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Via E-Mail (councilmeeting@toronto.ca)

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

Attention: Marilyn Toft

Your Worship Mayor John Tory and Members of Council:

Re: Item No. PH31.1
Development in the Proximity of Rail
Addresses: Multiple throughout the City Nos. 5415-5481, 5485 and 5487 Dundas St. West & 15 and 25 Shorncliffe Road, Toronto

We are counsel to Pinnacle International Ltd. which is the owner of a number of properties throughout the City, including lands that abut a rail corridor. As such, our client will be impacted by the "application review regime" that is being proposed through the "Rail Official Plan Amendment" (the "**Rail Amendment**") that is before Council for consideration and adoption.

We are writing this letter to provide you with our client's position respecting the Rail Amendment. Firstly, our client supports the City in attempting to create a consistent and timely, "one window approach" to the review of developments abutting rail facilities. Secondly, our client does not believe this has been achieved and we are taking this opportunity to outline our client's concerns with the proposed Rail Amendment.

BACKGROUND

By way of background, our client's representatives had been monitoring and participating in the background discussions that had taken place over the last several years and as a result had anticipated a more "precise policy document" would result that would not only ensure safety, but improve the efficiency of the review process. Our client believes it is a timely opportunity to improve upon the existing review process (with the City already circulating the impacted rail operator), will be missed if the Rail Amendment is adopted as is. This is not beneficial given that the City and the development industry are aligned in terms of improving upon the efficiency and the time it presently takes to review applications.

ISSUES OF CONCERN

Our client's concerns include what appears to be a "blanket" requirement for the preparation of a peer reviewed Rail Safety and Risk Mitigation Study ("**Rail Report**") at each stage of development (Official Plan, Rezoning, Plan of Subdivision and Site Plan). This not only creates a "moving target" for compliance, but the Rail Amendment fails to recognize and/or account for the level of design detail that is available respecting developments (going from least amount to the most amount) an Official Plan Amendment stage through to Rezoning, Subdivision and Site Plan Approval. As drafted, a new Rail Report would be required at each stage of approval and there is no recognition of the complexity of requirements that would be appropriate through these stages. For example, an Official Plan Amendment may only establish that lands are going to be mixed use while at the site plan approval stage details such as fencing, berms and setbacks are dealt with. The Rail Amendment does not recognize this fact and infers the Rail Report would be equally detailed at each stage of review.

A related concern is that our client believes that there is a more appropriate stage in the planning process to require the preparation of a Rail Report than at the Official Plan or Rezoning stage. For evidence of the same, there are already uses permitted immediately next to railways through both the City's Official Plan and zoning by-laws. Consideration of the rail impacts at the site plan stage and/or plan of subdivision is logical. As presently drafted, the Rail Amendment will create a framework whereby the required (to be peer reviewed) Rail Report will introduce the potential for "creep" in terms of requirements. There will no certainty for the City, residents and the developer.

It should be noted that rail companies are already circulated with applications in proximity to their rail corridors and provide comments relating to these same applications where they have concerns. This step of the review process is not being streamlined, but layered upon which was not the goal of the original review by the City. For example, one of our client's properties located at Shorncliffe Road and Dundas Street West in Etobicoke has already undergone a review and received a "rezoning sign off" by Metrolinx. As drafted, the Rail Amendment will trigger another review of the "same rail issues", by both the City and the rail operator. This is a significant and time consuming waste of everyone's resources.

We are also concerned that the City has chosen a strategy of not clearly identifying when a Rail Report would not be required. It is being put on the applicant to justify every scenario through a peer reviewed Rail Report that further investigation is not required. There are many instances today when the City does not require a review therefore, those situations should be exempted today.

Related to this last issue is the vagueness of the statement "A complete application to introduce, develop or intensify land uses within the area of influence of rail,…" . For example, what does "introduce" mean? Does intensify meaning you are "caught" any time you add density to an existing building or beyond the rail impact zone? For that matter, what is the rail impact zone to be applied? Staff reference 30m in their report, while the Rail Association Guidelines set out 30m or 15m requirements from railway to a building. The actual Rail Amendment is silent on the matter. Clarifying the instances that a new use could be exempt from this requirement is important if efficiency is to be improved.

We are also greatly alarmed by the fact the Rail Report is to be evaluated against a document the City has no expertise with, but still note they will clear the Rail Report when "accepted by the City and reviewed by the applicable rail operator". "Accepted by the City" is a potentially arbitrary test. What are these tests? Furthermore, the policy purports to require a rail operator to have reviewed the Rail Report while having no legal ability to require them to do so.

Also concerning, the Rail Amendment includes a provision whereby it attempts to use the Official Plan to obligate landowners to enter into legal indemnification agreements with the City. There is no planning or legal basis for the municipality to attempt to use the Official Plan as a means of extracting indemnification agreements from applicants requesting that the government perform its statutory duties in reviewing and approving land use planning applications.

Lastly, we note that one of the rail operators that will be relied upon to implement the directions of the Rail Amendment has expressed significant concerns with the document and have requested changes. That leaves the question if the rail operators are not in support and the development industry has concerns is it not best for all involved to defer consideration of the Rail Amendment in order to provide time for further consideration without having the matter adjudicated at the OLT?

We look forward to the opportunity to further discuss our client's suggestions with City staff. Please provide us with notice of any future meetings at which this matter is to be considered, and of any decisions made by City Council.

Yours truly,

Bennett Jones LLP

DocuSigned by:
Andrew Jeanrie
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Andrew L. Jeanrie

Cc: Client