

PG 28.2.257

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December 12, 2013
File No.: 121770.1003

Mayor and Members of Council
City of Toronto
Metro Hall, 24th Floor
55 John Street
Toronto, ON M5V 3C6

Attention: Your Worship and Members of Council

Dear Sirs/Mesdames:

**Re: City Council Meeting - December 16/17, 2013
Planning and Growth Management Committee Matter - PG28.2
Proposed Official Plan Amendment No. 231 Pertaining to Economic Health
Policies and the Policies, Designations and Mapping for Employment Areas
("OPA 231")
Client: National Rubber Technologies Corp. - 35 Cawthra Avenue, Toronto**

We are the solicitors for National Rubber Technologies Corp. ("NRT"), which owns and operates the existing rubber recycling and manufacturing facility at 35 Cawthra Avenue (the "Property"), south east of the intersection of Keele Street and St. Clair Avenue West. NRT and its predecessor companies have operated in this area since 1927. The Property is proposed to be redesignated as *Core Employment Area* in OPA 231.

We understand that OPA 231 will proceed to the Council meeting on December 16/17, 2013 where it is expected to be approved. We have reviewed the Staff report on "Official Plan and Municipal Comprehensive Reviews: Amendments to the Official Plan for Economic Health and Employment Lands Policies and Designations and Recommendations on Conversion requests" dated November 5, 2013. While our client is supportive of the City's efforts to protect employment uses, on behalf of our client, we raise the following concerns with OPA 231 in the spirit of strengthening the policies to protect employment uses in the City:

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(i) The Need to Protect Important Isolated Industrial Sites

Policy 2.2.4.1 states: "Employment Areas, as shown on Map 2, are comprised of both Core Employment Areas and General Employment Areas, as shown on Maps 13-23 inclusive. Employment Areas are areas designated in this Plan for clusters of business and economic activities including, but not limited to, manufacturing, warehousing, offices, and associated retail and ancillary facilities."

The inclusion of the Provincial Policy Statement ("PPS") definition for Employment Areas in OPA 231 appears to weaken the protection for isolated employment sites as individual industries, such as the Property, may be deemed not to constitute "clusters" of activities.

The language in Policy 2.2.4.1 of OPA 231 should be amended to recognize isolated employment sites and provide them with the same policy protections that are afforded to employment sites within clusters in Employment Areas.

(ii) There Should Be a Clear Mitigation Message for Residential and Sensitive Land Uses Adjacent to or Near to Employment Areas

Policy 2.2.4.5 states in part: "New residential and other sensitive land uses where permitted outside of, but adjacent or near to, Employment Areas will be appropriately designed, buffered and/or separated from impactful industries as necessary to prevent or mitigate adverse effects from noise, vibration, traffic, odour and other emissions and contaminants upon the occupants of the new development, and lessen complaints and their potential costs to businesses."

The goal for the compatibility studies undertaken in support of residential and sensitive land uses in proximity to Employment Areas should be broadened from merely lessening complaints to include preventing adverse impact on industries' compliance with applicable environmental regulations and guidelines, including the noise provisions of the City's Municipal Code.

In furtherance of the City's goal in Policy 2.2.4 of OPA 231 to "*conserve our Employment Areas, now and in the longer term, to expand existing businesses and incubate and welcome new businesses*", Policy 2.2.4.5 should be amended to require that the compatibility studies and recommended mitigation measures for residential and sensitive land uses near Employment Areas also take into consideration the potential intensification of expansion related emissions of existing industries and the potential introduction of new industries in the Employment Area.

Additionally, we suggest that similar language echoing the mitigation onus on new residential and other sensitive land uses be specifically referenced in policies respecting Regeneration, Mixed Use and Residential Area designations as

proponents of such uses outside of Employment Areas (and even City Staff) are unlikely to consider policies applicable to Employment Areas as being relevant to the development of properties in other designations.

