



PH19.1.21

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December 15, 2020

BY EMAIL

City Council  
c/o Marilyn Toft  
12th floor, West Tower, City Hall  
100 Queen Street West  
Toronto, ON M5H 2N2

[councilmeeting@toronto.ca](mailto:councilmeeting@toronto.ca)

Dear Mayor Tory and Members of Council:

**Re: Item PH19.1**

**Objection to Proposed OPA 482 (Protected Major Transit Station Areas)  
and Proposed OPA 483 (Keele Finch Secondary Plan)**

**Shell Canada Products (3975 Keele Street)**

**Imperial Oil (1150 Finch Avenue West)**

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Aird & Berlis LLP is legal counsel for Shell Canada Products (“Shell”) and Imperial Oil (“Imperial Oil”) with respect to the above captioned proposed Official Plan Amendments (the “OPAs”).

Our office provided the attached correspondence to and appeared before the Planning and Housing Committee on December 8, 2020 to voice Shell and Imperial Oil’s objections to the proposed OPAs.

As set out in the attached correspondence, Shell and Imperial Oil are very concerned that the City’s *Keele Finch Plus Noise, Air Quality and Safety Study (January 2020)* does not adequately account for the safety risks associated with permitting sensitive land uses in the vicinity of the Fuel Terminals.

A recent study undertaken by SNC Lavalin titled, *Consequence Analysis of Potential Major Accidental Events at Three Terminals in the Keele Finch Area* (the “Consequence Analysis”) demonstrates that the densities and land use designations provided for in the proposed OPAs present a risk to public safety. The proposed OPA 483 would permit sensitive uses, including residential uses, within 150 m of the Fuel Terminals.

The 2008 incident at the Sunrise Propane transfer, handling and storage facility led the City to amend its zoning by-law to require a 500 m setback between residential uses and such facilities.

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While Fuel Terminals are quite different from propane transfer, handling and storage facilities, the proposed OPA 483 underestimates the public safety risks which have been identified in the Consequence Analysis.

For this reason and for the additional reasons set out in the attached correspondence, Shell and Imperial Oil object to the proposed OPAs in their current form. Shell and Imperial Oil request that Council direct staff to work with them to revise the OPAs in a manner that reflects the recommendations of the Consequence Analysis and satisfies outstanding safety and operational concerns.

Yours truly,

AIRD & BERLIS LLP



Laura Dean

LD

Encl.

c. Clients

December 4, 2020

BY EMAIL

City of Toronto Planning and Housing Committee  
c/o Nancy Martins  
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Dear Members of the Planning and Housing Committee:

**Re: Item PH19.1**

**Objection to Proposed OPA 482 (Protected Major Transit Station Areas)  
and Proposed OPA 483 (Keele Finch Secondary Plan)**

**Shell Canada Products (3975 Keele Street)**

**Imperial Oil (1150 Finch Avenue West)**

Aird & Berlis LLP is legal counsel for Shell Canada Products (“Shell”) and Imperial Oil (“Imperial Oil”) with respect to the City’s proposed Official Plan Amendments 482 (“OPA 482”) and 483 (“OPA 483”), (collectively, the “OPAs”) which relate to Protected Major Transit Station Areas and the Keele Finch Secondary Plan, respectively.

Shell is the owner and operator of a fuel storage and distribution terminal located at 3975 Keele Street (the “Shell Terminal”, see #1 on Figure 1).

Imperial Oil is the owner and operator of a separate fuel storage and distribution terminal located at 1150 Finch Avenue West (the “Imperial Oil Terminal”, see #2 on Figure 1).

The Shell Terminal and the Imperial Oil Terminal (collectively, the “Fuel Terminals”) are two of three terminals located in the north-east quadrant of Keele Street and Finch Avenue West.

Shell and Imperial Oil have been following and participating in the process of developing the proposed OPAs. Most recently, representatives

**Figure 1: Location of the Fuel Terminals**



1. Shell Terminal
2. Imperial Oil Terminal
3. Suncor Terminal

from Shell and Imperial Oil attended and provided comments at the Community Information Session held on November 9, 2020.

