

March 8, 2022

By E-Mail

Council Secretariat
12th Floor, West Tower
Toronto City Hall
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Marily Toft

Your Worship Mayor John Tory and Council Members

**Re: Item No. PH 31.1
Development in Proximity to Rail
Proposed Official Plan Amendment 276**

We act for OTT 33 Development Inc., the owner of 33 Greenbelt Drive. This property is located adjacent to a rail corridor, and as such is directly affected by the proposed official plan policy

We are writing to express our concern with the policy as presented.

In general, we are concerned that the proposed policy is vague in many ways. For example, it refers to development in an "area of influence" requiring a study - but does not define what that "area of influence" is. Source documents have a wide range of definitions of this term - ranging from 30 metres to 1 kilometre. This ambiguity is troubling and offers potential for difficulties when the policy is applied.

Similarly, the vagueness of the policy creates the opportunity for inconsistent and uneven application of its requirements for studies and mitigation measures.

Most troubling is the aspect of the policy requiring landowners to indemnify the City in the event of a rail accident. Under the Canadian Constitution, railways and rail safety is a matter of federal government jurisdiction. The City is seeking to use its powers under the planning act over land use on non-railway lands to step into regulating this area that is otherwise regulated by another level of Government. However, nowhere does the planning act provide a municipality with the legal authority to require such legal indemnification for accidents that are caused by another third party. If the city does wish to assume regulatory authority in prescribing rail safety related measures, the City cannot escape the responsibility associated with exercising that authority by attempting to shift responsibility to landowners.

We would be pleased to continue discussion of these concerns with City staff.

Yours Sincerely,

AIRD & BERLIS LLP



Hon. Peter Van Loan
Partner

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