



2022-10-04

The Honourable Steve Clark
Minister of Municipal Affairs and Housing

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

Via Environmental Registry of Ontario (ERO) Number: 019-5717

Re: Niagara Region Official Plan

Dear Mr. Clark,

WSP has been retained and is acting on behalf of CN Rail (CN) to provide comments on the Niagara Region Official Plan Review. On May 25, 2022, WSP provided comments on the Regional Official Plan Review with respect to matters of land use compatibility in relation to rail facilities and sensitive land uses. Comments provided requested that consideration be given to the inclusion of policy language and definitions that specifically reflect the Provincial Policy Statement, 2020 (PPS), which requires that new development on adjacent lands be compatible with, and supportive of, the long-term viability of the rail corridor, and should be designed to avoid, mitigate or minimize negative impacts on and from the corridor. On June 23, 2022, Niagara Regional Council approved and adopted the Niagara Official Plan under Section 17(22) of the Planning Act, 1990 by By-law 2022-47. Following adoption, Niagara Region forwarded the adopted plan to the Province of Ontario's Ministry of Municipal Affairs and Housing (MMAH) for approval. In reviewing the adopted Niagara Official Plan, we note that while some of our previously submitted comments had been addressed, others were not incorporated.

We respectfully ask that the Ministry take into consideration CN's comments in reviewing the Niagara Official Plan for approval. Our comment letter to Niagara Region, dated May 24, 2022, is appended to this letter. The comments include recommended policy language that is intended to ensure that planning for land uses in the vicinity of rail facilities be undertaken in such a way that the economic function and long-term operation of rail systems is protected. Provincial policy sets out that sensitive land uses be appropriately designed, buffered and/or separated from rail facilities. These comments, along with those

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provided herein are intended to strengthen the Region's growth management and land use compatibility policies.

Per comments provide to the Region, we had requested that the Region identify all rail facilities and their associated areas of influence (300 metres for a rail line, 1 km for a rail yard) in Schedule J1 of the Regional Official Plan. The Region has opted not to include the facilities and their areas of influence in the Schedule J1 of the adopted Official Plan Amendment. It is our opinion that the requested inclusions are an important step toward avoiding potential land use planning conflicts between Rail Facilities and sensitive land uses.

Following a review of the adopted Niagara Official Plan, we note that while policies 4.2.4.2 and 4.2.4.3 are consistent with policy direction from the PPS, we recommend the inclusion of additional policy language per our initial comment letter to the Region.

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

We ask that new or expanded residential development or other sensitive land uses not be permitted within 300 metres of a rail yard. CNs preference would be that, where sensitive land uses are contemplated to be expanded or introduced within 300 metres of a freight rail yard, a local Official Plan Amendment be required. Study requirements for other land uses within 300 metres should completed in accordance with the FCM-RAC Guidelines and the MECP D-6 Guidelines.

In addition, all residential development or other sensitive land uses proposed to be located between 300 m and 1 km from a rail yard would be required to undertake land use compatibility studies to the satisfaction of the Municipality and the appropriate railway operator, to support the feasibility of development and, if feasible, undertake appropriate measures to mitigate any adverse effects from noise identified. These policies should be included in section 4.2.4 "*Employment Lands*" of the Official Plan.

Other concerns that were not addressed in the Regional Official Plan included the discouraging of sensitive land uses in the vicinity of the freight rail yard in the Region of Niagara and ensuring matters of noise, air quality, vibration and safety are appropriately addressed, per Section 3 of our original letter. We ask that the following policy language be included to address development requirements in proximity to rail facilities:

- Development in proximity to rail facilities shall be developed in accordance with the Guidelines for New Development in Proximity to Railway Operations



prepared by the Federation of Canadian Municipalities and the Railway Association of Canada (FCM-RAC Guidelines);

