

March 7<sup>th</sup>, 2022

City of Toronto  
City Clerk's Office  
Planning and Housing Committee  
10<sup>th</sup> Floor, West Towner, City Hall  
Toronto, Ontario  
M9C 2Y2

**Attention: Mr. John D. Elvidge, City Clerk**

**Re: Development in Proximity to Rail: Amendment to the Official Plan – Final Report,  
dated January 27, 2022  
Draft Official Plan Amendment No. 536 (the “Draft OPA”)  
Public Meeting Item PH31.1**

Dear Mr. Elvidge, et. al.,

We are litigant in person for JSW+ Associates (“**JSW+**”). JSW+ is a civil engineering firm that was founded in 1966, and has been providing civil engineering services, and more specifically rail safety design, for developments in the City of Toronto for decades. As a firm, we are presently providing rail safety design to at least 15 active developments (“**Subject Lands**”) that are in close proximity to rail, within the City of Toronto; this does not include all of the previous developments that have since been approved and constructed.

This letter will serve to provide our objection to the City of Toronto’s (“**City**”) Draft OPA. We have reviewed the Draft OPA that was appended to the Final report of the Chief Planner and Executive Director, City Planning, dated January 27, 2022, and we are writing to express our significant concerns with the aforementioned documentation.

While our firm has general concerns with the Draft OPA in its entirety, there is a serious concern with Policy 2, clause (c), which mandates the landowner to enter into an agreement with the City, whereby the landowner and the qualified professional engineer whose stamp appears on the drawings assumes responsibility and indemnifies the City from damages to persons and property resulting from a derailment on the rail corridor. It is of our professional opinion that Policy 2, clause (c), is an onerous policy that is not conducive with an environment suitable to promoting growth and development within the City, as outlined in the City of Toronto’s Official Plan.

First and foremost, the FCM/RAC Guidelines (“**The Guidelines**”) have been prepared in consultation with the City, in which the City has provided input and recommendations on the structure of these Guidelines. The City has also adopted these Guidelines in peer reviews and during the approval processes for development(s) adjacent to rail, in which peer reviewers provide documentation upon approval that the site has been designed in general accordance with The

Guidelines. Additionally, policies in the Provincial Policy Statement (2020), such as 1.2.6.1, stipulate that sensitive land uses shall be planned and developed in accordance with provincial guidelines, standards and procedures. As engineers, the entire basis of our design is heavily reliant on these Guidelines. Therefore, since the City (and the province) is actively implementing and adopting this criteria, the City should not be absolved of any liability if the Engineer has used The Guidelines as a basis for their design.

Secondly, the FCM/RAC Guidelines have not been designed and implemented to completely omit risk, rather minimize and mitigate any potential adverse impacts to public health and safety; this is further stated in policy 1.2.6.1 of the Provincial Policy Statement. By utilizing the recommendations in The Guidelines, the risk management strategy and intent is to mitigate any risk to a level that is as low as reasonably possible. Therefore, even if measures outlined in The Guidelines were directly implemented, there would still be inherent and dormant risk to the development.

Furthermore, the Draft OPA explicitly refers to an “alternative rail safety mitigation measure”, which alludes to a conscious deviation from The Guidelines. The Guidelines stipulate that the golden standard for development adjacent to a Principal Mainline track is a 30-meter setback and an earth berm, but also acknowledges that several factors can impact the ability to implement this recommendation. Additionally, the Guidelines also promote (and explicitly refer to) several alternative mitigation measures in lieu of a 30-meter setback and an earth berm. Thus, The Guidelines promote and allow the flexibility to utilize alternative rail safety mitigation measures, in which these measures are reviewed and approved by the City in accordance with the aforementioned Guidelines.

Lastly, it is our professional opinion, that this policy would severely restrict the opportunity for development and growth in the City of Toronto. This is because this type of policy will force engineers and developers to deviate from providing viable, exciting, and feasible development concepts out of concern over potential legal liabilities. Moreover, our present insurance policy would inhibit the ability to provide rail safety design based on the proposed Draft OPA.

Due to the reasons noted above, we respectfully urge that Council reconsiders the decision on the Draft OPA and ask that the City refrain from implementing this contentious policy. JSW+ would be happy to provide input on any, and all, amendments to the current form of the Draft OPA, if required. We also request to be provided with Council’s decision in respect to the Draft OPA.

Thank you for your consideration and taking the time to review this letter. If you require any additional clarification and/or have any questions, please do not hesitate to contact the undersigned.

Yours truly,

Johnson Sustronk Weinstein + Associates



Michael Mikhail, P.Eng.  
Associate Civil Engineer

Cc Brent Schuknecht, JSW+ Associates