



MUNICIPAL, PLANNING & DEVELOPMENT LAW

2 April 2019

Sent via E-mail: ecdc@toronto.ca

Economic and Community Development
Committee
10th Floor, West Toronto, Toronto City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Dear Chair Thompson and Members of the Committee:

**Re: 3 April 2019 Meeting Agenda Item EC3.6
Noise By-law Review - Proposed Amendments to Chapter 591, Noise**

We are the solicitors for Mondelez Canada Inc. ("Mondelez Canada"), the owner/operator of several industrial facilities within the City of Toronto (the "City"). The facilities include the East York Bakery located at 1200 O'Connor Drive / 5 Bermondsey Road, the Bertrand Plant located at 40 Bertrand Avenue, the Scarborough Bakery located at 370 Progress Avenue and the Gladstone Facility located at 277 Gladstone Avenue.

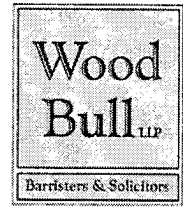
Mondelez Canada has had concerns for many years with the existing Noise By-law's treatment of noise emissions from stationary sources which are regulated by the Province, since such regulatory overlap creates problems for industry by increasing complexity and expense associated with compliance. On 21 January 2016, we submitted written comments to the Municipal Licensing & Standards Committee in regard to an earlier version of a proposed amendment to the Noise By-law to address sound from stationary sources. On 26 February 2019, we submitted additional written comments with respect to the January 2018 draft Outcomes Report from the City's Noise Working Group. Copies of those submissions are attached for your information.

Mondelez Canada is pleased to see that the proposed amendments to the Noise By-law include an exemption for "the emission of sound from a stationary source that is in compliance with a provincial environmental compliance approval" (section 591-2.8.B).

However, Mondelez Canada is concerned that this exemption is still too narrow and will continue to lead to regulatory overlap and issues of dual compliance, for two reasons. First, an "environmental compliance approval" or ECA is only one particular type of provincial approval. Second, the reference to the emission of sound being "in compliance with" the provincial approval suggests that City staff will

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be involved in assessing compliance with Provincial approvals, rather than leaving compliance to Provincial authorities.

Accordingly, Mondelez Canada recommends that section 591-2.8B be revised to read as follows:

§591-2.8 does not apply to the emission of sound from a stationary source that is subject to a Provincial Environmental Compliance Approval, Environmental Activity and Sector Registry registration or an equivalent approval issued by the Ministry of the Environment, Conservation and Parks.

Thank you for your consideration of this submission.

Yours very truly,

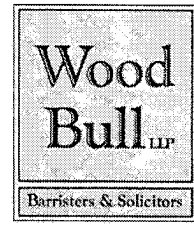
Wood Bull LLP

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Kim Mullin

KM/km

c. Client
Gord Reusing, GHD



MUNICIPAL, PLANNING & DEVELOPMENT LAW

26 February 2019

Sent via E-mail
mlsfeedback@toronto.ca

Elizabeth Glibbery
Executive Director (Interim),
Municipal Licensing and Standards
Toronto City Hall
16th floor, West Tower
100 Queen Street West
Toronto, ON M5H 2N2

Dear Ms. Glibbery:

Re: Noise By-law Review

We are the solicitors for Mondelez Canada Inc. ("Mondelez Canada"), the owner/operator of several industrial facilities within the City of Toronto (the "City"). The facilities include the East York Bakery located at 1200 O'Connor Drive / 5 Bermondsey Road, the Bertrand Plant located at 40 Bertrand Avenue, the Scarborough Bakery located at 370 Progress Avenue and the Gladstone Facility located at 277 Gladstone Avenue.

Existing Noise By-law and Previous Submission

As you know, section 591-5 of Toronto Municipal Code, Chapter 591 (the "Noise By-law"), sets out the following limitations on sound levels from stationary sources:

§ 591-5. General limitations on sound levels due to stationary sources.

