

## **Development in Proximity to Rail: Amendment to the Official Plan - Final Report**

Date: January 27, 2022

To: Planning and Housing Committee

From: Chief Planner and Executive Director, City Planning

Wards: All

### **SUMMARY**

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This report recommends amendment to the City of Toronto Official Plan, in order to establish a consistent city-wide approach to public safety for development when a complete application to introduce, develop or intensify land uses in proximity to rail facilities is submitted.

The recommended Official Plan Amendment will introduce a new section, Section 3.6 Rail Facilities and Public Safety which will contain policies related to the requirements for a Rail Safety and Risk Mitigation Report for developments that propose to introduce a new or intensified land use within the area of influence of rail facilities. 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.

Staff consider this approach to be an appropriate balance of provincial interests as identified by the Planning Act and are of the opinion the approach described in this Report and the amendments set out in Attachments 1 and 2 are consistent with the Provincial Policy Statement (2020) and conform with the Growth Plan for the Greater Golden Horseshoe (2020) as amended. Staff recommend that the Official Plan Amendment be adopted as set out in Attachment 1 of this Report.

### **RECOMMENDATIONS**

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The Chief Planner and Executive Director, City Planning recommends that:

1. City Council amend the Official Plan, substantially in accordance with the recommended Official Plan Amendment attached as Amendment 1 to the report dated January 27, 2022 from the Chief Planner and Executive Director.

2. City Council authorize the City Solicitor to make such stylistic and technical changes to the draft Official Plan Amendment as may be required.

## **FINANCIAL IMPACT**

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The City Planning Division confirms that there are no financial implications resulting from the recommendations included in the report in the current budget year or in future years.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

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### **Development in Proximity to Rail: Draft Official Plan Amendment and Proposed Zoning Amendment Approach**

At its meeting on December 8, 2020, Planning and Housing Committee adopted a report from the Chief Planner and Executive Director, City Planning, entitled Development in Proximity to Rail: Draft Official Plan Amendment and Proposed Zoning Amendment Approach and directed City Planning staff to hold one public open house and consult with key stakeholder groups, including Metrolinx, Canadian Pacific and Canadian National Railways, throughout the winter of 2021 to obtain feedback on the Official Plan Amendment and the proposed approach for an amendment to Zoning By-law 569-2013, as included in the Chief Planner and Executive Director's Report. The report can be found at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.PH19.2>.

### **Freight and Goods Movement Strategy**

At its meeting of September 22, 2020, Executive Committee adopted the Freight and Goods Movement Strategy (the "Strategy"). The Strategy provides a framework to support the current networks and operations of goods movers, shippers, carriers and manufacturers. The Decision History can be accessed at this link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.IE16.1>

### **Dupont Street Regeneration Area Study**

The Council adopted Site and Area Specific Policy 212 ("SASP") for the Dupont Study (OPA 271) included a policy that requires a 30 metre setback and a 2.5 metre earthen berm for any sensitive or high density use along the rail corridor between Ossington Avenue and Kendal Avenue. The SASP also included a policy that provides for an applicant to propose an alternative rail safety mitigation measure through a Zoning By-law Amendment application where the policy cannot be met due to topographical, geographical or other physical constraints. The OPA along with Council's actions can be

found at this link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.PG35.6>

OPA 271 was appealed in its entirety to the former Ontario Municipal Board, (now the Ontario Land Tribunal (OLT)). The City was successful at the OLT (Order dated January 20, 2017) and no changes were made to the rail safety policies endorsed by Council as part of OPA 271. The OLT Order can be found at this link: [https://www.toronto.ca/wp-content/uploads/2017/08/979a-OMBDDecisionDupont\\_Jan\\_20\\_2017.pdf](https://www.toronto.ca/wp-content/uploads/2017/08/979a-OMBDDecisionDupont_Jan_20_2017.pdf)

## ISSUE BACKGROUND

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### Municipal Role in Rail Transportation Regulation

Under Federal railway regulations, each rail operator has a responsibility regarding public safety and to ensure that a consistent approach to risk mitigation is implemented consistently. Rail operations, including the type of freight carried by a rail company, is federally regulated. Municipalities have no ability to restrict where and when rail traffic is directed or the type of freight carried. However the City and the Federation of Canadian Municipalities have made numerous recommendations and requests to the Government of Canada to improve the country's railway safety regime.