We have reviewed the draft OPAs and the Keele Finch Plus Study – Final Report dated November 24, 2020 from the Chief Planner and Executive Director, City Planning to the Planning and Housing Committee. We note that few substantive changes have been made to the proposed OPAs since they were last presented to the public. As such, Shell and Imperial Oil continue to have serious concerns with respect to the OPAs as currently drafted.

## THE FUEL TERMINALS

The Fuel Terminals have been in operation since 1957.

The Fuel Terminals are situated on lands zoned Employment Heavy Industrial pursuant to By-law 569-2013 and are designated *Core Employment Areas* on Map 16 of the City of Toronto Official Plan (the “Official Plan”).

Ninety-five percent (95%) of the fuel used in the Greater Toronto Area has been transported from the three fuel terminals adjacent to the Keele Finch Secondary Plan area. Product is transferred to and from the fuel terminals by truck, pipeline and rail, with the terminals operating 24 hours a day, 7 days a week. Approximately 600 tanker trucks fill up at the Fuel Terminals every day.

The Fuel Terminals are an essential service and critical to the local and provincial economy by providing certainty of fuel supply to Toronto and Ontario.

## OBJECTIONS

### A. OPA 482 – Protected Major Transit Station Areas

Shell and Imperial Oil object to the proposed densities in the vicinity of the fuel terminals as shown on Map 2 of the proposed OPA 482 (see Figure 2).

As drafted, OPA 482 would permit significant density in close proximity to the Imperial Oil Terminal on the north side of Finch Avenue W. It is notable that an FSI of 2.9 times the area of the lot is proposed within 150 m of the Imperial Oil Terminal and other significant densities are proposed to the south.

The proposed densities in the vicinity of the Fuel Terminals would encourage development that is incompatible with the operations of the Fuel Terminals and pose a risk to public safety.

Shell and Imperial Oil request that the permitted densities in the vicinity of the Fuel Terminals be

Figure 2: Map 2 of draft OPA 482



reduced in order to protect public health and safety and to avoid the encroachment of sensitive uses upon the Fuel Terminals.

**B. OPA 483 – Keele Finch Secondary Plan**

*(i) Land Use Designations and Safety Risks*

Map 3 of OPA 483 sets out proposed land use designations for the Keele Finch Secondary Plan area. Shell and Imperial Oil object to the *Mixed Use Areas A* land use designation in the immediate vicinity of the Fuel Terminals as this designation would permit the introduction of residential and other sensitive institutional uses. A map of the OPA 483 area containing an overlay of the proposed land use designations is attached as Attachment 1.

On behalf of its members, the Canadian Fuel Association (“CFA”) retained SNC Lavalin (“SNC”) to conduct a peer review of the City’s *Keele Finch Plus Noise, Air Quality and Safety Study (January 2020)* (the “City’s Study”). The peer review found the City’s Study to be insufficient in that it underestimated public safety risk. The City’s Study does not include consequences for all accident scenarios including a vapour cloud explosion, which was the known cause of explosions and a major fire in 2005 at a fuel distribution facility in Buncefield, UK.<sup>1</sup> This incident caused injury to persons and considerable damage to property.<sup>2</sup> An investigation report into the cause of the incident noted, “The severity of the explosion was far greater than could reasonably have been anticipated based on knowledge at the time and the conditions at the site. The devastation was enormous.”<sup>3</sup>

The peer review also found that the City’s Study downplayed the risks of other accident scenarios (e.g. a pool fire).

As a result Shell and Imperial Oil submit that the policies in the draft OPA 483 that seek to mitigate the safety risks associated with locating other uses in the vicinity of the Fuel Terminals are insufficient and have the potential to put the public at risk.

In order to understand the extent of the risk posed by the proposed OPA 483, SNC Lavalin prepared a report titled, *Consequence Analysis of Potential Major Accidental Events at Three Terminals in the Keele Finch Area* (the “Consequence Analysis”), issued in November 2020.

The Consequence Analysis provides recommendations for land use in the vicinity of the Fuel Terminals. These recommendations consider specific experience gained following documented

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<sup>1</sup> This facility was not owned by Shell or Imperial Oil.

<sup>2</sup> On December 11, 2005, a number of explosions occurred at Buncefield Oil Storage Depot, Hemel Hempstead, Hertfordshire, UK. At least one of the initial explosions was of massive proportions and led to a large fire, which engulfed over 20 large fuel storage tanks and lasted 5 days. At least 40 people were injured in the incident. Significant damage occurred to both commercial and residential properties in the vicinity and a large area around the site was evacuated on emergency service advice. About 2000 people were evacuated and sections of the M1 motorway were closed.