A. No person shall emit or cause or permit the emission of sound from a stationary source such that the level of sound from that source at a point of reception located in a quiet zone or residential area exceeds the applicable sound level limit prescribed in Publication NPC-205 - "Sound Level Limits for Stationary Sources in Class 1 and 2 Areas (Urban)".

B. Subsection A shall not apply to residential air-conditioning devices regulated under § 591-6.

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26 February 2019

On 21 January 2016, we submitted written comments to the Municipal Licensing & Standards Committee in regard to an earlier version of a proposed amendment to the Noise By-law to address sound from stationary sources. A copy of that submission is attached to this letter for your reference.

At that time, the City's proposed amendment recognized the importance of providing an exemption to the Noise By-law for noise emissions from stationary sources meeting certain criteria ("Proposed Exemption"). The purpose of the Proposed Exemption was to reduce overlap and duplication between the regulatory efforts of the City and the Ministry of the Environment and Climate Change ("MOECC") (now the Ministry of the Environment, Conservation and Parks ("MECP")). We understood that this was in recognition of the fact that regulatory overlap creates problems for industry by increasing complexity and expense associated with compliance. However, we were concerned that many stationary sources, including all of Mondelez Canada's facilities in the City, would not meet the exemption criteria, notwithstanding that they were operating in compliance with MOECC requirements. This would have undermined the City's goal in providing the Proposed Exemption.

Noise Working Group and Proposed Revisions to Noise By-law

At the City's invitation, Mondelez Canada's noise consultants, GHD Limited ("GHD"), attended meetings of the City's Noise Working Group ("NWG") in 2017 and 2018 to provide feedback on the Noise By-law.

In January 2018, a draft Outcomes Report from the NWG sessions was provided to members of the NWG. The draft Outcomes Report noted that the Proposed Exemption at that time read as follows:

Despite any other provision of this chapter, it shall be lawful to emit or cause or permit the emission of sound:

*From a stationary source where the emission of sound is in compliance with a provincial **environmental compliance approval** that permits the emission of noise.*

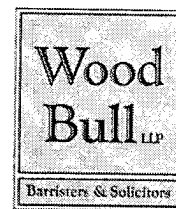
The draft Outcomes Report referred to feedback from the NWG recommending that the Proposed Exemption be revised to read as follows:

Despite any other provision of this chapter, it shall be lawful to emit or cause or permit the emission of sound:

"...in compliance with a provincial ECA, EASR or an equivalent issued by the MOECC.

Mondelez Canada supports this revision to the Proposed Exemption, with a further modification to refer to the MECP, rather than MOECC. In addition, section 591-5 should be revised to refer to current

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MECP noise criteria. Accordingly, Mondelez Canada submits that section 591-5 of the Noise By-law should be revised to read as follows (revisions shown in **bold type**):

§ 591-5. General limitations on sound levels due to stationary sources.

*A. No person shall emit or cause or permit the emission of sound from a stationary source such that the level of sound from that source at a point of reception located in a quiet zone or residential area exceeds the applicable sound level limit prescribed in **Publication NPC-300 - "Environmental Noise Guideline: Stationary and Transportation Sources - Approval and Planning"**.*

B. Subsection A shall not apply to residential air-conditioning devices regulated under § 591-6.

C. Despite any other provision of this chapter, it shall be lawful to emit or cause or permit the emission of sound in compliance with a provincial Environmental Compliance Approval, Environmental Activity and Sector Registry, or an equivalent approval issued by the Ministry of the Environment, Conservation and Parks.

Further Consultation

We understand that City staff are currently conducting public consultations with the goal of presenting a report to Council recommending updates to the Noise By-law in the spring of this year. On behalf of Mondelez Canada, we urge you to include the revisions set out above in the draft update to the Noise By-law.