- Ensuring that noise, air quality, vibration and safety issues are addressed for all developments adjacent and in proximity to rail facilities;
- Sensitive land uses will not be encouraged adjacent or in proximity to rail facilities;
- All proposed residential or other sensitive use development within 300 metres of a railway right-of-way will be required to undertake noise studies, to the satisfaction of the Municipality, in consultation with the appropriate railway operator, and shall undertake appropriate measures to mitigate any adverse effects from noise that were identified. All available options, including alternative site layouts and/or attenuation measures, will be thoroughly investigated and implemented to ensure appropriate sound levels are achieved;
- 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;
- All proposed building setbacks shall be in accordance with the FCM-RAC Guidelines. As a general guideline, buildings shall be setback 30 metres with an appropriate berm abutting the rail right-of-way. Reduced setbacks can be considered in certain circumstances dependant on the proposed use and in conjunction with additional study and alternative safety measures, to the satisfaction of the Municipality, in consultation with the appropriate railway operator;
- 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
- Implementation and maintenance of any required rail noise, vibration, air quality 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.



Conclusion

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 Niagara Region Official Plan. We look forward to continuing to work with the Region and the MMAH 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 very truly.

WSP CANADA INC.

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

Chad B. John-Baptiste, MCIP, RPP

Director, Planning – Ontario

Copy: Eric Harvey, CN Rail



2022-05-24

Niagara Region
1815 Sir Isaac Brock Way
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Attn: Michelle Sergi
Commissioner of Planning
Via email: makingourmark@niagararegion.ca;

Re: Niagara Region Official Plan Review

WSP has been retained and is acting on behalf of CN Rail and are pleased to have this opportunity to provide comments on the Niagara Region Official Plan Review. It is our understanding that a Public Meeting was held on April 22, 2022 and the comments provided herein will be provided to Staff and 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 relate to existing and/or future CN Rail facilities, operations and infrastructure. Specifically, the Provincial Policy Statement, 2020 (PPS) requires that new development on adjacent lands be compatible with, and supportive of, the long-term viability of the rail corridor and should be designed to avoid, mitigate or minimize negative impacts on and from the corridor.

It is our opinion, supported by the PPS and the Ministry of Environment, Conservation and Parks (MECP) D-6 Compatibility between Industrial Facilities Guidelines (D-6 Guidelines), that planning for land uses in the vicinity of *rail facilities* be undertaken in such a way that the economic function and long-term operation of rail systems are protected. Provincial policy sets out that sensitive land uses be appropriately designed, buffered and/or separated from rail facilities.

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Additional provincial guidance regarding land use compatibility between industrial and sensitive land uses is provided in the D-6 Guidelines. It is our opinion that rail yards are considered a major facility per the PPS and would be classified by the D-6 Guidelines as Class III Industrial Facilities because of their scale, adverse effects from the facility, and continuous operations. Per Section 1.2.6 of the PPS, major facilities and sensitive land uses should be planned and developed to ***avoid*** (emphasis added), and where avoidance is not possible, to minimize and mitigate potential adverse effects from odour, noise and other contaminants. Sensitive uses should only be located in proximity to the major facility and only when the need for the use is established and when there are no reasonable alternative locations for the proposed use. Moreover, the D-6 Guidelines recommend that **no incompatible development** (emphasis added) should occur within 300 metres of a Class III facility. Further to the provincial policy test above, a feasibility analysis is required for any proposed sensitive land use within 1 kilometer of a Class III facility. The Province of Ontario, through the Ministry of Transportation, has issued Freight-Supportive Guidelines that also speak to the need for appropriate land uses around freight facilities.

It is our position that the Region of Niagara needs to incorporate policies that reflect the new PPS and provide policy direction in the Official Plan.

The proposed Regional Official Plan encompasses an area that contains CN rail rights-of-way for CN rail lines. CN Rail views these rights of way as Major Goods Movement Facilities and Transportation Corridors as outlined in the PPS. In addition, CN has freight rail yards within the Region of Niagara, including the Merritton Trillium Interchange, Thorold Yard, Port Robinson Yard, South Yard, and the Fort Erie Yard. These facilities are important to the Regional, Provincial and National economy. As such, the current and future operations of these facilities need to be protected from encroachment by sensitive land uses as per Provincial Policy. CN Rail views these rail yards as Major Facilities and the land use compatibility policies of the PPS apply to these facilities.

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. In its decisions the Canadian Transportation Agency (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 is Decision No. 69-R-2014, dated February 27, 2014.