<sup>3</sup> Major Incident Investigation Board, (2011), “Buncefield: Why did it Happen?: The underlying causes of the explosion and fire at the Buncefield oil storage depot, Hemel Hempstead, Hertfordshire on 11 December 2005” online: <https://www.hse.gov.uk/comah/buncefield/buncefield-report.pdf>

fuel terminal incidents, in particular the consequence of a vapour cloud explosion – a scenario which was not even considered in the safety component of the City's Study.

The Consequence Analysis provides the following land use recommendations:

- ❑ Inside the inner zone of 250 m from the retention berms of the Fuel Terminals: no new construction of offices, commercial developments or housing developments;
- ❑ Inside the middle zone of 300 m from the retention berms of the Fuel Terminals: no new construction of housing developments with more than 30 dwelling units or more than 40 dwelling units per hectare, commercial developments where total floor space is greater than 5,000 m<sup>2</sup>, schools, hospitals or any other sensitive institutional buildings;
- ❑ Inside the outer zone of 400 m from the retention berms: no new construction of schools comprising more than 1.4 hectares, hospitals comprising more than 0.25 hectares.

The recommendations are graphically depicted in Figure 3 below which has been overlaid onto the land use designations contained in Map 3 of OPA 483.

**Figure 3: SNC Recommendations Overlaid onto Map 3 Land Use Designations**



Shell and Imperial Oil are also concerned that the proposed OPA 483 puts the onus of demonstrating land use compatibility and safety on the proponent of a new development in the vicinity of the Fuel Terminals. Shell and Imperial Oil submit that where issues of public safety

are concerned, the City should assume responsibility for carrying out a robust assessment of potential safety risks.

Shell and Imperial Oil request that the proposed land use designations in the vicinity of the Fuel Terminals be revised according to the recommendations of the Consequence Analysis.

(ii) *Limiting Expanded Operations*

Shell and Imperial Oil are concerned with policy 4.2.3 of the proposed OPA 438 which may be interpreted as prohibiting their expansion. Policy 4.2.3 states:

4.2.3. New medium or heavy industrial operations within the vicinity of residential and mixed-use residential areas will be required to submit a detailed Noise Study and Air Quality Assessment Study, or other environmental reports as appropriate, at the development review stage and implement appropriate source mitigation measures to reduce/minimize impacts of the industrial operations. Noise attenuation walls adjacent to public streets will be avoided. Where a noise attenuation wall is unavoidable, it will be attractive and contribute to a high quality public realm.

It is not certain that an expansion of an existing heavy industrial operation would be subject to this policy. Policy 4.2.3 would also appear to apply to lands that are already zoned for medium and heavy industrial uses. Shell and Imperial Oil submit that it is not appropriate in an industrially zoned area to require permitted uses to undertake such studies. Furthermore, it is not clear how the above policy would be applied if no *Planning Act* application were being sought.

The Fuel Terminals will be further developed over time, and policy should both reflect, and plan for, the right of Shell and Imperial Oil to develop their properties within the existing lot lines.

Shell and Imperial Oil request that a policy be added to the proposed OPA 483 that explicitly permits the intensification and expansion of the Fuel Terminals.

(iii) *Noise and Air Quality*

CFA's peer review of the City's Study also found that the noise component of the proposed OPA 483 should be reassessed considering more accurate/realistic assumptions, following the methodology set out in NPC-300.

The peer review further recommended that a more detailed cumulative assessment of air quality be completed which includes petroleum contaminants commonly emitted from the Fuel Terminals.

Shell and Imperial Oil submit that until more detailed studies have been conducted, moving forward with OPA 483 as proposed may pose a risk to future inhabitants of the area and may give rise to land use compatibility and nuisance complaints from new residents.

(iv) *Road Safety and Heavy Trucks*

Shell and Imperial Oil submit that the proposed OPA 483 does not have adequate regard for road safety associated with the relatively high heavy truck presence in the area, including fuel tanker trucks associated with the Fuel Terminals.

