

June 30, 2022

File No.: 127446-1268

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”)
Region of Peel 2051 Official Plan**

We are counsel for CN, with respect to the above-noted matter. On April 28, 2022, the Region of Peel (the “**Region**”) adopted its new Official Plan (the “**ROP**”). We respectfully ask the Ministry of Municipal Affairs and Housing (“**MMAH**”) to take into consideration the below comments, in approving the ROP. The 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 into the United States. These railway lines and freight yards are used to support the frequent bulk transfer of cargo, including dangerous goods, throughout Canada. These railway lines include connections into the MacMillan Yard, which is one of two of the largest freight rail yards in North America. The goods moving through Peel Region to and from the MacMillan Yard are essential to Ontario’s economy, as well as the economies of Canada and our neighbours to the south, more broadly.

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 Official Plan. CN submitted the enclosed letter to the Region on December 1, 2021, that identified concerns with the draft ROP. CN and its consultants subsequently met with staff on February 14th, 2022 to further discuss these concerns, and work collaboratively (including through further correspondence with Regional staff) to strengthen the ROP policies.

However, a number of key references to provincial policies were not included in the final draft, leaving the ROP open to the interpretation in lower-tier municipal Official Plans, which 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 Region's Official Plan can create conflicts in land uses and potentially impede the efficient movement of goods, throughout the Region and in particular the MacMillan Yard.

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

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. In addition, there is a lack of consistency in the manner in which the ROP policies require lower-tier municipalities to adhere to Provincial "standards and guidelines", as opposed to "policies and regulations", in addressing land use compatibility. As a result, the onus is placed on lower-tier municipalities to strengthen the land use compatibility policies in lower tier Official Plans, and implement the needs and alternatives test from the PPS in the 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 below.

5.3.3 Plan for major facilities and sensitive land uses to be appropriately designed, buffered and/or separated from each other to prevent adverse effects from odour, noise and other contaminants, minimize risk to public health and safety, **in accordance with the PPS**, and to ensure the long-term operational and economic viability of major facilities in accordance with the applicable provincial guidelines, standards and procedures.

5.6.16 ~~Encourage~~ **Require** the local municipalities to **plan for and** develop employment and industrial uses near and adjacent to major goods movement facilities and corridors, including highways, rail facilities, airports, haul routes, and major truck terminals, **and use major facilities to serve as a transition buffer with sensitive uses.**

5.6.17.9 Encourage the local municipalities to complete comprehensive planning for Strategic Growth Areas that:

e) ~~considers~~ **addresses** land use compatibility, in accordance with the PPS **and provincial guidelines**, standards, and procedures. **No sensitive land uses shall be permitted within Strategic Growth Areas, unless the PPS land use compatibility policies have been satisfied, including reviewing alternative locations.**

5.6.19.10 The local municipalities shall undertake comprehensive planning for Primary and Secondary Major Transit Station Areas to address the following matters to the satisfaction of the Region:

h) land use compatibility and the separation or mitigation of sensitive land uses in accordance with requirements of the PPS and provincial guidelines, standards and procedures. This shall include an assessment of the need for proposed sensitive land uses and alternative locations in the municipality.

n) land use in Major Transit Station Areas that overlap with Employment Areas which are identified on Schedule E-4 and subject to Policy 5.8.36.

Note: We recommend that policy 5.6.19.10 n) be more comprehensive to specifically address lands that are within an Major Transit Station Area (“MTSA”) and within the Area of Influence of a major goods movement facility and corridors or major facilities that are outside of the MTSA. This policy should acknowledge the policy requirement of protecting these facilities from adverse effects of sensitive land uses, in accordance with the PPS.

