

June 29, 2022

File No.: 127446-1266

Mr. Christopher Raynor
Regional Clerk
The Regional Municipality of York
17250 Yonge Street
Newmarket, Ontario
L3Y 6Z1

Dear Mr. Raynor:

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

We are counsel for CN, with respect to the above-noted matter. We are writing to you further to our letter dated May 18, 2022. Please ensure that this letter and enclosed documents are provided to Council in advance to the June 30, 2022 meeting.

We respectfully request that York Region (the “**Region**”) take into consideration the comments submitted by CN, which are intended to strengthen the Region’s growth management and land use compatibility policies, prior to the adoption of the Official Plan. These comments have been previously provided to staff.

CN appreciates the opportunity to participate in the Region’s Official Plan (the “**ROP**”) review process, leading up to the June 2022 draft of the ROP. The enclosed letters dated March 31, 2022 and May 18, 2022 were submitted to the Region and identified concerns in the draft ROP, with particular regard for the MacMillan Yard in Vaughan. The Region demonstrated a willingness to strategically address many of CN’s comments, however, several key references to the Province’s land use policies were not included in the June 2022 draft, significantly limiting the clarity and effect of the ROP with respect to these matters.

Below are CN’s concerns regarding the growth management, land use and rail-specific policies in the June 2022 draft of the ROP.

The revised policies did not use language that implements the “needs and alternatives test” established by the Provincial Policy Statement, 2020 (“**PPS**”) when addressing land use compatibility, as CN had requested in previous comments. As a result, the onus is placed on lower-tier municipalities to strengthen the land use compatibility policies in their own Official Plans, and implement the PPS needs and alternatives test in lower tier Official Plans, rather than providing a uniform approach in the ROP, applicable across the Region. In addition, there are a number of outstanding issues related to the MacMillan Yard, and associated mapping. We have identified specific policies below that require further consideration in this regard.

Fernanda Lopes & Asociados ► Guevara & Gutierrez ► Paz Horowitz Abogados ► Sirote ► Adepetun Caxton-Martins Agbor & Segun ► Davis Brown ► East African Law Chambers ► Eric Silwamba, Jalasi and Linyama ► Durham Jones & Pinegar ► LEAD Advogados ► Rattagan Macchiavello Arocena ► Jiménez de Aréchaga, Viana & Brause ► Lee International ► Kensington Swan ► Bingham Greenebaum ► Cohen & Grigsby ► Sayarh & Menjra ► For more information on the firms that have come together to form Dentons, go to [dentons.com/legacyfirms](https://www.dentons.com/legacyfirms)

1. Policies 4.2.6 and 4.3.4 should be revised. Although changes were made to these sections which resulted in the capitalization of “Employment Areas”, the policies do not include clear reference to the Ministry of the Environment, Conservation and Parks D-6 Series Guidelines (the “**D-Series Guidelines**”) or reference to the needs and alternatives test outlined in the PPS. This section should be revised to include reference to both.
2. With respect to section 4.4 of the ROP we have the following comments.
 - a. Add the following policy to section 4.4: “That employment growth is an important component of intensification, and that employment/non-sensitive land uses are encouraged within strategic growth areas.”
 - b. Add the following policy to section 4.4: “Due to the importance of employment uses within the Region of York, intensification of sensitive land uses can only occur where it has been demonstrated that the long-term protection of employment uses in proximity to the strategic growth area has been demonstrated and that there are no adverse effects on the proposed sensitive land use or impacts on the employment use.”
 - c. Amend section 4.4.18 to include the proposed language in red: “That a wide range of residential, commercial and institutional uses, including retail uses, offices, mixed-use and human services be provided in strategic growth areas. **The introduction of sensitive land uses within a strategic growth area in proximity to major facilities can only occur where the land use compatibility requirements of the Provincial Policy Statement have been met, including demonstrating the need for the proposed use and that there are no reasonable alternative locations for the sensitive land use in the municipality. This is to ensure the long-term protection of employment uses in the Region.**”
 - d. Add the following to section 4.4.24 (and re-letter to reflect the new subsection appropriately): “**g.** That sensitive land uses are only permitted when it has been demonstrated that the long-term protection of employment uses/major facilities within or in vicinity of the strategic growth area, including the land use compatibility requirements of the Provincial Policy Statement. Specifically, the local municipality must demonstrate that there is a need and that there is no reasonable alternative location for the sensitive land use to be located in the municipality”.
 - e. Add the following to section 4.4.24 (and re-letter to reflect the new subsection appropriately): “**h.** The strategic placement of non-sensitive land uses as an appropriate buffer to employment uses within or in proximity of the strategic growth area”.
 - f. Add the following to section 4.4.10: “**g.** address the land use compatibility requirements in the Provincial Policy Statement.”
3. The following policy language be added to section 4.2 – Community Areas and/or 6.3 – Goods Movement: “To require local municipalities to plan for and develop employment and non-sensitive land uses near and adjacent to major goods movement facilities and corridors, that are major facilities, to serve as a transitional buffer with sensitive uses to ensure land use compatibility.”

