The D-6 Guidelines recommend that no incompatible development should occur within 300 metres of a Class III facility. In addition to the provincial policy test above, a feasibility analysis is required for any proposed sensitive land use within 300 metres of a Class III facility. The Province of Ontario has issued Freight-Supportive Guidelines that also speak to the need for appropriate land uses around freight facilities.

We note that the Province is currently consulting on new land use compatibility guidelines that integrate the Province's new approach to land use compatibility. CN reserves the right to update these comments accordingly once those guidelines are finalized. It is our position that the Region needs to incorporate policies that reflect the new PPS and provide direction based on these



guidelines in ROPA 48 to ensure a consistent approach to implementation across local municipalities.

About CN Rail, Railway Noise and other Adverse Effects

CN Rail 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. 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. 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. 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.

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

CN has multiple facilities in Halton Region; Aldershot, Oakville and a proposed intermodal facility Milton. 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 per Provincial Policy.

Preliminary Comments and Concerns

There are a number of high-level comments and concerns with the draft Regional Official Plan Review which are presented below.

1. Table 2B – Minimum Density Targets

As a general statement, it is not clear that land use compatibility has been fully assessed in advance of establishing the Density Targets proposed for the various MTSAs and other strategic growth areas. As such, it is not clear whether the density in these areas is fully achievable in the context of also addressing other PPS and Growth Plan policies, including addressing land use compatibility matters. In particular, the concern is that should this matter be deferred to local municipalities to address, the development of these strategic areas will not appropriately consider transitional land uses that could appropriately buffer Major Facilities. Furthermore, at this stage, opportunities exist to look at development approaches that not only achieve transit supportive development but also ensure the long term function of Employment Uses within or adjacent to employment areas and Major Facilities.

2. ROPA 48 should include further policy direction to clarify that new developments would be required to meet the PPS 2020 requirements for land use compatibility.



The PPS 2020 requires that sensitive land uses be developed in a way that avoids or mitigates the adverse effects of odour, noise, and other contaminants. To further strengthen the Regional Official Plan's conformity with these policies in the PPS, it is recommended that statements be added to several policies to ensure that new developments are required to meet the PPS requirements for land use compatibility.

As it currently reads, proposed policy 81(6) provides direction to protect existing significant employment uses within Major Transit Station Areas by ensuring land use compatibility with adjacent new developments. While this policy provides a good foundation to ensure that land use compatibility is achieved, land use compatibility is not specifically defined nor is it clear how to address Employment areas adjacent to MTSA's. As such, it can be further strengthened by being modified as follows:

“To protect existing significant employment uses within and adjacent to Major Transit Station Areas by ensuring land use compatibility with adjacent new development is achieved. New developments are required to meet the PPS requirements for land use compatibility and strong consideration should be given to non-sensitive land-uses that provide a buffer to sensitive land uses.”

Proposed policy 81.2(4)(f) also should make reference to the PPS 2020 policies to satisfy land use compatibility. The proposed policy requires that the local municipality prepare detailed OP policies or an Area-Specific Plan for an MTSA. The plan must achieve land use compatibility by ensuring that the development of sensitive land uses or major office uses, avoids, or where avoidance is not possible, minimizes and mitigates adverse impacts on industrial, manufacturing, or other uses that are vulnerable to encroachment. Adding the additional reference to the PPS 2020 land use compatibility policies will further enhance its conformity. As an example, the policy does not reference the Demonstration of Need test and the alternatives test as required by the PPS. Suggested language is as follows:

“achieves land use compatibility, by ensuring that the development of sensitive land uses or major office uses, avoids, or where avoidance is not possible, minimizes and mitigates adverse impacts on industrial, manufacturing or other uses that are vulnerable to encroachment, in accordance with Section 143(12) of this Plan. Where development is proposed in vicinity of a Major Facility, the applicant must prepare a Land Use Compatibility Study in accordance with the PPS that outlines a demonstration of need and assessment of alternatives, including giving strong consideration to buffering major facilities with a transitional land use”

3. Amend policies to permit and encourage the development of non-sensitive land uses to serve as a transitional buffer with sensitive land uses.