Shell and Imperial Oil request that a traffic patterns study be undertaken and that future street designs consider the need for increased turning radii at intersections or the development of truck bypass routes that are free from cycling routes. Potential for an increase in truck traffic associated with increased industrial development should also be considered.

(v) *Extension of Tangiers Road*

In addition to the above, Shell has a particular concern with respect to the proposed policy 6.2.8 of draft OPA 483. That provision states:

6.2.8 The Tangiers Road extension north of its current terminus will be secured as part of any major redevelopment of lands designated General Employment Areas or will be secured by the City if the extension is identified as a preferred solution in any Environmental Assessment. Capacity expansions to the existing fuel distribution terminals is not major redevelopment. Additionally, any capacity expansions implemented must not preclude the northerly extension of the street.

The proposed Tangiers Road extension would bisect a new berm for Shell's main tank farm which is currently under construction. This new berm is required in order for Shell to meet the requirements of the Ontario Liquid Fuels Handling Regulation (O. Reg. 217/01) which is made pursuant to the *Technical Standards and Safety Act, 2000*, S.O. 2000, c. 16.

**Figure 4: Location of the proposed Tangiers Road Extension and the new required berm**





As part of Shell's ambition to be a net-zero energy business by 2050 or sooner, in step with society, Shell is working to reduce the carbon intensity of the products they sell, which could include modifications and expansions at existing infrastructure. The proposed Tangiers Road extension would restrict Shell's ability to evolve its operations over time.

Shell recommends that the Tangiers Road extension and policy 6.2.8 be removed from the proposed OPA 483.

## **PLANNING CONTEXT**

### **Matters of Provincial Interest**

Shell and Imperial submit that the proposed OPAs do not have appropriate regard for the following matters of provincial interest as set out in section 2 of the *Planning Act*, R.S.O. 1990, c. P.13:

- (h) the orderly development of safe and healthy communities;
- (l) the protection of the financial and economic well-being of the Province and its municipalities;
- (o) the protection of public health and safety;
- (p) the appropriate location of growth and development;

### **Provincial Policy Statement**

The proposed OPAs are not consistent with the Provincial Policy Statement, 2020 ("PPS").

Policy 1.1.1 c) of the Provincial Policy Statement provides:

1.1.1 Healthy, liveable and safe communities are sustained by

1.1.1 c) avoiding Development and land use patterns which may cause environmental or public health and safety concerns.

Policy 1.2.3 of the PPS directs the following:

1.2.3 Planning authorities should coordinate emergency management and other economic, environmental and social planning considerations to support efficient and resilient communities.

As further set out below, Shell and Imperial Oil have serious concerns with the OPAs as they have the potential to impact public health and safety.

Each of Shell and Imperial Oil's Commitment and Policy on Safety is designed to help protect people and the environment. Risks inherent to the operation of the Fuel Terminals are managed, but cannot be fully eliminated.

Shell and Imperial Oil manage the safety risks of bulk fuel storage through a number of systems such as preventative maintenance, critical equipment identification/testing, risk assessment,

change management and training. Each system is intended to add a layer of protection to reduce both the probability and severity of process safety incidents. Industry-related incidents outside of Shell and Imperial Oil are analyzed, and lessons learned are integrated into managing systems.

The OPAs are not supported by a robust assessment of the potential safety risks associated with the introduction of sensitive land uses in the vicinity of the Fuel Terminals. The SNC Lavalin Report makes it clear that the City's Study is inadequate.

Section 3.0 of the PPS deals with public health and safety and directs that:

Ontario's long-term prosperity, environmental health and social well-being depend on reducing the potential for public cost or risk to Ontario's residents from natural or human-made hazards.

Development shall be directed away from areas of natural or human-made hazards where there is an unacceptable risk to public health or safety or of property damage, **and not create new or aggravate existing hazards** (emphasis added).

As described above, the OPAs would introduce considerable density to the area around the Fuel Terminals and would bring sensitive land uses significantly closer to the Fuel Terminals than they are today. The OPAs would increase the public's exposure to the inherent risks associated with the Fuel Terminals in a manner that is inconsistent with the above policies of the PPS.