4. Section 6.3.53 in the ROP reads as follows: “To discourage the location of land uses sensitive to noise and vibration and safety issues, in proximity to rail facilities, rail corridors and intermodal yards. Appropriate design and buffering from sensitive land uses is required to avoid issues of compatibility.”

We recommend that section 6.3.53 be revised to remove the reference to “Intermodal Yards”, for two reasons. First the proposed policy appears to consider freight rail lines as equivalent to freight rail yards. This is incorrect both as it relates to policy and operations of these types of facilities. Our suggested approach was to distinguish rail lines and rail yards, by adding a policy that related to rail facilities in general, and a separate policy that related to rail yards (i.e. a new section 6.3.54), which are Class 3 industrial uses per the D-Series Guidelines. See item 5. below for the proposed policy. The second reason is specific to the MacMillan Yard. Intermodal operations is only one component of the overall rail operations in the MacMillan Yard. Intermodal operations are not the main operation in the yard, and as such, referencing a “freight rail yard” is more appropriate to capture the breadth of operations that take place at the Macmillan Yard. We recommend that clarity be added to this policy to ensure that new developments meet the PPS requirements for land use compatibility.

5. Add the following section 6.3.54 and re-number the subsequent sections appropriately: “To avoid the location of sensitive land uses in proximity to major facilities (i.e. freight rail yards), that new or expanded sensitive land uses be prohibited within 300 m of major facilities. If a sensitive land use is proposed a local Official Plan Amendment will be required to address the following:
 - a. Require that the planning and development of sensitive land uses near or adjacent to major facilities be done in accordance with the PPS and provincial guidelines, standards and procedures, including assessing the need and alternative locations for the proposed sensitive land use,
 - b. Ensure that noise, odour, vibration, safety issues and other land use compatibility matters are addressed for development adjacent to rail facilities and corridors, and;
 - c. Ensure the long-term operation of the facility.”
6. Amend Map 11 to remove the Langstaff Road crossing as it relates to the MacMillan Yard. Additionally, all references to the Langstaff Road Crossing in the draft ROP and the 2022 Transportation Master Plan Update should be removed.
7. CN recommends that the Region review and reconsider the locations, and/or restrict sensitive uses within, several planned Major Transit Station Areas (“**MTSAs**”) located in proximity to CN Rail facilities as the proposed MTSAs would create conflict with the MacMillan Yard. These MTSAs include:
 - a. MTSA 56 – Creditstone BRT Station
 - b. MTSA 60 – Keele BRT Station
 - c. MTSA 72 – Langstaff BRT Station
 - d. MTSA 75 – Pennsylvania BRT Station
 - e. MTSA 76 – Springside BRT Station
 - f. MTSA 77 – Vaughan Mills BRT Station

CN's suggestion is that these MTSA be removed, and/or sensitive uses not be permitted within the proposed MTSA's. The existing employment policy framework can appropriately address future non-sensitive land use growth in these areas. Alternatively, CN requests that the boundaries of the MTSA's be shaped such that the MTSA's do not encroach on the 300 metre setback from the MacMillan Yard. MTSA's do not need to include residential uses, within the mixed uses that can be included, particularly in areas that are primarily employment areas and are in proximity to major facilities, such as the MacMillan Yard. Including residential uses within MTSA's in proximity to major facilities will result in land use compatibility issues, including complaints to the City from future residents.

8. Amend Map 1B to identify major goods movement facilities, corridor boundaries and areas of influence.

CN respectfully requests that Regional Council amend the draft policies to include specific references to provincial land use compatibility policies and other applicable guidelines, as per the above, prior to the adoption of the Official Plan.

Thank you again for your consideration of this letter and previous submissions. We look forward to continuing to work with the Region to ensure that this important industry is properly managed by the Province's land use framework. If you have any questions, please do not hesitate to contact the undersigned.

Yours truly,

Dentons Canada LLP



Katarzyna Sliwa
Partner

Copy: Client

Encl. Letter to Mr. Christopher Raynor, Regional Clerk, York Region dated March 31, 2022
Letter to Mr. Christopher Raynor, Regional Clerk, York Region dated May 18, 2022

May 18, 2022

File No.: 127446-628

SENT VIA EMAIL TO: regionalclerk@york.ca; futureyork@york.ca; haydi.wong@york.ca

Mr. Christopher Raynor
Regional Clerk
The Regional Municipality of York
17250 Yonge Street
Newmarket, Ontario
L3Y 6Z1

Dear Mr. Raynor:

**Re: Canadian National Railway Company (“CN”)
The Regional Municipality of York (the “Region” or “York Region”)
York Region’s 2051 Regional Official Plan Review**

We are counsel for CN with respect to the above noted matter. Kindly ensure that this correspondence is provided to the Regional Council Members in advance of the Special Regional Council Meeting on May 18, 2022.

I am writing further to WSP’s letter to you, on behalf of CN, dated March 31, 2022 (enclosed), that was provided during the comment period.