5.6.19.18 Until such time as the local municipality has established Major Transit Station Area policies in accordance with Section 16(16) of the *Planning Act*, R.S.O. 1990, c. P.13, and Policy 5.6.19.9, proposed Region of Peel Official Plan developments within a Major Transit Station Area identified on Schedule E-5 shall be reviewed with consideration to the objectives of this Plan to ensure the proposed development:

i) Avoids potential adverse effects to major facilities and sensitive land uses, and addresses land use compatibility in accordance with the PPS, provincial guidelines, and standards and procedures;

5.10.38.8 Support a safe and efficient railway network by:

a) Evaluating, prioritizing and securing grade separation of railways and major roads, in cooperation with Transport Canada and the railways; and

b) Requiring that the planning and development of a sensitive land use near or adjacent to a major facility be developed in accordance with the PPS and provincial guidelines, standards and procedures; and

~~b)~~ c) Ensuring that noise, odour, vibration and safety issues are addressed for development adjacent to railway corridors and terminal facilities.

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, and review of the Region of Peel's ROP. We look forward to continuing to work with MMAH and the Region to ensure that this important industry is properly managed by the Province's land use policy framework. Please do not hesitate to contact me if you have any questions.

Yours truly,

Dentons Canada LLP



Katarzyna Sliwa
Partner

Enclosure: Letter to Ms. Kathryn Lockyer, Regional Clerk, Region of Peel dated December 1, 2021

Copy: Client



December 1, 2021

Kathryn Lockyer, Regional Clerk
Regional Municipality of Peel
10 Peel Centre Dr., Suite A – 5th Floor
Brampton, ON L6T 4B9

Via email: regional.clerk@peelregion.ca

Re: Peel 2051 Regional Official Plan Review – October 1, 2021 Consolidation of the Peel Regional Official Plan – Preliminary Comment Letter on Behalf of CN Rail

Dear Ms. Lockyer,

We are pleased to have the opportunity to participate in Peel Region's Regional Official Plan Review. It is our understanding that Public Open Houses were held on October 26 and 27, 2021, and a Public Meeting of Regional Council was held on November 4, 2021. Comments were being received up until November 30, 2021. While this deadline has passed, we believe that these comments should still be provided to Durham Region Staff and Council.

There is an 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. In particular, our focus is on policy and/or infrastructure initiatives with potential implications to existing and/or future CN Rail facilities, operations and infrastructure. Provincial policy indicates that planning for land uses in the vicinity of *rail facilities*, as defined in the Provincial Policy Statement, 2020 (PPS), be undertaken in such a way 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 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, as developed by the Ontario Ministry of



Environment, Conservation and Parks (MECP). 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 and vibration profile, 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 was previously consulting on new land use compatibility guidelines that integrate the Province's new approach to land use compatibility, but this process was put on hold. CN Rail 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 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 Peel Region; Brampton Intermodal, Brampton Yard and Malport. 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

We note the following high-level comments and concerns with the draft Regional Official Plan Review and planned Major Transit Station Area (MTSA) policies:

- 1. Include a definition for Major Facilities and Sensitive Land Uses.**

There is currently no existing or proposed definition for Major Facilities, Rail Facilities, or Sensitive Uses in the Regional Official Plan. Additionally, Section 5.10.35.8 puts the responsibility of defining the term onto Mississauga and Brampton, which could lead to confusion and incongruous terms and usage.

We recommend that the definitions of Major Facilities and Sensitive Uses found in the PPS be included in the Regional Official Plan.

2. Review and reconsider the locations of several Planned MTSA's in proximity to rail facilities.

Several MTSA's are planned for areas that would create conflict with existing rail facilities. While the geographic points for the MTSA are more than 300 metres from the railyards, the 800 metre area around those points would be within the area set out by provincial guidelines. Some preliminary mapping by the Region has also suggested that the MTSA boundaries would be within 300 m of the rail facilities. The planned MTSA's in question are identified on the proposed draft Schedule Y7 as:

- QUE-11,
- QUE-12,
- 407-8,
- 407-9, and
- 407-10.

The PPS requires that sensitive land uses be planned and developed to avoid any potential adverse effects, and land uses must be planned to ensure the long-term operational and economic viability of major facilities in accordance with provincial guidelines, standards and procedures. The PPS outlines a test to demonstrate the situation in which avoidance is not possible, and this requires demonstrating amongst other matters that alternative locations have been evaluated and found that there are no reasonable alternative locations in addition to assessing mitigation.