The City is responsible for regulating land uses adjacent to rail facilities and has authority to require public safety and hazard condition mitigation measures through its land use planning instruments.

### Planning Policy Framework

#### Planning Act

The *Planning Act* establishes areas of provincial interest for which decision-makers in the land use planning process must have regard. Section 2 of the *Planning Act* states:

*"Provincial interest*

*2 The Minister, the council of a municipality, a local board, a planning board and the Tribunal, in carrying out their responsibilities under this Act, shall have regard to, among other matters, matters of provincial interest such as,*

*(h) the orderly development of safe and healthy communities;*

*(o) the protection of public health and safety;*

*(p) the appropriate location of growth and development;"*

#### Provincial Policy Statement, 2020

The Provincial Policy Statement (PPS) 2020 provides policy direction on matters of provincial interest related to land use planning and development. The PPS sets the policy foundation for regulating the development and use of land. The key objectives include: building strong communities; wise use and management of resources; and, protecting public health and safety.

Section 1.6.8 of the PPS (2020) is titled "Transportation and Infrastructure Corridors". The section directs planning authorities to protect transportation and infrastructure corridors for the long term and consider development in relation to this requirement. Policy 1 of Section 1.6.8 of the PPS (2020) states:

*"Planning authorities shall plan for and protect corridors and rights-of-way for infrastructure, including transportation, transit and electricity generation facilities and transmission systems to meet current and projected needs."*

Policy 3 of Section 1.6.8 of the PPS (2020) states:

*"Planning authorities shall not permit development in planned corridors that could preclude or negatively affect the use of the corridor for the purpose(s) for which it was identified."*

*New development proposed on adjacent lands to existing or planned corridors and transportation facilities should be compatible with, and supportive of, the long-term purposes of the corridor and should be designed to avoid, mitigate or minimize negative impacts on and from the corridor and transportation facilities."*

The PPS (2020) also directs land use compatibility is to be considered for the purposes of planning major facilities and sensitive land uses. Policy 1 of Section 1.2.6 of the PPS (2020) states:

*"Major facilities and sensitive land uses shall be planned and developed to avoid, or if avoidance is not possible, minimize and mitigate any potential adverse effects from odour, noise and other contaminants, minimize risk to public health and safety, and to ensure the long-term operational and economic viability of major facilities in accordance with provincial guidelines, standards and procedures."*

Policy 2 of Section 1.2.6 of the PPS (2020) states:

*"Where avoidance is not possible in accordance with policy 1.2.6.1, planning authorities shall protect the long-term viability of existing or planned industrial, manufacturing or other uses that are vulnerable to encroachment by ensuring that the planning and development of proposed adjacent sensitive land uses are only permitted if the following are demonstrated in accordance with provincial guidelines, standards and procedures:*

- a) there is an identified need for the proposed use;*
- b) alternative locations for the proposed use have been evaluated and there are no reasonable alternative locations;*
- c) adverse effects to the proposed sensitive land use are minimized and mitigated; and*
- d) potential impacts to industrial, manufacturing or other uses are minimized and mitigated."*

"Major facilities" are defined in the PPS (2020) to include rail facilities.

"Rail facilities" are defined in the PPS (2020) and means:

*"rail corridors, rail sidings, train stations, inter-modal facilities, rail yards and associated uses, including designated lands for future rail facilities."*

"Sensitive land uses" are a defined term in the PPS (2020) and mean:

*"Buildings, amenity areas, or outdoor spaces where routine or normal activities occurring at reasonably expected times would experience one or more adverse effects from contaminant discharges generated by a nearby major facility. Sensitive land uses may be a part of the natural or built environment. Examples may include, but are not limited to: residences, day care centres, and educational and health facilities."*

"Adverse effects" is also a defined term in the PPS (2020) and means:

*"as defined in the Environmental Protection Act, means one or more of:*

- a) impairment of the quality of the natural environment for any use that can be made of it;*
- b) injury or damage to property or plant or animal life;*
- c) harm or material discomfort to any person;*
- d) an adverse effect on the health of any person;*
- e) impairment of the safety of any person;*
- f) rendering any property or plant or animal life unfit for human use;*
- g) loss of enjoyment of normal use of property; and*
- h) interference with normal conduct of business."*

Policies 1.2.4 and 1.2.5 further direct municipalities to identify density targets in areas adjacent or in proximity to major transit corridors (existing or planned). Policy 1.4.3, of the PPS (2020) further instructs planning authorities to provide for an adequate range and mix of housing options and densities by requiring transit-supportive development and prioritizing intensification, including potential air rights development, in proximity to transit, including corridors and stations.

As these policies encourage development in close proximity to, or even above, transportation corridors and stations, the application of rail safety and risk mitigation measures is important to protecting public safety and protecting the viability of major facilities, such as rail corridors and rail facilities which move people and goods throughout the country, region, and the City.

The *Planning Act* requires City Council's planning decisions to be consistent with the PPS.

### **A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020**

The Growth Plan for the Greater Golden Horseshoe (Growth Plan 2020) provides a framework for managing growth in the Greater Golden Horseshoe including: directions for where and how to grow; the provision of infrastructure to support growth; and protecting natural systems and cultivating a culture of conservation.

Policy 3 of Section 2.2.4 of the Growth Plan (2020) states:

*"Upper- and single-tier municipalities will undertake integrated planning to manage forecasted growth to the horizon of this Plan, which will:*

*c) provide direction for an urban form that will optimize infrastructure, particularly along transit and transportation corridors, to support the achievement of complete communities through a more compact built form;"*

This policy reinforces the need for development adjacent to transit and transportation corridors to be designed and approved in such a way as to support the effective and ongoing use of these corridors without introducing compatibility issues or other potential conflicts that would otherwise negatively impact transportation uses in municipalities.

Policy 2 of Section 3.2.4 Moving Goods of the Growth Plan (2020) states:

*"The Province and municipalities will work with agencies and transportation service providers to:*

*a) co-ordinate, optimize, and ensure the long-term viability of major goods movement facilities and corridors;"*

This policy sets out the shared responsibility to support the viability of major goods movement facilities and corridors, and requires the Province and municipalities to work with companies which operate these major facilities, such as the rail operators which own and operate rail facilities in Toronto.

Additionally, Policy 1 of Section 3.2.5 Infrastructure Corridors of the Growth Plan (2020) states:

*"In planning for the development, optimization, or expansion of existing and planned corridors and supporting facilities, the Province, other public agencies and upper- and single-tier municipalities will:*

*b) ensure that existing and planned corridors are protected to meet current and projected needs in accordance with the transportation and infrastructure corridor protection policies in the PPS;"*

This policy establishes the requirement for the Province and municipalities to protect infrastructure corridors, to support the ability of these corridors to meet transportation demands into the future.

The *Planning Act* requires City Council's planning decisions to conform with, or not conflict with, as the case may be, the Growth Plan (2020).

## **Official Plan**

The City's Official Plan contains several policies which include consideration of compatibility and mitigation in relation to transportation corridors, and major facilities,

and employment areas. These policies address compatibility and mitigation in a general way, which are then supported by policies which focus on specific issues, such as noise or other compatibility considerations.

In August of 2014, Council adopted OPA 274, which contained revised Official Plan transportation policies, which added policy 4 to Section 2.2 of the Official Plan as follows:

*"Require new development on lands adjacent to existing or planned transportation corridors and facilities to be compatible with, and supportive of, the long-term purposes of the corridors and facilities and be designed to avoid, mitigate or minimize negative impacts on and from the transportation corridors and facilities."*

The Amendment was approved by the Minister of Municipal Affairs and Housing on December 31, 2014 without modification and is now in full force and effect.