The PPS definition of *infrastructure* includes "oil and gas pipelines and associated facilities". Section 1.6.4 of the PPS provides:

1.6.4 *Infrastructure* and *public service facilities* should be strategically located to support the effective and efficient delivery of emergency management services, and to ensure the protection of public health and safety in accordance with the policies in Section 3.0: Protecting Public Health and Safety.

The Fuel Terminals are considered critical infrastructure by the Ministry of the Solicitor General and are part of the Ontario Government Emergency Fuel Distribution Protocol. The encouragement of residential and other sensitive uses in the vicinity of the Fuel Terminals has potential to disrupt their operations and compromise their ability to respond to an emergency.

The Fuel Terminals are *major facilities* for the purpose of the PPS. *Major facilities* are facilities that may require separation from sensitive land uses.

Policy 1.2.6.1 of the PPS provides:

*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.

Policy 1.2.6.2 of the PPS further provides:

1.2.6.2 Where avoidance is not possible in accordance with policy 1.2.6.1, 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.

Residential and other sensitive land uses are incompatible with the operation of the Fuel Terminals and should not be encouraged to locate in such close proximity as the OPAs would permit.

Under the PPS, the Fuel Terminals would also qualify as *major goods movement facilities*. These are facilities associated with the inter- and intra-provincial movement of goods.

In this respect, the PPS directs the following:

1.3.2.6 Planning authorities shall protect *employment areas* in proximity to *major goods movement facilities and corridors* for *employment uses* that require those locations.

...

1.6.8.2 Major goods movement facilities and corridors shall be protected for the long term.

The Fuel Terminals are connected to an inter-provincial pipeline and are strategically located for the purpose of distribution. These facilities represent a significant financial investment and cannot be relocated.

### **Growth Plan**

The proposed OPAs do not conform to the Growth Plan for the Greater Golden Horseshoe, 2020 (the "Growth Plan").

The Fuel Terminals are located within a Provincially Significant Employment Zone as identified in the Growth Plan.

Policy 2.2.5.9 of the Growth Plan provides:

The development of sensitive land uses, major retail uses or major office uses will, in accordance with provincial guidelines, avoid, or where avoidance is not possible, minimize and mitigate adverse impacts on industrial, manufacturing or other uses that are particularly vulnerable to encroachment.

The introduction of sensitive uses in the vicinity of the Fuel Terminals would have adverse impacts on the Fuel Terminals. These adverse impacts can be avoided, in conformity with Policy 2.2.5.9, by revising the OPAs in the manner recommended in the SNC Report.

### **City of Toronto Official Plan**

The Fuel Terminal lands are currently designated Core Employment Areas in the Official Plan. As set out below, the Official Plan contains a number of policies directed at protecting Employment Areas.

Policy 2.2.4.5 of the Official plan provides:

Sensitive land uses, including residential uses, where permitted or proposed outside of and adjacent to or near to Employment Areas or within the influence area of major facilities, should be planned to ensure they are appropriately designed, buffered and/or separated as appropriate from Employment Areas and/or major facilities as necessary to:

- a) prevent or mitigate adverse effects from noise, vibration, and emissions, including dust and odour;
- b) minimize risk to public health and safety;
- c) prevent or mitigate negative impacts and minimize the risk of complaints;
- d) ensure compliance with environmental approvals, registrations, legislation, regulations and guidelines at the time of the approval being sought for the sensitive land uses, including residential uses; and,
- e) permit Employment Areas to be developed for their intended purpose.

Policy 6.a) of the Official Plan provides:

6. Development will contribute to the creation of competitive, attractive, highly functional Employment Areas by:

- a) supporting, preserving and protecting major facilities, employment uses and the integrity of Employment Areas;

The proposed OPAs do not conform to the above policies.

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## CONCLUSIONS

In conclusion, Shell and Imperial Oil are concerned that the proposed OPAs introduce safety and operational risks and do not adequately recognize the crucial contribution of the Fuel Terminals to the local and provincial economy. The OPAs do not have adequate regard for matters of provincial interest, are not consistent with the PPS and conflict with both the Growth Plan and the Official Plan.

We respectfully request that the Committee direct City staff to work with Shell and Imperial Oil to revise the OPAs in a manner that reflects the recommendations of the SNC Report and satisfies outstanding safety and operational concerns.

Yours truly,

AIRD & BERLIS LLP



Laura Dean

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### Attachment 1 Location of Fuel Terminals