As you know, CN owns and operates a number of freight rail yards (including intermodal terminals) located throughout the Greater Toronto and Hamilton Area, with railway lines, which run through the Region. These railway lines and freight yards are used to support the frequent bulk transfer of cargo, including dangerous goods throughout Canada. The rail lines include connections to the MacMillan Yard, being one of the largest rail freight yards in North America. In addition, where CN has divested of rail lines to other operators, CN often maintains “running rights” to carry freight on those lines when needed to serve customers.

The MacMillan Yard is an industrial rail yard, operating 24 hours per day, seven days per week. It is a Class 3 Industrial Facility, as defined in the Ministry of the Environment, Conservation and Parks’ D-Series Guidelines (the “**D-Series Guidelines**”). The MacMillan Yard is strategically located to connect customers to eastern and western Canada, as well as, major rail hubs in the United States, while also servicing freight needs in the Greater Toronto Area. Annually over 1 million cars (loads and empties) are processed in the MacMillan Yard. The planned upgrades to the pullback track will increase the number of cars processed in the MacMillan Yard to 2 million annually. Operations at the MacMillan Yard include, but are not limited to:

- Operation and idling of diesel locomotives and trucks;
 - Locomotives idling anywhere in the yard; possibly multiple locomotives;
- 24 hour per day artificial lighting;
- Loading, unloading, and switching of rail cars;
- Bulk transfer of cargo, including dangerous goods;
- Shunting / yard switching - involves rolling railcars through the yard down tracks. Cars will roll into the standing cars to be coupled together;

- Stretching - involves pulling the slack out of a string of cars;
- Coupling/uncoupling of sections of railcars into and out of different tracks;
- Sorting and classification of cars (utilizes the pullback track, the Belt Pack Locomotive Control system and Hump Process Control system);
- Intermodal Transport:
 - Freight forwarders (deliveries less than a truck load);
 - Auto Compound (for car dealerships);
 - metal distribution; and,
 - paper transfer facility;
- Bells, horns, whistles;
- Moving of trains;
- Moving of locomotives;
- Throttling of engines;
- Vehicle traffic- back up alarms;
- Brake squeal;
- Wheel squeal;
- Various activities related to the maintenance and repair of rail and other equipment;
- Various activities related to inspections of locomotives and cars;
- Repairs of cars and locomotives;
- Locomotive load testing - high rev testing of locomotive power systems; and/or,
- Bulk transfers of grain, metals, plastic beads (CargoFlo – Transfer and specialized handling of “flowables”) - heavy equipment, pumps, air compressors, forklifts, and trucks.

The nature of the operations at the MacMillan Yard, and their associated noise and other emissions, are wholly incompatible with sensitive uses. Sensitive uses should not be permitted within 300 metres of the MacMillan Yard. The area of influence, where developments need to be studied and appropriate mitigation measures implemented, for the MacMillan Yard is 1000 metres.

The coordination of land uses along railway corridors poses a unique set of challenges. The development of sensitive uses beside a rail yard, which experiences high traffic of train operations, leads to the increased potential for conflicts between the rail operations and adjacent land uses. The Federation of Canadian Municipalities and the Railways Association of Canada Guidelines (the “**FCM-RAC Guidelines**”) recommend that municipalities take a proactive approach to identifying potential land use conflicts.

CN appreciates that the Region has addressed some of CN's comments, including by adding Policy 2.3.1.11 which addresses part of the land use computability test in the Provincial Policy Statement, 2020 (the “**PPS**”) and adding in the definition of Major Facilities. However, CN still has concerns with respect to the updated draft Regional Official Plan, dated May 2022 (the “**ROP**”).

On behalf of CN, we appreciate the opportunity to provide comments on the ROP. CN has reviewed the ROP, and has the following comments. These comments are also expanded on, in the enclosed letter from WSP, dated March 31, 2022.

1. Revise Policy 2.3.1.11 to include reference to the needs and alternatives test, which is included as part of the land use compatibility test in the PPS. Currently, this policy only references half of the land use compatibility test as outlined in the PPS, therefore not meeting the entirety of the requirements of the PPS.

