

November 24, 2022

File No. 127446-628

The Honourable Steve Clark
Minister of Municipal Affairs and Housing
College Park, 17th Floor
777 Bay Street
Toronto, Ontario
M7A 2J3

Dear Mr. Clark:

**Re: Canadian National Railway Company (“CN”)
Bill 23, More Homes Built Faster Act, 2022 (“Bill 23”)**

We are counsel for CN with respect to the above-noted matter. On October 25, 2022, the Province of Ontario introduced Bill 23, which proposes to amend the *Planning Act*, R.S.O 1990, c. P.13 (the “**Act**”) and the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A. We respectfully request that the Ministry of Municipal Affairs and Housing (“**MMAH**” or the “**Ministry**”) take into consideration the below comments, in reviewing and modifying Bill 23.

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

CN appreciates the need to build more 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 operations of rail yards and corridors must be addressed.

The coordination of land uses along railway corridors, and adjacent to rail yards poses a unique set of challenges. The development of sensitive uses beside railway lines and rail yards, which experience high traffic of train operations, leads to increased potential for conflict between the rail operations and adjacent

land uses, and may result in safety issues on both sides. The Federation of Canadian Municipalities and The Railway Association of Canada Guidelines for New Development in Proximity to Railway Operations recommends that municipalities take a proactive approach to identifying potential land use conflicts. Sensitive uses should not be permitted within 300 metres of railway lines and within 1000 metres of rail yards.

Below are CN's comments on Bill 23, as proposed, relating to site plan control, which are intended to address these compatibility and safety concerns.

Bill 23 proposes to amend section 41 of the Act, which addresses site plan control matters. Specifically, Bill 23 repeals subparagraph 41(4)(2)(d), reproduced in part below:

41(4) Approval of plans or drawings

No person shall undertake any development in an area designated under subsection (2) unless the authorized person referred to in subsection (4.0.1) or, where an appeal has been made under subsection (12), the Tribunal has approved one or both, as the authorized person may determine, of the following:

1. Plans showing the location of all buildings and structures to be erected and showing the location of all facilities and works to be provided in conjunction therewith and of all facilities and works required under clause (7) (a), including facilities designed to have regard for accessibility for persons with disabilities.
2. Drawings showing plan, elevation and cross-section views for each building to be erected, except a building to be used for residential purposes containing fewer than 25 dwelling units, which drawings are sufficient to display,
[...]

(d) matters relating to exterior design, including without limitation the character, scale, appearance and design features of buildings, and their sustainable design, but only to the extent that it is a matter of exterior design, if an official plan and a by-law passed under subsection (2) that both contain provisions relating to such matters are in effect in the municipality

Bill 23 substitutes subsection 41(4)(2)(d) of the Act with the following subsection:

(d) matters relating to building construction required under a by-law referred to in section 97.1 of the *Municipal Act, 2001*,

Although this substitution may allow for certain mitigation measures, such as those relating to acoustics (STC ratings and brick veneering) to be addressed where a municipality passes a by-law, it does not ensure that all mitigation measures, such as those relating to safety (i.e. a crash wall) to be addressed at the site plan stage.

Bill 23 also proposes to add subsection 41(4.1.1), reproduced below:

The appearance of the elements, facilities and works on the land or any adjoining highway under a municipality's jurisdiction is not subject to site plan control, except to the extent that the

appearance impacts matters of **health, safety, accessibility, sustainable design or the protection of adjoining lands.**

This section raises concerns for CN as a number of issues concerning health, safety, accessibility or the protection of adjoining lands, and implementation of noise, air quality and vibration mitigation measures, are related to exterior design and are dealt with at site plan stage, such as crash walls, berms, STC ratings for windows and doors, brick veneer, chain link fences, and more. However, the wording of this section is problematic, as it appears that these matters may be interpreted as being dealt with in relation to their appearance, but the specifics of the design of each item is important and needs to be specified as to the construction to ensure that the purpose of the mitigation measure is properly implemented. Each proposed development is examined based on the specifics of the development, and the mitigation measures are then individually outlined in order to mitigate safety, vibration, noise and health concerns and the protection of adjoining lands. CN requests that consideration be given to rewording the proposed subsection 41(4.1.1) to say:

The elements, facilities and works on the land or any adjoining highway under a municipality's jurisdiction is not subject to site plan control, except to the extent that these elements serve to mitigate matters of health, safety, accessibility, sustainable design or the protection of adjoining lands.

Thank you for your consideration. We look forward to continuing to work with MMAH. Please do not hesitate to contact me if you have any questions.

Yours truly,

Dentons Canada LLP

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Mary Ellen Bench
Counsel

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