



2022-12-21

The Honourable Steve Clark, Minister of Municipal Affairs and Housing

Provincial Land Use Plans Branch
13th Floor, 777 Bay Street
Toronto ON M7A 2J3

Via email: growthplanning@ontario.ca

Re: Review of A Place to Grow and Provincial Policy Statement – ERO 019-6177

Dear Minister Clark,

WSP has been retained and is acting on behalf of the Canadian National Railway Company (CN Rail or CN). We are pleased to have this opportunity to provide comments on the Review of A Place to Grow and Provincial Policy Statement – ERO 019-6177.

We recognize and understand the key outcomes of the **Review of A Place to Grow and Provincial Policy Statement** (the Review) are to develop a streamlined policy framework that is less complex, and more flexible that provides growth management tools to facilitate the provision of more housing units, while ensuring a range of mix of housing options, for all Ontarians. We support the goals of reducing duplication and clarifying policy overlaps between the Provincial Policy Statement and A Place to Grow: Growth Plan for the Greater Golden Horseshoe.

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 or Act) and the *Railway Safety Act* (RSA), amongst 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.

100 Commerce Valley Drive West
Thornhill, ON
Canada L3T 0A1

T: +1 905 882-1100
F: +1 905 882-0055
wsp.com



The Canadian Transportation Agency (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 Agency has concluded that municipalities have a responsibility to assess compatibility issues before approving housing developments in proximity to railway rights-of-way. The 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 that responds to a resident-issued complaints concerning noise and vibration along a rail right-of-way, is Decision No. 69-R-2014, dated February 27, 2014, where the Agency noted the lack of implementation of the FCM-RAC Guidelines by the Municipality to justify dismissing the complaint.

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 Agency guidelines are issued under the Act. 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*** in its rulings.

Note that certain noises from a freight rail yard are stationary noise sources as defined in the Province's MECP Noise Guideline (NPC-300). In addition, the NPC-300 Class 4 area classification does not benefit federally regulated land uses or residents in development subject to Class 4, as rail facilities are not subject to provincial regulation that protect Provincial facilities from the increase decibel limits permitted by Class 4 (see above). As such, NPC-300 should not be considered the default approach for noise mitigation near rail facilities.

Rail Proximity Guidelines are available at the following link:

<https://www.proximityissues.ca/>

Guidelines for the Resolution of Complaints Over Railway Noise are available at the following link:

<https://otc-cta.gc.ca/eng/publication/guidelines-resolution-complaints-over-railway-noise-and-vibration/>

Canadian National Railway, 2020 Sustainability Report

Freight rail has demonstrated that it can play a role in Enabling the Transition to a Low-Carbon Future. Some extracts from CN Rail's 2020 Sustainability Report are as follows:

- More Fuel Efficient: Trains, on average are 3 to 4 times more fuel efficient than trucks.
- Longer Hauls: 480 miles is the distance one train can move a ton of freight on one gallon of fuel. (Approx. 200 kilometres/litre)

- Avoids Congestion: One freight train can replace over 300 big trucks.

Connecting the GGH: A Transportation Plan for the Greater Golden Horseshoe (February 2022)

We also recognize that there is 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. As an example, “*Connecting the GGH: A Transportation Plan for the Greater Golden Horseshoe (February 2022)*” issued by the Ministry of Transportation includes “Efficiently Moving Goods” as one of the four inter-related themes. That same document further outlines a Strategic Goods Movement Network (SGMN) and states the following in Section 4.4:

“Utilize consistent design, engineering, operations, maintenance, and rehabilitation standards across the SGMN corridors, and **protect the corridors from adverse new development that undermines goods movement uses. This will build on best practices and well-established guidelines** such as the “*Freight-Supportive Guidelines*” and the Railway Association of Canada’s “*Guidelines for New Development in Proximity to Railway Operations*”. (Emphasis added)

The same document includes Map 6 which outlines the “Current, planned and conceptual Strategic Goods Movement Network elements”. The Map includes several existing and planned CN infrastructure as part of the SGMN, including but not limited to the MacMillan Yard in Vaughan, the Brampton Intermodal Terminal and the future Milton Logistics Hub, along with several CN railway lines that service these facilities and the rest of the Greater Golden Horseshoe (GGH). Finally, while this document is GGH focused, it is our opinion that the principles established within this document, as it relates to the movement of goods, are equally applicable across the Province of Ontario.

CN also 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.

Comments

Our comments focus on policies and/or infrastructure initiatives as they relate to existing and/or future CN Rail facilities, operations and infrastructure. We want to ensure that the specific policies within the Provincial Policy Statement, 2020 (PPS) and the Growth Plan

that requires that new development on adjacent/proximal lands are compatible with and supportive of, the long-term purposes of the corridor/rail facility and should be designed to avoid, mitigate or minimize negative impacts on and from the corridor are kept in any future policy framework.

Planning for land uses in the vicinity of *rail facilities* must be undertaken in such a way that the economic function and long-term operation of rail systems are protected. Provincial policy sets out that sensitive land uses be appropriately designed, buffered and/or separated from rail facilities. The Review speaks to streamlining and simplifying policies to allow for the potential conversion of employment lands to residential and/or mixed uses. Some employment lands are adjacent to or in the vicinity of rail facilities and it is our position that such locations are not appropriate for sensitive land uses, such as residential uses.