2. Policies 4.2.6 and 4.3.4 should be revised. Although changes were made to this section which resulted in the capitalization of “Employment Areas”, it does not include clear reference to the D-Series Guidelines or reference to the needs and alternatives test. This section should be revised to include reference to both.
3. Policy 4.4.3 – Please see our enclosed letter with respect to our comments relating to Policy 4.4.3.
4. Policy 6.3 – The comment matrix, which was included as Attachment 2 to Agenda Item f.2.1 ‘Draft Regional Official Plan Consultation Update and Statutory Public Meeting’, states that this change was supported. However, it is not clear in the updated ROP that this change was supported.
5. Policy 6.3.3 – The comment matrix, which was included as Attachment 2 to Agenda Item f.2.1 ‘Draft Regional Official Plan Consultation Update and Statutory Public Meeting’, states that this change was addressed. However, it is not clear in the updated ROP how this comment was addressed.
6. Policy 6.3.4.2 (Revise Policy 6.3.4.2 to remove reference to “Intermodal Yards” and the proposed new policy requested by CN). CN recommends that clarity be added to this policy to ensure that new developments are required to meet the PPS requirements for land use compatibility. By requiring a local Official Plan Amendment to permit sensitive land uses near a Major Facility, this ensures that adequate noise, vibration and safety mitigation measures are implemented into the development. It also ensures that this is a public policy decision and not merely an implementation decision through zoning. As noted previously, the PPS requires that sensitive land uses avoid Major Facilities. Therefore, it is a public policy decision to introduce new sensitive land uses near Major Facilities, in addition to an implementation decision. Further, there are two reasons for the request to remove the reference to intermodal. The first is that the proposed policy appears to consider freight rail lines to be equivalent to freight rail yards, which is not the case in policy and in the operations of the facilities. Our suggested approach was to distinguish rail lines and rail yards by having a policy that related to rail facilities in general and a separate policy that related to rail yards, specifically as Class 3 industrial uses (i.e. a new 6.3.4.3). The second reason is with respect to the Macmillan yard, intermodal operations is only one component of the overall rail operations in the yard. Intermodal operations is not the main operation in the yard, and as such, referencing a “freight rail yard” is more appropriate to capture the breath of operations that take place in Macmillan Yard.
7. CN recommends that the Region review and reconsider the locations of several planned Major Transit Station Areas (“**MTSAs**”) which are located in proximity to CN Rail facilities, as the proposed MTSAs would create conflict with the MacMillan Yard. These MTSAs include:
 - a. MTSA 57 – Creditstone BRT Station
 - b. MTSA 61 – Keele BRT Station
 - c. MTSA 73 – Langstaff BRT Station
 - d. MTSA 76 – Pennsylvania BRT Station
 - e. MTSA 77 – Springside BRT Station
 - f. MTSA 78 – Vaughan Mills BRT Station

CN's suggestion is that these MTSA be removed as the existing employment policy framework can appropriately address future non-sensitive land use growth in these areas. Alternatively, CN

requests that the boundaries of the MTSAs be shaped such that the MTSAs do not encroach on the 300 metre setback from the MacMillan Yard. CN suggests that all MTSAs do not necessarily need to include residential uses, particularly in areas that are primarily employment areas and are in proximity to major facilities, such as the MacMillan Yard.

8. Map 1A - The comment matrix, which was included as Attachment 2 to Agenda Item f.2.1 'Draft Regional Official Plan Consultation Update and Statutory Public Meeting', states that CN's suggestion to designate the pullback track lands as Employment Area was supported. However, the schedules were not included in the updated ROP, and as such, we were unable to review the changes that were made. CN looks forward to having the opportunity to review the Schedules.
9. Map 1B - The comment matrix, which was included as Attachment 2 to Agenda Item f.2.1 'Draft Regional Official Plan Consultation Update and Statutory Public Meeting', states that CN's suggestion to identify major goods movement facilities and corridors boundaries and area of influences on the map were supported. Again, the schedules were not included in the updated ROP, and as such, it remains unclear what changes were made. CN looks forward to having the opportunity to review the Schedules.
10. Map 11 - The comment matrix, which was included as Attachment 2 to Agenda Item f.2.1 'Draft Regional Official Plan Consultation Update and Statutory Public Meeting', states that the connecting Langstaff Road from Creditstone Road to Keele Street across the active operational area of the MacMillan Yard was removed. However, the schedules were not included in the updated ROP, and as such, it remains unclear what changes were made. CN looks forward to having the opportunity to review the Schedules.

We look forward to continuing to work collaboratively with the Region to address the above considerations. Should 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

Enclosures: Letter from WSP to Chris Raynor, dated May 31, 2022

Copy: Client



March 31, 2022

Chris Raynor, Regional Clerk

Regional Municipality of York
17250 Yonge Street
Newmarket, ON L3Y 6Z1

Attn: Chris Raynor, Regional Clerk

Via email: futureyork@york.ca; regionalclerk@york.ca, transportation@york.ca

**Re: York 2051 Regional Official Plan Review – December 1, 2021, Consolidation of the Draft York Region Official Plan
York Region 2022 Transportation Master Plan Update – February 10, 2022
Preliminary Comment Letter on Behalf of CN Rail**

Dear Mr. Raynor,

WSP has been retained and is acting on behalf of CN Rail and are pleased to have this opportunity to provide comments on the York Region's Regional Official Plan Review and the recently released update to the York Region's Transportation Master Plan. We are providing comments on both initiatives given the relationship between the two. It is our understanding that an Online Open House was held on January 25, 2022, and the Statutory Open House and Public Meeting is expected to be held in May 2022. We also understand comments are being received until March 31, 2022, and request that these comments be circulated to York Region Staff and Regional Council. We request that the comments herein be considered.

We recognize and understand 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. Our comments focus on policies and/or infrastructure initiatives as they may impact existing and/or future CN Rail facilities, operations and infrastructure.

It is in our opinion, supported by Provincial Policy direction such as the Provincial Policy Statement, 2020 (PPS) and the D-6 Compatibility between Industrial Facilities Guidelines (D-G 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. Specifically, the PPS requires that sensitive land uses be planned and developed to ***avoid*** (emphasis added) *major facilities*, which, by definition, includes *rail facilities*, and where avoidance is not possible, to minimize and mitigate

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potential adverse effects from odour, noise and other contaminants only when the need for the use is established and when there no reasonable alternative locations for the proposed use.