(iii) Opportunity to Incorporate a Framework for Noise Flexibility in Decision-Making

As a result of industry requests for more clarity, certainty and protection from residential encroachment and to facilitate urban development and support the objectives of the PPS, the Ministry of the Environment ("MOE") recently issued, "*Environmental Noise Guideline, Stationary and Transportation Sources – Approval and Planning, Publication NPC-300*" ("NPC 300"). NPC 300 provides advice and guidance that may be used when land use planning decisions are made under the *Planning Act*, but it also is implemented in approvals issued by the MOE.

To improve land use compatibility in urban areas, NPC-300, among other things, harmonizes and provides 5 dB flexibility in the noise standards applicable to the development of new, unbuilt, sensitive land uses in proximity to existing industry and the standards applicable to the existing industry due to the introduction of the sensitive land use. The 5 dB additional allowance over MOE's standard regulations may be utilized if the City formally classifies and provides written confirmation to the MOE that the lands intended for the development of new sensitive land uses are a "Class 4" area under NPC 300 during the development approval process, should it decide to do so in its sole discretion in the exercise of its responsibility and authority under the *Planning Act*.

We recognize that proposed Amendment 231 was drafted prior to the MOE's recent issuance of the aforementioned Guideline, however, it would be beneficial to add policies to Policies 2.2.4 and 3.5.1 of OPA 231, to promote land use compatibility through the classification of lands intended for the (re)development of sensitive land uses as a "Class 4" area, where appropriate, under NPC 300 as amended or replaced from time to time. Such provisions should also be referenced in Official Plan policies respecting Regeneration, Mixed Use and Residential Area designations.

(iv) Compatibility of Uses Within Employment Areas

Policy 4.6.6 states: "Implementing Zoning By-law(s) will create a gradation of zones that distinguish between employment uses on the basis of their potential operations and impacts to ensure a compatibility of uses within Employment Areas."

We agree that it is appropriate to create a gradation of zones that distinguish between employment uses on the basis of their potential operations and impacts, but the gradation should ensure land use compatibility between uses within Employment Areas and uses that are external to Employment Areas. We suggest that the language of Policy 4.6.6 be amended to include the following text: ...within

Employment Areas *and areas adjacent or near to Employment Areas*". Such additional language would be consistent with the language in Policy 2.2.4.5 of OPA 231.

(v) Refinements to Policies for All Employment Areas

The preamble in Policy 4.6.5 states "*Development will contribute to the creation of competitive, attractive, highly functional Employment Areas by*" and then lists a number of methods by which this goal will be achieved.

Our concerns with some of the provisions in this Policy fall into three categories: a) policies that conflict with or are inconsistent with other policies in OPA 231; b) policies that address issues that are already/more appropriately regulated by the Ministry of the Environment ("MOE") and c) policies that address issues that are more appropriately regulated by a zoning by-law.

a) Conflicts and Inconsistencies in Policies Supportive of Industry

There are inconsistencies in OPA 231 policies relating to employment generated truck traffic:

Policy 4.6.5. ..."e) limiting or mitigating the effects of traffic generated by the development within the Employment Area and adjacent areas".

Policy 2.2.4.6 states, "Employment Areas in the vicinity of existing major transportation infrastructure such as highway interchanges, ports, rail yards and airports are designated to provide for, and are to be preserved for, employment uses that may rely upon the major transportation infrastructure for the movement of goods."

Policy 2.2.4.7 reads in part, "Measures will be introduced and standards applied on roads within Employment Areas that give priority to the movement of trucks..."

Policy 4.6.5 e) seeks to limit or to mitigate traffic within Employment Areas and adjacent areas, whereas Policies 2.2.4.6 and 2.2.4.7 encourage reliance on major transportation infrastructure and give priority to the movement of trucks within Employment Areas. Policy 4.6.5 e) does not support employment growth and should be deleted.

b) Matters Already/More Appropriately Regulated by the MOE

The language in Policy 4.6.5 i) of OPA 231 replicates Policy 4.6.6 f) of the City of Toronto Official Plan. That being said, where an existing policy is problematic this process provides the opportunity to review and reconsider policies to address such concerns.

Policy 4.6.5...” i) mitigating the effects of noise, vibration, dust odours or particulate matter that will be detrimental to other businesses or the amenity of neighbouring areas”.

