

ENTUITIVE

March 8th, 2022

Toronto City Council
100 Queen Street West
City Hall, 12th Floor, West Tower
Toronto, ON M5V 3C6
c/o: clerk@toronto.ca

Attention: John Elvidge, City Clerk

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

Dear Mr. Elvidge,

We write to express our concerns regarding the Draft Official Plan Amendment No. 536 (the “**Draft OPA**”) relating to development in proximity to rail. Entuitive is a company that provides professional services in the area of Rail Safety of developments in proximity to railways. This is a service we provide directly to landowners and developers and we are the “qualified professional engineer whose stamp appears on the drawings for the alternative rail safety mitigation” and whose stamp appears on the rail safety reports. Separately we are one of three firms on the roster for the City of Toronto to peer review rail safety applications received by the City. While we are aligned with the goals of reducing risks to public safety and property damage in the context of densification near rail infrastructure, we believe that some aspects of the Draft OPA are unworkable as currently written.

From the Draft OPA (note this wording never appeared in any of the background documents):

“2. (c) the landowner will enter into an agreement with the City to be registered on title, whereby the landowner and the qualified professional engineer whose stamp appears on the drawings for the alternative rail safety mitigation measures assume responsibility for, and indemnify the City from, damages to persons and property resulting from a derailment on the rail corridor”

In our role as Rail Safety consultant to the landowner we are unable to indemnify the City from damages to persons and property resulting from a derailment on the rail corridor. In this capacity, Entuitive would have no contractual relationship with the City, rather the contractual relationship would be with the landowner.

As such, indemnity to the City, as a 3rd party would be uninsurable. Furthermore, wording of the clause exceeds the scope of our services in a rail safety capacity. Our role is to recommend measures that mitigate the risks associated with a property being in proximity to a railway not eliminate all risks. The risks under consideration include but are not limited to, derailment of one or several cars, explosion, debris, smoke, and fire. Even when the mitigation measures to these risks conform to the detail or intention of the national guidelines, there still remains residual risk of damage to persons and property. We stand by our rail safety reports that we stamp and are peer reviewed by one or two independent rail safety specialist firms, and we accept responsibility for any errors or omissions within our work product, however we can not provide blanket indemnity as worded.

We would be happy to collaborate with the City towards a workable outcome should the City be interested in such effort.

Sincerely,
Entuitive

A handwritten signature in black ink, appearing to read 'JHUA', written over a light blue horizontal line.

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Cc.

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