Additional provincial guidance regarding land use compatibility between industrial and sensitive land uses is provided in 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, and continuous operation. 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. 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 has consulted with stakeholders on developing new land use compatibility guidelines that would integrate the Province's new approach to land use compatibility; however, this process was put on hold. CN Rail reserves the right to update these comments accordingly once those guidelines are finalized.

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.

In addition to the federal guidelines related to railway noise, the Rail Proximity Guidelines are available at the following: <https://www.proximityissues.ca/>

Preliminary Comments and Concerns

CN has freight rail facilities in York Region, specifically the MacMillan Yard located in the area north of Highway 407 between Jane Street and Keele Street and includes the pullback track north of Rutherford Road. This facility is important to the Regional, Provincial and National economy and is one of the largest classification rail yards in North America. As such, the current and future operations of these facilities need to be protected from



encroachment by sensitive land uses. CN also owns various main line rail facilities throughout York Region used for passenger travel (GO Transit) and Freight Rail operations

We recommend the Region's new Official Plan incorporate policies that reflect the new PPS and provide direction to ensure a consistent approach to implementation across all of the local municipalities.

It is important to stress and understand that with the anticipated population and employment growth for the Province, York Region and local municipalities, that there is also added growth pressures on the freight rail network to accommodate more freight rail traffic to support the regional, provincial and national economy. Therefore, the consideration of growth in the community must also consider the subsequent growth in freight rail traffic and the added impacts that come from freight rail traffic increasing within the Region generally and specifically at MacMillan Yard. Currently the York Region Official Plan and Transportation Master Plan do not substantially address growth requirements for the freight rail and freight rail yards.

We note the following comments and concerns with the draft Regional Official Plan and Transportation Master Plan. Our comments generally revolve around the importance of considering land use compatibility early in the land use planning process and particularly as part of intensification initiatives:

1. Review and reconsider the locations of several Planned Major Transit Station Areas (MTSAs) in proximity to rail facilities.

Several MTSAs are planned for areas that would create conflict with the MacMillan Yard. 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. The planned MTSAs in question are identified on the proposed Appendix 2 – York Region Major Transit Station Areas and Map 1B:

- MTSA 57 – Creditstone BRT Station
- MTSA 61 – Keele BRT Station
- MTSA 73 – Langstaff BRT Station
- MTSA 76 – Pennsylvania BRT Station
- MTSA 77 – Springside BRT Station
- MTSA 78 – Vaughan Mills BRT Station

The PPS requires that *major facilities* and *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 policy test to demonstrate in a situation where avoidance is not possible,



and this requires demonstrating need and that alternative locations have been evaluated and found that there are no reasonable alternative locations.

We suggest that, in the context of how the MTSA policies are currently written, York Region has not given firm direction to ensure that major facilities within or outside these planned MTSA's will be protected from sensitive land uses. It is important to note that the land use compatibility policies in the PPS apply irrespective of being within an MTSA, and as such sensitive land uses within these planned MTSA's (entirely or partially) may not be feasible as sensitive land uses are not likely to be able to address the land use compatibility policies. Particularly when there are reasonable alternatives within the Region and the local municipality to locate sensitive land uses outside of the area of influence of the Major Facilities, like MacMillan Yard.

The draft Regional Official Plan provides many reasonable alternative MTSA's that are not in proximity to a rail yard and would be able to accommodate the development of sensitive land uses. The 800 metre walk shed of these MTSA's intersects the 300 metre area around the MacMillan Yard, which would create the types of conflicts that the PPS directs to avoid. Therefore, our first preference is that these MTSA's be removed as the existing employment policy framework can appropriately address future non-sensitive land use growth in these areas. In the alternative, we request that the boundaries of these MTSA's be shaped such that the MTSA does not encroach on the 300 m setback from the MacMillan yard.

In addition, we request stronger policy language to clarify that certain MTSA's (or portions thereof) are MTSA's where employment/non-sensitive land uses are the only uses permitted and where sensitive land uses would be prohibited due to the proximity of major facilities. It is our opinion that language regarding the exclusion of residential uses from certain MTSA's is not only sensible, but necessary to meet Provincial policies related to land use compatibility.

We note that other regional governments in the Greater Toronto Area have either removed MTSA's in part due to conflicts with major facilities or provided stronger policy language to make it clear that there can be employment only MTSA's, in part to address issues of land use compatibility.

2. Intensification policies that require the protection of Major Facilities.

The proposed policies in the York Region Official Plan related to intensification are relatively silent on the issue of land use compatibility, despite residential intensification creating a variety of land use planning impacts on existing businesses (and their future growth) in York Region. We have noted various policy suggestions to address this concern.

Suggested policy revisions to Section 4.4, 4.4.20, 4.4.26 and Regional Centres policy 4.4.1.6 are as follows:



New policy in section 4.4: “That employment growth is an important component of intensification, and that employment/non-sensitive land uses are encouraged within strategic growth areas.”