Streamlining and facilitating the conversion of employment land to residential or mixed-use with denser intensification will create increased instances of land use compatibility conflicts. We note that the Provincial guidance regarding land use compatibility between industrial and sensitive land uses is provided in the Ministry of the Environment, Conservation and Parks (MECP) D-6 Compatibility between Industrial Facilities Guidelines (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 continuous operation.

We recommend that the policy in Section 1.2.6 of the PPS be kept as it ensures major facilities and sensitive land uses 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 only be located in proximity to the major facility when the need for the use is established and when there are no reasonable alternative locations for the proposed use.

The D-6 Guidelines support and add further policy direction that **only compatible development** (emphasis added) should occur within 300 metres of a Class III facility. This 300-metre separation distance for rail yards is also reflected in the 2013 Guidelines for New Development in Proximity to Railway Operation, prepared for The Federation of Canadian Municipalities and The Railway Association of Canada (FCM-RAC). Further to the Provincial policy test above, a feasibility analysis is required for any proposed sensitive land use within 1 kilometre of a Class III facility. In 2016 the Province of Ontario, through the Ministry of Transportation, issued Freight-Supportive Guidelines that also speak to the need for appropriate land uses around freight facilities. In addition, we note that in May 2021, the Province issued an update to the MECP D-Series Guidelines that was subsequently rescinded. It is our opinion that the MECP D-Series Guidelines need to be updated to reflect new policy direction.

We recommend that as part of the Review, the Province considers including policy direction that ensures that municipalities incorporate policies relating to developments adjacent or in proximity to rail rights-of-way in their Official Plans and comprehensive Zoning By-laws. We also recommend the following high-level comments for consideration in the Review:

1. Require municipalities to include a General Acknowledgement policy in policy documents.

The Review provides policy language that requires municipalities to acknowledge 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. Municipalities should be required to ensure 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. Keep the PPS 2020 and Growth Plan Freight Supportive, Land Use Compatibility and Transportation Infrastructure Policies and enhance them further based on recent experience

We request that Section 1.2.6 and other related policies, such as but not limited to Section 1.1.3.2 (g), 1.6.7, 1.6.8, 1.6.9 and 1.8.1(d) remain within the PPS. Similarly, Sections 2.2.5.7(c), 2.2.5.8, 3.2.4 and 3.2.5 of the Growth Plan should remain. Furthermore, we provide the following recommendations:

- PPS Section 1.2.6.2 (a): The “needs” test is not well defined and is left to interpretation. Some have suggested that simply “needing” homes or other sensitive uses in the municipality is enough to satisfy this policy test. While at a macro level this is true, that should not mean at a micro level, as it relates to land use compatibility, that simply “needing” a use is enough to justify introducing a land use that can have adverse effects on the industry. The “needs” test should be revised to state “there is an identified need for the proposed use, ***in the context of land use compatibility...***”
- PPS Section 1.2.6.2 (b): The alternatives test has been interpreted multiple ways in the land use planning community. Some have suggested that alternatives are only within an undefined area of the community, others have suggested that it must only be within the adverse effects impact radius of the major facility. Clarity is needed here. We suggest that the test be revised to state that “alternative locations for the proposed use have been evaluated and there are no reasonable alternative locations ***within the municipality.***”

3. Keep the definitions 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 kept, and to include a policy direction for municipalities to include such definitions in their local policy documents:

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: means buildings, amenity areas, or outdoor spaces where routine or normal activities occurring at reasonably expected times would experience one or more adverse effects from contaminant discharges generated by a nearby major facility. Sensitive land uses may be a part of the natural or built environment. Examples may include, but are not limited to residences, day care centres, and educational and health facilities.

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.

4. Add a Provincial Policy that requires rail facilities and influence areas to be shown on municipal policy document schedules.

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

5. Add Provincial Policy that requires municipalities to add policies in their Official Plans and comprehensive Zoning By-laws that clarify that new developments would be required to meet the PPS requirements for the long-term protection of Rail Facilities.

The policies proposed below are recommended to be included in the PPS to address requirements for developments and infrastructure 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 (2013), 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 to, or in proximity to rail facilities;
- e) All proposed residential or other sensitive use developments 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 set back 30 metres, with an appropriate berm abutting the railway right-of-way. Reduced setbacks can be considered in certain circumstances dependant on the proposed use and in conjunction with additional studies 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.

6. Add Provincial Policy that requires municipalities to include policies in their Official Plans and comprehensive Zoning By-law to clarify that new developments would be required to meet the Provincial Policy Statement requirements for land use compatibility with respect to major facilities.

We recommend that the current PPS policies are kept. We also recommend that a policy that directs municipalities to conform with the PPS policies in their policy documents, and also requires that sensitive land uses be developed in a way that avoids or mitigates the adverse effects of odour, noise, and other contaminants. We recommend the following statements be added:

- 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, as amended (PPS 1.2.6.1).”
- 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 ***in the context of land use compatibility;***
 - b. alternative locations for the proposed use have been evaluated and there are no reasonable alternative locations ***in the municipality;***

- 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. CN Rail considers Freight Rail Yards to be a Class III 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 needed, shall undertake appropriate measures to mitigate any adverse effects that were identified.



Conclusion

We would like to thank you again for the opportunity to participate in the Review of A Place to Grow and Provincial Policy Statement – ERO 019-6177. We look forward to continuing to work with the Province 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. If there are any questions, we are happy to discuss this matter further.

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: Katarzyna Sliwa, Dentons
Eric Harvey, CN Rail
proximity@cn.ca