Yours very truly,

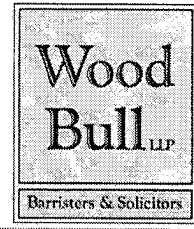
Wood Bull LLP

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Kim Mullin

c Client
GHD Limited

KM/km



MUNICIPAL, PLANNING & DEVELOPMENT LAW

21 January 2016

Sent via E-mail
lsc@toronto.ca

Municipal Licensing and Standards Committee
10th floor, West Tower, City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Dear Chair and Members:

**Re: Licensing and Standards Committee Agenda Item LS 9.1
Proposed Amendment - Chapter 591 - Noise By-law**

We are the solicitors for Mondelez Canada Inc. ("Mondelez Canada"), the owner/operator of several industrial facilities within the City of Toronto (the "City"). The facilities include the East York Bakery located 1200 O'Connor Drive / 5 Bermondsey Road, the Bertrand Plant located at 40 Bertrand Avenue, the Scarborough Bakery located at 370 Progress Avenue and the Gladstone Facility located at 277 Gladstone Avenue.

We have reviewed the Staff Report dated 11 January 2015 [sic] (the "Report") regarding proposed amendments to Toronto Municipal Code, Chapter 591 (the "Proposed Amendment"). With respect to manufacturing and industrial stationary sources, the Report states:

Inconsistency with existing provincial standards can have significant adverse effects on industry. Currently, industry has two different standards of noise to adhere to (the NPC-300 and Chapter 591, noise). In addition, there may be duplication of efforts as staff at ML & S and staff at MOECC [Ministry of the Environment and Climate Change] have roles in investigating complaints and monitoring compliance for industry.

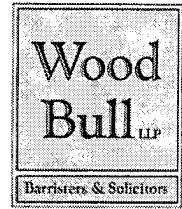
...

The proposed amendments to the by-law include an exemption for organizations that are complying with provincial noise standards. The effect of this exemption reduces unnecessary duplication for these organizations as well as City staff.

We agree that avoidance of overlapping jurisdiction between the City and MOECC with respect to noise is an important and desirable objective for the City. We also agree that a reasonable manner of

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21 January 2016

achieving this objective is to provide an exemption for industrial facilities that are in compliance with provincial noise standards. However, Mondelez Canada has serious concerns with respect to some provisions in the Proposed Amendment that will, in fact, have the opposite effect.

Consultation

At the City's invitation, representatives of Mondelez Canada and their noise consultants GHD Limited ("GHD"), attended a meeting with staff to discuss the in force- version of Chapter 591 (the "Noise By-law"). Following that meeting, GHD submitted a memorandum dated 18 September 2015 (the "GHD Memo"). The GHD Memo summarized issues and problems that Mondelez Canada had encountered with the Noise By-law and proposed an exemption for industrial facilities operating in full compliance with an Environmental Compliance Approval ("ECA") and Ministry of the Environment and Climate Change ("MOECC") noise criteria.

The problem of dual compliance with municipal noise standards and MOECC guidelines was recently addressed by the City of Hamilton by amending its Noise By-law. The text of the Hamilton amendment was included in the GHD Memo, as a suggested manner of addressing the same problem with the City's Noise By-law. A copy of the GHD Memo is attached to this letter for your reference.

Stationary Source Exemption

Chapter 591-3(C) of the Proposed Amendment purports to provide an exemption for stationary sources as follows:

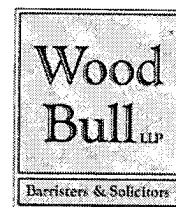
591-3. Specific exemptions.

Despite any other provision of this chapter, it shall be lawful to emit or cause or permit the emission of sound:

...

C. from a stationary source where the emission of sound is in compliance with an environmental compliance approval that has been granted when that approval includes an agreement for noise mitigation [emphasis added].

In order to obtain an environmental compliance approval ("ECA"), a stationary source must establish that it will operate within the noise level limits set by guideline NPC-300 (or its predecessor, NPC-205), issued by MOECC. Most ECAs are issued without a noise abatement action plan or an agreement for noise mitigation. However, in order to qualify for the exemption under Chapter 591-3(C) of the



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Proposed Amendment, a stationary source is required to have both an ECA and an agreement for noise mitigation.