It is important to understand that there is no specific decibel limit for CN operations contained in federal guidelines related to the construction or operation of rail facilities. Those federal guidelines clearly state that, while the Agency may take provincial and



municipal noise and vibration guidelines into account in its deliberations, the Agency is not bound by those guidelines

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

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

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

Preliminary Comments and Concerns

In the Region of Niagara, CN operates the Merriton Trillium Interchange, Throld Rail Yard, Port Robinson Rail Yard, South Yard, and the Fort Erie Rail Yard, in addition to main line facilities, that is an important component of the overall freight rail network in Canada. As such, any policies in the Regional Official Plan are requested to incorporate reference to CN Rail's infrastructure and the guidelines referenced above.

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

1. General Acknowledgement

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

2. Add rail facilities and defined areas of influence to a schedule.

We recommend identifying rail facilities and the areas of influence (300 metres for a rail line, 1 km for a rail yard) in schedule J1 of the Regional Official Plan. 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.

3. Policy direction should 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 proposed Regional Official Plan to address development requirements in proximity to rail facilities.

- a) Evaluating, prioritizing and securing grade separation of railways and major roads, in cooperation with Transport Canada and the railways;
- b) Development in proximity to rail facilities shall be developed in accordance with the Guidelines for New Development in Proximity to Railway Operations prepared by the Federation of Canadian Municipalities and the Railway Association of Canada (FCM-RAC Guidelines);
- c) Ensuring that noise, air quality, vibration and safety issues are addressed for all developments adjacent and in proximity to rail facilities;
- d) Sensitive land uses will not be encouraged adjacent or in proximity to rail facilities;
- e) All proposed residential or other sensitive use development within 300 metres of a railway right-of-way will be required to undertake noise studies, to the satisfaction of the Municipality, in consultation with the appropriate railway operator, and shall undertake appropriate measures to mitigate any adverse effects from noise that were identified. All available options, including alternative site layouts and/or attenuation measures, will be thoroughly investigated and implemented to ensure appropriate sound levels are achieved;
- f) All proposed developments within 75 metres of a railway right-of-way will be required to undertake vibration studies, to the satisfaction of the Municipality, in consultation with the appropriate railway operator, and shall undertake appropriate measures to mitigate any adverse effects from vibration that were identified;
- g) All proposed building setbacks shall be in accordance with the FCM-RAC Guidelines. As a general guideline, buildings shall be setback 30 metres with an appropriate berm abutting the rail right-of-way. Reduced setbacks can be considered in certain circumstances dependant on the proposed use and in conjunction with additional study and alternative safety measures, to the satisfaction of the Municipality, in consultation with the appropriate railway operator;
- h) All proposed development adjacent to railways shall ensure that appropriate safety measures such as setbacks, berms, crash walls and security fencing are provided, to the satisfaction of the Municipality, in consultation with the appropriate railway operator.

Where applicable, the Municipality will ensure that sightline requirements of Transport Canada and the railway operators are addressed; and

- i) Implementation and maintenance of any required rail noise, vibration, air quality 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.

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

The PPS requires that sensitive land uses be developed in a way that avoids or mitigates the adverse effects of odour, noise, and other contaminants. 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:

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



- d. potential impacts to industrial, manufacturing or other uses are minimized and mitigated. (PPS 1.2.6.2)”
- c) Requiring that the planning and development of a sensitive land use near or adjacent to a major facility be done in accordance with the PPS and provincial guidelines, standards and procedures. CN Rail considers Freight Rail Yards to be Class III Industrial Use per the MECP 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. A local 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 FCM-RAC Guidelines and the MECP D-6 Guidelines.
- e) All residential development or other sensitive land uses located between 300 m and 1000 m of a rail yard will be required to undertake land use compatibility studies, to the satisfaction of the Municipality and the appropriate railway operator, to support the feasibility of development and, if feasible, shall undertake appropriate measures to mitigate any adverse effects from noise that were identified.

Conclusion

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

Chad B. John-Baptiste, MCIP, RPP

Director, Planning – Ontario

Copy: Eric Harvey, CN Rail