New policy in section 4.4: “Due to the importance of employment uses within the Region of York, intensification of sensitive land uses can only occur where it has been demonstrated that the long-term protection of employment uses in proximity to the strategic growth area has been demonstrated and that there are no adverse effects on the proposed sensitive land use or impacts on the employment use.”

“4.4.20 That a wide range of residential, commercial and institutional uses, including retail uses, offices, mixed-use and human services be provided in strategic growth areas. The introduction of sensitive land uses within a strategic growth area in proximity to major facilities can only occur where the sensitive land use has met the land use compatibility requirements of the Provincially Policy Statement, including demonstrating the need for the proposed use and that there are no reasonable alternative locations for the sensitive land use in the municipality. This is to ensure the long-term protection of employment uses in the Region.”

“4.4.26 (additional sub policy) . . . s) That sensitive land uses are only permitted when it has been demonstrated that the long-term protection of employment uses/major facilities within or in vicinity of the strategic growth area have been demonstrated, including the land use compatibility requirements of the Provincial Policy Statement. Specifically, the local municipality must demonstrate that there is a need and that there is no reasonable alternative location for the sensitive land use to be located in the municipality”

“4.4.26 (additional sub policy) . . . t) the strategic placement of non-sensitive land uses as an appropriate buffer to employment uses within or in proximity of the strategic growth area”

“4.4.1.6 (additional sub policy) i) address the land use compatibility requirements in the Provincial Policy Statement”

3. Acknowledge that certain MTSAs are not appropriate for residential uses.

Section 4.4.2 Regional Corridors and Major Transit Station Areas of the draft York Region Official Plan describes MTSAs as areas that *“are planned and designed to support existing and planned transit infrastructure and to accommodate a range and mix of land uses, housing types, employment, active transportation amenities and activities.”*

We suggest that all MTSAs do not necessarily need to include residential uses, particularly in areas that are primarily employment areas and are proximal to *major facilities*, as identified above. In this regard, we suggest that language be included



that acknowledges that not all MTSA's are appropriate for residential uses and that alternative land use mixes be considered to achieve density targets. For example, there is no policy direction that states that MTSA's can either be all employment or all non-sensitive land uses, or that all MTSA's do not require every land use identified.

In addition, we recommend a specific policy link which conforms with the PPS that strengthens land use compatibility policies in the draft York Region Official Plan. Such a policy ensures that land uses within MTSA's are only approved if they meet all the land use compatibility requirements identified in in the PPS, specifically the assessment of needs and alternative locations. This is particularly important given the limitation of appeals for areas identified as Major Transit Station Areas.

Suggested policy revisions for this section are as follows:

Section 4.4.2.1 (added sub policy): . . . "d) land use compatibility with employment uses in proximity to the MTSA is also a consideration for boundary adjustments for MTSA's as currently delineated on Appendix 2."

New section after 4.4.2.6 . . . (i.e. new 4.4.2.7): "That the introduction or intensification of sensitive land uses only occur where the long-term protection of employment facilities has been addressed per the requirements of the Provincial Policy Statement."

4.4.2.9 (additional sub section): "l) Policies that prohibit the establishment of land uses and built forms that would adversely affect employment uses in proximity to the MTSA."

4.4.2.9 (additional sub section): "m) that the municipality will address the land use compatibility requirements of the Provincial Policy Statement including the demonstration of needs and alternatives when designating lands for a sensitive land use in proximity to major facilities."

4. Redefine *major goods movement facilities and corridors*.

The draft York Region Official Plan does not distinguish between major goods movement *facilities* and major goods movement *corridors*, which have fundamentally different operational characteristics, needs and create substantially different impacts on neighbouring land uses. For example, treating a 400-series highway the same as a major intermodal facility or freight rail yard ignores the different odour, noise, vibration, and safety risk profiles of each use.

The draft York Region Official Plan defines *major goods movement facilities and corridors* as:



“The transportation facilities and corridors associated with the inter- and intra-provincial movement of goods. Examples include: inter-modal facilities, ports, airports, 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.”

This definition covers all the various parts of the goods movement system but limits the ability of the York Region Official Plan to distinguish between *major facilities* and *goods movement corridors*, which as mentioned above, have different operational characteristics, and impacts on their surroundings. This is particularly the case with respect to the PPS policy test of avoiding *sensitive land uses* in proximity to major facilities, such as freight railyards and intermodal facilities. For example, avoiding *sensitive land uses* in proximity to a haul route or primary transportation corridor would be less critical than avoiding *sensitive land uses* in proximity to an intermodal yard where 24-hour noise and vibration is anticipated.

We suggest that a distinction be made between *major facilities* and *goods movement corridors* so that the PPS policy test can be applied appropriately. The PPS provides separate definitions of *major facilities* and *major goods movement facilities and corridors*. In our policy suggestions, we have noted major facilities as they are a distinct land use with distinct land use planning implications.

5. Strengthen policies regarding land use compatibility including development in proximity to *major goods movement facilities and corridors (major facilities)*.

The PPS (policy 1.2.6) 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 draft York Region Official Plan's conformity with these policies in the PPS, we recommend that statements be added to ensure that new developments are required to meet the PPS requirements for land use compatibility.

