

March 7, 2022

Via E-mail

Toronto City Council
100 Queen Street West
City Hall, 12th Floor, West Tower
Toronto, ON M5V 3C6

Attention: John Elvidge, City Clerk

Dear Sirs/Mesdames:

Re: PH31.1 – Development in Proximity to Rail: Amendment to the Official Plan – Final Report

We are counsel to a number of owners with landholdings in close proximity to rail facilities. We write on behalf of our clients to express concerns with draft Official Plan Amendment No. 536 (the “**Draft OPA**”) relating to development in proximity to rail. While our clients share the objective of ensuring public health is protected in the context of supporting intensification near rail facilities, certain aspects of the Draft OPA are problematic as currently drafted. As outlined further below, certain minor revisions would go a long way toward resolving some of our clients’ concerns and, in our view, better reflect staff’s intentions as outlined in the associated staff report.

We write this letter on behalf of the following clients with interests in lands in proximity to rail:

- 500 Macpherson Avenue Limited Partnership (500 Macpherson Avenue)
- 888DS TAS LP (888 Dupont Street)
- Auckland Residences Inc. (5251 Dundas Street West)
- Campont Developments Limited (316-336 Campbell Avenue)
- Castlepoint Weston Limited Partnership (1865, 1871, 1879 & 1885 Weston Road)
- Cityscape Holdings Inc., Dream Distillery District Commercial (GP) Inc., Ribbon East Corp., Ribbon West Corp., OTP Management LTD. (the Distillery District and a portion of the Triangle Lands)
- City Front Developments Inc. (400 Front Street West)

- Dream Asset Management Corporation, Dream Impact Master LP, Kilmer Infrastructure Developments Inc. and Tricon Lifestyle Rentals Investment LP (lands located within the West Don Lands of Toronto)
- Dream GG Inc. (351 and 369 Lake Shore Boulevard East)
- EHL (21 Don Roadway) Inc., EHL (30 Booth Ave) Inc., EHL (385 Eastern Avenue) Inc. and EHL (375 Eastern Avenue) Inc. (East Harbour Lands)
- Freed (AnX) LTD. (310 – 358 Dupont Street)
- G&N Developments Inc. (401 Logan Avenue)
- Quayside Impact Limited Partnership (Quayside Lands)
- Sterling 3B Developments Limited (150 Sterling Road, Block 4, Plan 66M2559), Sterling 4B Developments Limited (181 Sterling Road, Block 7, Plan 66M2559), and Sterling 5B Developments Limited (150 Sterling Road, Block 8 Plan 66M 2559)
- TAS (259 Geary Avenue, 55 Milne Avenue, 1655 Dupont Street, 142 Vine Avenue)
- TAS Tecumseth Niagara LP (2 Tecumseth Street)
- Tricon Residential Inc. (386-394 Symington Avenue)

Summary of Concerns with the Draft OPA

The purpose of the Draft OPA, as outlined in the staff report dated January 27, 2022 (the “**Staff Report**”), is to protect public health and the viability of rail facilities, while supporting intensification across the City. Our clients share this objective as one means of ensuring that land use planning and public transit considerations are appropriately integrated. However, in our view, the Draft OPA is problematic in certain respects, including the following.

The geographic scope of the Draft OPA is not limited to 30 metres as intended

The Staff Report makes clear that the intention is for the Draft OPA to apply to development applications for lands within 30 metres of the property line of rail facilities. Excerpts from the Staff Report confirming this intent are included in Appendix A. However, the Draft OPA itself does not reference the 30 metre standard. Instead, it simply provides that development applications within an undefined “area of influence of rail” would be subject to its policies. Use of this vague terminology instead of the more precise 30 metre standard referenced in the Staff Report creates significant uncertainty and leads to concerns that sites located beyond 30 metres from rail facilities could be made subject to the Draft OPA.

Revising the Draft OPA to specify that the “area of influence of rail” is 30 metres as set out in the Staff Report would ensure that the Draft OPA reflects staff’s intent and avoid uncertainty in applying the associated policies. Further, a number of our clients’ concerns are based solely on this aspect of the Draft OPA. Resolving the uncertainty associated with use of “the area of influence of rail” in the manner described would address the concerns of a number of our clients.

The proposed indemnity policies are impractical and inappropriate

The Draft OPA provides that landowners are to enter into an agreement with the City whereby both the landowner and the qualified professional engineer who prepared the rail safety mitigation measures indemnify the City from damages resulting from a derailment on the rail corridor. Requiring an engineering firm to provide an indemnity to the City is unworkable, as doing so is not part of typical engineering practice and it is not clear that any engineering firm would be willing to provide such an indemnity. As a result, including this language would set up a policy test that may well be impossible to meet.

Our clients also have more general concerns relating to the appropriateness of the policy requiring an indemnity. An indemnity is not necessary to protect the City’s interests given other tools available. Further, the indemnity obligation as drafted is inappropriately vague and unduly broad, as it does not draw any causal link between the damages to be indemnified and any action or omission on the part of the owner or the engineer.

In these circumstances, the Draft OPA should be revised to remove the policy requiring indemnities.

The absence of transition policies creates unfairness

The Draft OPA does not include any transition policies recognizing applications already submitted or approved. A number of our clients have applications that have been in process for years, are approved in principle, or already have zoning amendments in force. It is inappropriate and prejudicial for the new policies in the Draft OPA to apply in such circumstances. In our view, the Draft OPA should be revised to exempt pre-existing applications and approved developments, and future applications that implement such applications/approvals (such as site plan applications to implement an approved rezoning).

Conclusion

We believe the revisions noted above would better reflect staff’s intentions and improve the clarity of the Draft OPA’s policies. We ask that City Council incorporate the requested revisions into the policies as approved.

We also ask that this communication be treated as our clients' written representation in respect of the Draft OPA in accordance with the *Planning Act*. We would appreciate receiving notice of any decision of City Council in respect of this matter.

Yours truly,

Goodmans LLP

A handwritten signature in blue ink, appearing to read "Max Laskin".

Max Laskin
ML/
encl.

cc. Anne Benedetti, David Bronskill, Joe Hoffman, Roslyn Houser

APPENDIX A
EXCERPTS FROM THE STAFF REPORT REFERENCING
30 METRE AREA OF INFLUENCE

- “A recommended amendment to Schedule 3, Application Requirements incorporates the requirement for a Rail Safety and Mitigation Report **for development within 30 metres of the property line for rail facilities.** The Official Plan Amendment would require proposed development of new or intensified land uses to consider proximity to rail facilities and public safety in relation to rail facilities in a consistent manner.”
- “The recommended Official Plan Amendment has been drafted to address rail safety and risk mitigation issues as part of the development application review process. Development proposals subject to planning applications for Official Plan amendments, rezoning amendments, plans of subdivision, and applications subject to site plan control which would introduce new or intensified land uses on lots **wholly or partially located within 30 metres of rail facilities.** are proposed to require rail safety review and the development of risk mitigation approaches specific to each application to reflect rail operations and site conditions.”