Industry does not have to mitigate for other businesses. The MOE only requires mitigation for health and safety reasons and to increase land use compatibility with sensitive uses/receptors. This policy seems to go even further.

Policy 4.6.5 i) appears to undermine the strength of and conflicts with Policy 2.2.4.5 which requires a new sensitive or residential land use to mitigate:

“...to prevent or mitigate adverse effects from noise, vibration, traffic, odour and other emissions and contaminants upon the occupants of the new development, and lessen complaints and their potential costs to businesses.”

The proponent of a residential development may argue using Policy 4.6.5 i) as justification, that an industry has to comply with Policy 4.6.5 i) so the proponent does not have to account for any emission impacts when introducing a new sensitive land use.

When an industry proposes to locate in an area where there are existing sensitive receptors, the industry must consider such receptors to obtain an Environmental Compliance Approval from the MOE so that it can operate. Industry is complying with PPS compatibility requirements through MOE permitting and licensing requirements and need not be regulated further by the City through Policy 4.6.5 i) of OPA 231. Policy 4.6.5 i) should therefore be deleted in its entirety.

Policy 4.6.5...” l) ensuring that where the zoning by-law(s) permit open storage and/or outdoor processing of goods and materials, the open storage and/or processing is: ... iv. not adversely affecting existing and planned neighbouring land uses in terms of dust, noise and odours.”

We question how open storage and/or processing adversely affects existing and planned neighbouring (employment) land uses within an Employment Area. Official Plan policy and zoning by-laws are useful to plan and regulate the orderly arrangement of uses and appropriate development standards, but emissions are operational impacts that are better regulated and managed under the *Environmental Protection Act*. Policy 4.6.5 l) should therefore be deleted from OPA 231.

c) Matters More Appropriately Regulated by a Zoning By-law

Policy 4.6.5...” j) providing landscaping on the front and any flanking yard adjacent to any public street, park and open space to create an attractive streetscape, and screening parking, loading and service areas;”

This policy is very detailed for an Official Plan and more restrictive in some cases than the City's new Zoning By-law 569-2013. The requirement for screening of all parking, loading and service areas is onerous and not appropriate in all *Employment Areas* and in all *Employment Zones*.

We understand that the City wishes to improve the aesthetics of *Employment Areas*, however, the requirement to provide landscaping on the front and flanking yards may conflict with the objective of creating "competitive, highly functional" and higher density *Employment Areas*.

A policy requiring all flanking yards to be landscaped adjacent to any public street, park and open space to "screen" all parking, loading and service areas is unreasonable. Such issues are better addressed through zoning. Policy 4.6.5 j) should therefore be deleted in its entirety.

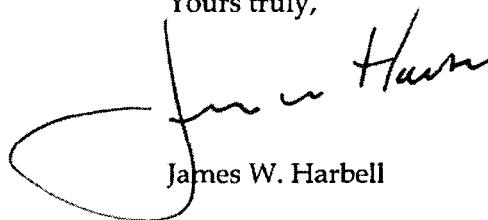
Conclusion

There are policies in OPA 231 that are of concern to our client, in particular, such policies that may adversely affect the current and future employment use of the Property. The above noted list of concerns with OPA 231 is not exhaustive and we would welcome the opportunity to discuss them with City staff. This correspondence serves to protect our client's right to appeal OPA 231 to the Ontario Municipal Board, should it be required. We also reserve the right to raise additional comments and concerns as OPA 231 is subject to further refinement and Council approval.

Please keep us apprised of the status of the OPA 231 by providing us with copies of any further staff reports, notice of any further public meetings, committees of Council and Council meetings and copies of all decisions made by Council, that are concerned with this OPA.

Should you have any questions respecting this request, kindly contact the writer at your earliest convenience.

Yours truly,



James W. Harbell

JH/vs

cc. Rex Moulard, *Financial Controller, National Rubber Technologies Corp.*
Ulli S. Watkiss, *Clerk, City of Toronto*
Nancy Martins, *Administrator, Planning and Growth Management Committee, City of Toronto*
Paul Bain, *City Planning*