We are pleased to see policies directing that the development of *sensitive land uses* avoid impacts on *employment areas* through policy 4.2.6 and 4.3.4 but note deficiencies with consistency and conformity with the PPS regarding the introduction of *sensitive land uses* near *major facilities*. Furthermore, the policy is not consistent with the PPS references to a needs and alternatives assessment.

The draft York Region Official Plan needs to make clear the distinction between *major facilities* and *employment areas*, and to clearly reference the needs and alternatives test.



Policy 4.2.6 currently reads:

“That the development of *sensitive land uses*, *major retail uses* or *major office uses* will avoid, or where avoidance is not possible, minimize and mitigate adverse impacts on *employment areas* in order to maintain land use compatibility and long-term viability of the planned uses and function of these areas.”

We recommend that additional policy language be inserted after Section 4.2.6 (i.e. a new section 4.2.7) to read:

“That *major facilities* and *sensitive land uses* be planned and developed to avoid, or if avoidance is not possible, address the land use compatibility requirements of the PPS for the introduction of sensitive land uses near major facilities. This includes determining the need for the sensitive land use in that municipality and the assessment of alternative locations within the municipality to determine that there are no reasonable alternative locations for the use in the municipality. The sensitive land use will minimize and mitigate any potential adverse effects from odour, noise and other contaminants, minimize risk to public health and safety, 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 4.3.4 currently reads:

“That *employment areas* be protected from the encroachment of *sensitive uses* to ensure their success in attracting future business and job opportunities.”

We recommend that additional policy language be inserted following 4.3.4 to read:

“That *employment areas and major facilities* be protected from the encroachment of *sensitive uses* to ensure the long-term operational and economic viability of major facilities as required by the PPS and in accordance with provincial guidelines, standards and procedures and the Ministry of the Environment, Conservation and Parks guidelines.”

With respect to *major goods movement facilities and corridors*, the draft York Region Official Plan provides direction to discourage the location of sensitive land uses in proximity to rail facilities, rail corridors and intermodal yards. While this policy provides a foundation to ensure that land use compatibility is achieved, it is not reflective of the new language of the PPS which does not speak to “discourage”, but clearly speaks to “avoidance” as a core principle which is stronger policy language. Furthermore, sensitive land uses are only permitted if specific tests have been satisfied.



Policy 6.3.4.2 reads:

“To discourage the location of land uses sensitive to noise and vibration and safety issues, in proximity to rail facilities, rail corridors and intermodal yards. Appropriate design and buffering from sensitive land uses is required to avoid issues of compatibility.”

To further strengthen the draft York Region Official Plan conformity with the policies in the PPS, we recommend that clarity be added to this policy to ensure that new developments are required to meet the PPS requirements for land use compatibility and an Official Plan Amendment would be required to locate sensitive land uses near a Major Facility, such as a freight rail yard.

We recommend that policy 6.3.4.2 be revised to remove the reference to “Intermodal Yards”.

We recommend an additional policy below 6.3.4.2 (i.e. a new 6.3.4.3) as follows:

(New policy) “To avoid the location of *sensitive land uses* in proximity to *major facilities* (i.e. freight rail yards), that new or expanded sensitive land uses be prohibited within 300 m of major facilities. If a sensitive land use is proposed a local Official Plan Amendment will be required to address the following:

- a) Require that the planning and development of *sensitive land uses* near or adjacent to *major facilities* be done in accordance with the PPS and provincial guidelines, standards and procedures, including assessing the need and alternative locations for the proposed sensitive land use,
- b) Ensure that noise, odour, vibration, safety issues and other land use compatibility matters are addressed for development adjacent to rail facilities and corridors, and;
- c) Ensure the long-term operation of the facility.”

We suggest that these policies be revised to more clearly direct that issues of land use compatibility be avoided (i.e. prohibited), and where avoidance is not possible, require minimization and mitigation of adverse effects on *major facilities*. Policies should require that where avoidance is not possible, that alternative locations be evaluated. The Regional Official Plan policies should be strengthened to reaffirm PPS guidelines and reflect the priority to avoid land use conflicts with rail yards and other *major facilities*.



6. Include policies to encourage the development of non-sensitive land uses to serve as a transitional buffer with sensitive land uses.

We recommend that additional policy language be added to clearly articulate the direction to use non-sensitive land uses near and adjacent to *major goods movement facilities and corridors* to serve as a transitional buffer with sensitive land uses.

We recommend the following policy language be inserted within section 4.2 – Community Areas and/or 6.3 – Goods Movement:

“To require local municipalities to plan for and develop employment and non-sensitive land uses near and adjacent to *major goods movement facilities and corridors* that are *major facilities* to serve as a transitional buffer with sensitive uses to ensure land use compatibility.”