While the existing policy 83.2 makes mention of prohibiting residential and other non-employment uses including major retail uses in Employment Areas, we believe that there should be an additional reference to the new PPS land use compatibility policies. This



will ensure that the land use compatibility requirements in the PPS have been recognized and implemented within the MTSA. We suggest the following changes to Section 83.2(2):

“Plan for, protect and preserve the Employment Areas for current and future use. Development in proximity to Major Facilities, including but not limited to new developments are required to meet the PPS requirements for land use compatibility and strong consideration should be given to non-sensitive land-uses that provide a buffer to sensitive land uses.”

Policy 83.2(7)(b) seeks to provide an interface between an Employment Area and adjacent mixed-use areas to maintain land use compatibility within MTSAs. In our opinion, the wording “*adjacent mixed use areas*” is vague and could be interpreted in conflicting ways (i.e. does this comprise a stand-alone office building, a purely residential building or a building with a mix of uses?). We recommend that the policy be amended to specifically recognize non-sensitive land uses as a stand-alone use as an alternative in an MTSA transitional area. By including this provision, non-sensitive land uses can be used to provide transitional uses and/ or buffering between mixed use development and rail facilities. Suggested language is as follows:

“providing an appropriate interface between the Employment Area and adjacent mixed use areas to maintain land use compatibility. Strong consideration should be given to transitional land uses that buffer the employment area; and...”

Further, proposed policy 79.3(12) should also be amended to encourage the development of non-sensitive land uses as a transition between major facilities and sensitive uses. As written, the proposed policy does not provide direction on approaches to mitigate adverse effects. Given the potential adverse effects that may occur in sensitive uses, a clear statement regarding the development of non-sensitive land uses will further help avoid and mitigate these concerns. The following is suggested to be included at the end of the section:

“. . . Strong consideration should be given to transitional land uses that buffer the major employment uses”

4. Provide stronger language for existing Policy 77(5)(f.1)).

Existing Policy 77(5)(f.1)) states that:

It is regional policy to require local municipalities to prepare Area-Specific Plans or policies for major growth areas, including the development or redevelopment of communities. The area may contain solely employment lands without residential uses or solely an Intensification Area. Such plans or policies shall be incorporated by amendment into the Local Official Plan and shall demonstrate how the goals and objectives of this Plan are being attained and shall include; consideration for land use compatibility in accordance with Regional and Ministry of the Environment guidelines.



In our opinion, the use of the word “*consideration*” is not sufficient given the importance of the land use compatibility policies within these areas and the *Planning Act* requirement to be consistent with PPS policies. We recommend that the policy be altered to read:

“shall address land use compatibility in accordance with the Provincial Policy Statement, Regional guidelines and the Ministry of the Environment, Conservation and Park’s guidelines.”

5. Include a definition for major facilities and/or rail facilities.

There is currently no existing or proposed definition for rail facilities and/or major facilities. We recommend that the definition contained in the PPS 2020 be used.

6. Policy 143 (among others) needs to be updated to reflect new provincial direction on Land Use Compatibility.

The current land use compatibility policies in the Halton Region Official Plan are not consistent with the PPS 2020 policies related to land use compatibility. As an example, there is no reference to the Needs and Alternatives tests as outlined in the PPS 2020. This creates an important gap in the Regional Official Plan. Furthermore, this is an opportunity to provide Regional direction on key matters that go above the minimum policy requirements of the PPS 2020 to address such matters as defining these new policy tests at the Regional and Local level.

Conclusion

We would like to thank you again for the opportunity to participate in the Halton Regional Official Plan Review. We look forward to continuing to work with the Region 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 and the undersigned.:

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

Yours very truly,

WSP CANADA INC.

A handwritten signature in black ink that reads "C. B. John-Baptiste".

Chad B. John-Baptiste, MCIP, RPP
Director, Planning – Ontario

Copy: Eric Harvey, CN Rail
Ms. Katarzyna Sliwa, Dentons Canada LLP