In the case of QUE-11, QUE-12, 407-8, 407-9 and 407-10, we suggest that these planned MTSA's and the proposed policy direction by the Region of Peel do not address the PPS policy requirements. Specifically, while the proposed policies anticipate a future land use planning exercise to delineate these areas, identify land uses and determine densities, based on the material provided the development potential in these areas do not justify an MTSA designation as it is not clear that sensitive land uses are needed in these areas.

The proposed draft Regional Official Plan policies imply that sensitive land uses are an objective and/or requirement in all MTSA's (i.e. mixed use development and

permitting residential without an amendment to the Region's Official Plan), however, there has been no formal land use compatibility assessment per the PPS that demonstrates that sensitive land uses are feasible within the MTSAs outlined. Nor is there a formal requirement to complete a land use compatibility assessment per the PPS. We have reviewed the correspondence from the Ministry of Municipal Affairs (August 10th, 2021) and they specifically note that an MTSA can be developed with only employment uses. Furthermore, the PPS requires that when introducing a sensitive land use that a needs and alternatives test be completed, and based on the materials provided there are several reasonable alternative MTSAs that are not in proximity to a rail yard, and would be able to accommodate sensitive land uses.

Therefore, it is our opinion and recommendation that these MTSAs be removed from the draft Regional Official Plan. In lieu of removal, the above noted MTSAs should be considered employment only MTSAs and contain no sensitive land uses with specific policy direction from the Region to that effect.

3. The ROPA should include policy direction to clarify that new developments would be required to meet the Provincial Policy Statement requirements for land use compatibility

The PPS and Growth Plan requires that sensitive land uses be developed in a way that avoids major facilities. Sensitive land uses are only permitted if it can be demonstrated that there is a need for the use, that there are no reasonable alternatives and that impacts of adverse effects are mitigated. Adverse Effects may come from odour, noise, vibration, derailment in the case of rail and other contaminants. To further strengthen the Regional Official Plan's conformity with these policies in the PPS, we recommend 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 5.3.3 provides direction to plan for major facilities and sensitive uses noting that they be appropriately designed, buffered and/or separated from each other to prevent adverse effects from odours, noise and other contaminants. While this policy provides a good foundation to ensure that land use compatibility is achieved, it does not reflect the new language of the PPS.

We recommend that policy 5.3.3 be revised to read:

“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.”

Policy 5.8.31 and 5.8.32 should be amended to include stronger land use compatibility policies that meet the policy requirements of the PPS. Specifically, we suggest that Policy 5.8.32 be amended to include language that requires that major facilities and sensitive land uses avoid adverse effects and that alternative locations be assessed, as required by the PPS. As currently drafted, it is our opinion that these policies do not meet the requirements for land use compatibility as set out in the PPS.

Policy 5.10.36.9 concerning the railway network reads:

Support a safe and efficient railway network by:

- a) Evaluating, prioritizing and securing grade separation of railways and major roads, in cooperation with Transport Canada and the railways; and,
- b) Ensuring that noise, vibration and safety issues are addressed for development adjacent to railway corridors and terminal facilities.

This policy calls for the mitigation of adverse effects of major facilities and it can be strengthened to reaffirm PPS guidelines and reflect the priority to avoid land use conflicts with rail yards and other major facilities. We suggest the following language be inserted between a) and b), and b) be revised to include odour issues:

- a) Evaluating, prioritizing and securing grade separation of railways and major roads, in cooperation with Transport Canada and the railways; and,
- b) 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; and,
- c) Ensuring that odour, noise, vibration and safety issues are addressed for development adjacent to railway corridors and terminal facilities.

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

Policy 5.6.16 states that it is policy to:

Encourage local municipalities to develop employment and industrial uses near and adjacent to major goods movement facilities and corridors, including highways, rail facilities, airports, haul routes, and major truck terminals.

This policy provides direction to use non-sensitive land uses as a transitional buffer to major facilities. However, the language used in the ROP should be strengthened to take away uncertainty and to reference the proposed definition for major facilities and to relate it to the PPS. We recommend that the policy be altered to read:

“Require local municipalities to plan for and develop employment and industrial uses near and adjacent to major goods movement facilities and corridors and *major facilities* to serve as a transitional buffer with sensitive uses.”