7. Add *major goods movement facilities and corridors* to a schedule.

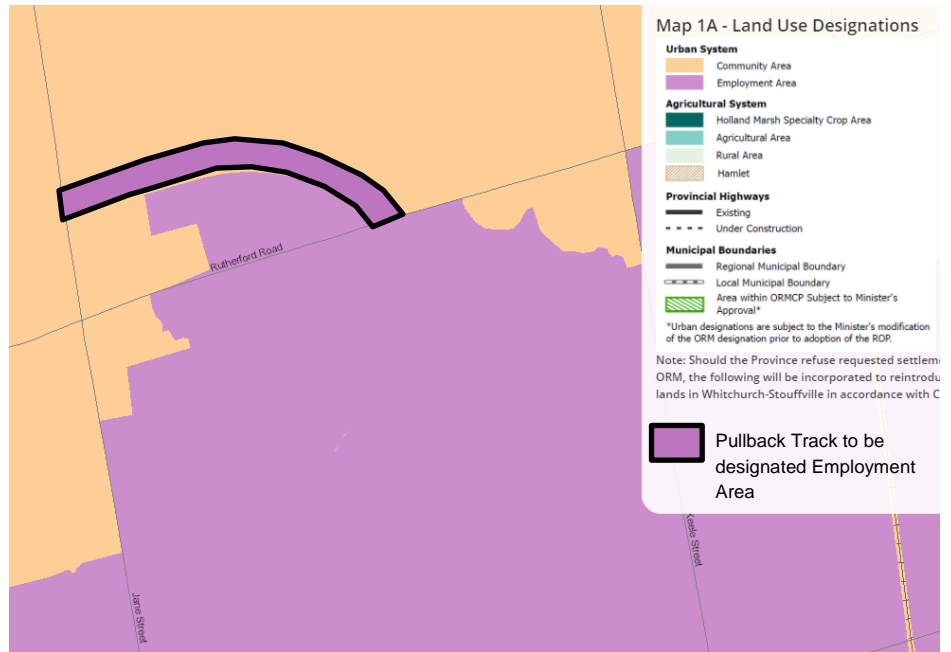
The above noted planned MTSAs are indicated on Map 1B – Urban System Overlays, and potentially fall within 300 metres of the CN MacMillan Yard. The provincial guidelines, standards and procedures measures this distance from the property line of the facility, as the functionality of the facility can change and expand based on need. Existing policies in the York Region Official Plan need to act to protect evolving employment areas and reduce long term land use conflicts.

However, there is no clear identification or way to identify a potential conflict between *major goods movement facilities* and *sensitive land uses* in the Regional Official Plan. As an example, Schedule 6 of the Growth Plan identifies MacMillan Yard as an intermodal hub, however the draft York Region Official Plan does not show the facility in any Official Plan schedule.

We recommend identifying major goods movement facilities and corridors on a schedule of the York Region Official Plan, such as on draft Map 1B – Urban System Overlays. Identifying their boundaries and areas of influence (1 km) 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.

8. Land Use Schedule Changes

We note that the pullback track associated with MacMillan Yard north of Rutherford Road is not designated as Employment Area on draft Map 1A – Land Use Designations. We recommend that these land uses be designated as Employment Area recognizing their importance to the operations of MacMillan Yard and to further strengthen protection from encroachment of *sensitive land uses*.



Note: Excerpt from York Maps Interactive Map Viewer

9. Remove Langstaff Road crossing of MacMillan Yard from the draft York Region Official Plan and the 2022 Transportation Master Plan Update.

The draft York Region 2022 Transportation Master Plan update identifies a new road link connecting Langstaff Road from Creditstone Road to Keele Street across the active operational area of MacMillan Yard on Map 4 – Proposed 2051 Road Network. The draft York Region Official Plan shows the same connection on Map 11.

York Region is aware that CN Rail has significant concerns regarding this potential link for a variety of reasons and we therefore recommend that it be removed from the draft Transportation Master Plan and the draft York Region Official Plan until such time as those concerns are addressed.

We note that the draft Transportation Master Plan provides the following statement regarding this potential new road link:

“The Region is undertaking an environmental assessment for the construction of new section of Langstaff Road to cross the Canadian National Railway MacMillan Yard. This is included on a contingency basis as it can proceed only if additional funding were available from third parties. (pg. 41)”

The above statement indicates that no local funding is available, or is anticipated to be made available, for the construction of the proposed link. As such, it is not clear that the road link is needed from a transportation perspective and it implies that the link is more a desire of the Region, then a definitive need of the Region.



As a result, this suggests that the link is not absolutely needed for future growth in the Region and therefore should be removed.

CN Rail has previously stated concerns regarding the construction of this overpass which has not been addressed. These concerns include:

- a) The Langstaff Environmental Assessment (EA) did not discuss future impacts of the proposed structure on the safety of the public, safety of rail operations and impacts to CN's future maintenance.
- b) The Langstaff EA does not appear to consider the scale of crossing one of the largest rail classification yards in Canada, particularly the hundred of train movements per day.
- c) The potential need to shut down the yard during construction of the overpass as CN does not permit train movements under unsecured loads.
- d) The installation of piers that would temporarily and permanently reduce capacity on all of the various types of tracks in the yard (inbound, outbound, classification, maintenance, inspection, etc.), impacting the critical operational flexibility inherent to a freight rail yard like MacMillan Yard.

Conclusion

We would like to thank you again for the opportunity to participate in the York Region 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". The signature is written in a cursive, slightly slanted style.

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

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