NPC-300 defines an agreement for noise mitigation as:

“Agreement for noise mitigation”

means one, or multiple, legally binding agreements involving parties such as land use planning authorities, proponents of a noise sensitive land use and owners of a stationary source.

Agreement(s) may be associated with decisions made by the land use planning authority under the Planning Act or established as collateral agreements.

These agreements should outline the framework for cooperation among the land use planning authority, the stationary source and the noise sensitive land use. Agreements are intended to provide protection for both the stationary source and the noise sensitive land use. The need for the agreement(s) is triggered by the use of receptor based noise control measures to ensure compliance with the applicable sound level limits. The finalized agreement(s) are to be submitted by the stationary source with any application for an MOE approval [emphasis added].

...

The result of coupling the requirement for an ECA with an agreement for noise mitigation, is that stationary sources operating within noise level limits in compliance with NPC-300, may be prosecuted for municipal noise complaints and cannot rely on the exemption as a defense.

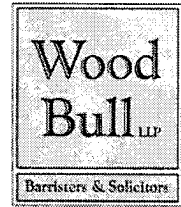
As the definition above explains, an agreement for noise mitigation is triggered by the use of receptor based noise control measures. However, receptor based noise mitigation as a manner of ensuring compliance with NPC-300, is only permitted under limited circumstances on lands that have been previously designated by the municipality as being within a Class 4 Area.

NPC-300 defines a Class 4 Area as:

“Class 4 area”

means an area or specific site that would otherwise be defined as Class 1 or 2 and which:

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- *is an area intended for development with new noise sensitive land use(s) that are not yet built;*
- *is in proximity to existing, lawfully established stationary source(s); and*
- *has formal confirmation from the land use planning authority with the Class 4 area classification which is determined during the land use planning process.*

Additionally, areas with existing noise sensitive land use(s) cannot be classified as Class 4 areas.

Under the definition, a number of preconditions must exist before an area may be considered for Class 4 designation. With respect to the Mondelez Canada facilities within the City, it is our understanding that none are adjacent to Class 4 Areas and none are a party to an agreement for noise mitigation as defined by NPC-300. As a result, not one of the Mondelez Canada facilities would qualify for an exemption under the Proposed Amendment. The Mondelez Canada facilities would remain subject to two different noise standards.

This result does not appear to accord with the stated purpose and objective stated in the Report.

Noise Mitigation Plan

Under the Proposed Amendment, the Executive Director may require any person to submit a noise mitigation plan, if the director is of the opinion that it is necessary to achieve compliance with the Proposed Amendment.

The plan is required to set out particulars for achieving compliance but does not provide any objective standards, against which compliance is to be measured. In addition, the Proposed Amendment does not provide an exemption for stationary sources with an ECA.

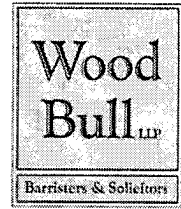
Similar to subjecting stationary sources to dual compliance between the City and MOECC with respect to investigation and enforcement, industrial facilities may be required to submit two noise mitigation plans subject to different evaluation and compliance criteria.

Again, this result does not appear to accord with the purpose and objective stated in the Report.

Conclusion

Given the Report's recognition of the importance of providing an exemption in the Proposed Amendment for stationary sources that operate in compliance with an ECA, the exemption should be

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modified to apply to any stationary source operating in compliance with an ECA. The exemption should not be limited to stationary sources with an agreement for noise mitigation.

We propose the following modification:

591-3. Despite any other provision of this chapter, it shall be lawful to emit or cause or permit the emission of sound:

...

C. *from a stationary source as a result of an activity that is authorized under federal or provincial legislation, such as an activity carried out in accordance with an environmental compliance approval.*

Alternatively, we request that the Committee defer this matter to allow further consultation with industrial stakeholders, so that we may work collaboratively with staff to find an alternative amendment for the Committee's consideration at a later date.

Yours very truly,

Wood Bull LLP

A handwritten signature in cursive script, appearing to read "Peter A. Gross".

Peter A. Gross

c. Client