5. Strengthen Strategic Growth Area land use compatibility policies.

Policy 5.6.17.9 e) states that it is policy to:

Encourage the local municipalities to complete comprehensive planning for Strategic Growth Areas that:

- e) considers land use compatibility;

This policy can be strengthened by requiring land use compatibility be addressed in accordance with the PPS, provincial guidelines, standards and procedures. We recommend the following language:

Encourage the local municipalities to complete comprehensive planning for Strategic Growth Areas that:

- e) addresses land use compatibility, in accordance with the PPS and provincial guidelines, standards and procedures. No sensitive land uses shall be permitted within Strategic Growth Areas unless the PPS land use compatibility policies have been satisfied, including reviewing alternative locations.

6. Strengthen Major Transit Station Areas land use compatibility policies.

Policy 5.6.19.13 provides policy direction for proposed development in Major Transit Station Areas, where the local municipality has not yet established Major Transit Station Area policies. The objectives of this policy do not include ensuring land use compatibility. We recommend that the following policy language be added:

Until such time as the local municipality has established Major Transit Station Area policies in accordance with Section 16(16) of the Planning Act, proposed developments within a Major Transit Station Area identified on Schedule Y7 shall be reviewed with consideration to the objectives of this Plan to ensure the proposed development:

- i) Avoids potential adverse effects to major facilities and sensitive land uses, and addresses land use compatibility in accordance with the PPS and provincial guidelines, standards and procedures.

Policy 5.6.19.9 h) states that it is policy to:

Direct the local municipalities to establish policies in their official plan and other implementation documents for each Major Transit Station Area delineated on Schedule Y7 to the satisfaction of the Region that addresses the following:

- h) land use compatibility and the separation or mitigation of sensitive land uses;

Policies in the Regional Official Plan should be consistent with or reference the PPS land use compatibility policy requirements. In our opinion, mitigation alone is not the sole test for land use compatibility as the PPS and Growth Plan both call for avoidance. Where avoidance is not possible, and no reasonable alternatives exist, minimization and mitigation should apply to both the sensitive land use and the industrial and/or major facility. We recommend that the policy be altered to read:

- h) land use compatibility per the requirements of the PPS and provincial guidelines, standards and procedures. This shall include an assessment of need for the proposed sensitive land uses and alternative locations in the municipality.

Policy 5.6.19.9 n) states that it is policy to address:

- n) land use in Major Transit Station Areas that overlap with Employment Areas which are identified on Schedule Y6 and subject to policy 5.8.32

We recommend that these policies be more comprehensive to specifically address lands that are within an MTSA and within the Area of Influence of a major goods movement facility and corridors or *major facilities* that are outside of the MTSA. This policy should acknowledge the policy requirement of protecting these facilities from adverse effects of sensitive land uses, in accordance with the PPS.

7. Include missing Major Transit Station Areas on draft Schedule Y6

In the case of the Major Transit Station Areas QUE-11, QUE-12, 407-8, 407-9 and 407-10, we recommend that these MTSA be identified on draft Schedule Y6. These MTSAs are located within Employment Areas and should be considered as Major Transit Station Areas Subject to a Flexible Employment Policy.



8. Add major facilities to a schedule.

The boundaries of the Urban Growth Area and the MTSA area of QUE – 2 shown in draft Schedules Y6 and Y7 respectively, potentially fall within the 300 metre Area of Influence of the Brampton Yard. The provincial guidelines, standards and procedures measures this distance from the property line of the industrial land use and this proximity and the ambiguity of the property line of the rail yard is a concern. These areas are already designated for urban growth and intensification, but intensification targets can be reached through non-sensitive uses, such as employment. Existing policies in the OP act to protect major facilities and reduce land use conflicts. However, there is no clear identification or way to identify this potential conflict in the Official Plan.

We recommend identifying rail facilities in a schedule of the Official Plan, such as on draft Schedules Y6 and Y7. Identifying their 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 that are already designated for intensification and growth.

Conclusion

We would like to thank you again for the opportunity to participate in the Peel 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.

Chad B. John-Baptiste, MCIP, RPP

Director, Planning – Ontario

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