## **COMMENTS**

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### **Public Consultation and Stakeholder Engagement**

City Planning has undertaken a comprehensive public consultation and stakeholder engagement process for the development of the recommended Official Plan and Zoning By-law amendments. This includes consultation in 2017 as part of the Rail Land Use Study, discussion with applicants and rail operators during the Pilot, and formal consultation on the draft Official Plan amendment and Zoning By-law approach in January and February of 2021.

### **Rail Land Use Study**

In 2017, consultation was undertaken during Phase 1 of the Development in Proximity to Rail Operations Land Use Study. The Federation of Canadian Municipalities and the Rail Association of Canada, the Rail Operators in Toronto, and the Building Industry and Land Development Association (BILD) Toronto Chapter were consulted as part of this first round of rail safety consultation. Additionally, five public meetings were held between November 6 and 30, 2017. The comments received during this consultation informed the initiation of the Rail Safety and Risk Mitigation Pilot.

The outcomes of the Rail Land Use Study consultation were reported on in Chapter 3 of the Phase 2 report, found on the Development in Proximity to Rail webpage, [Final Report City Wide Land Use Study: Development in Proximity to Rail Operations Phase 2 March 21, 2019](#).

### **Commencement of the Rail Safety and Risk Mitigation Pilot**

Following the completion of the Rail Land Use Study, City Planning initiated a Pilot of rail safety report and peer review processes to evaluate the process recommended by the Rail Land Use Study. Through this Pilot a number of meetings were held with landowners, applicants and rail operators to discuss study requirements, access to and

scope of information required, and the Peer Review study approach and alignment for the Pilot. These discussions informed the finalization of the Terms of Reference for undertaking Rail Safety and Risk Mitigation reporting, and assisted in aligning and streamlining processes to support the Pilot process. Since initiation of the Pilot, there have been approximately 60 Rail Safety and Risk Mitigation Reports submitted for peer review.

### **Consultation on the Proposed Official Plan Amendment and Proposed Zoning Approach**

Consultation on the proposed OPA and Zoning approach directed by the Planning and Housing Committee pursuant to its decision made during its December 8, 2020 meeting, was undertaken between January 25 and February 10, 2021. A total of four events were held, comprising two focus groups, a BILD Chapter meeting, and a community meeting. All consultation events occurred virtually and were well attended, with a total of 183 participants across the four consultation events. A summary of the input received is provided in the following section. Overall, the comments were focused on implementation related matters.

#### **Focus Group Meetings**

A focus group meeting with staff from the major rail operator companies in Toronto representing Canadian National Railway, Canadian Pacific Railway and Metrolinx (collectively, "Rail Operators") was held on January 25, 2021. The City has worked closely with the major Rail Operators during the pilot and has discussed the approach to introducing rail safety and risk mitigation (RSRM), as well as consultation regarding technical refinements to the RSRM Pilot process. The discussion centred around implementation of the proposed amendments, including how to best coordinate with the rail operators, when and if each company would undertake reviews of Rail Safety Reports, and how to best streamline requests for operational information required for each individual Rail Safety and Risk Mitigation Report.

On February 2, 2021, a focus group meeting was held with staff from the consulting firms which have been providing Peer Review services as part of the Pilot process. This consultation was focussed on the practical aspects of the Rail Safety and Risk Mitigation Pilot, both the reporting and peer review processes. Detailed input was offered which will be considered and will inform improvements to the RSRM process going forward. This meeting focused on how to improve the Rail Safety and Risk Mitigation reporting and peer reviewing processes, including recommendations to clarify development application review timing, coordination between the rail safety consulting firms participating in the review process, and how to improve coordination with City Planning during the peer review process.

#### **BILD Chapter Meeting**

City staff presented an overview of the proposed Official Plan Amendment and Zoning approach at the February 10, 2021 BILD Toronto Chapter meeting. This was a virtual meeting, attended by 73 BILD Toronto members. Following the presentation, questions were posed to staff regarding implementation of the proposed amendments and several



site and situation specific questions regarding interpretation of the equivalent safety measures as discussed in the FCM/RAC Guidelines.

### **Community Meeting**

A virtual community meeting was held in the evening of February 10, 2021. Information and invitations to the community meeting were sent to individuals who had participated in, or expressed an interest in, receiving information regarding subsequent consultation. Additionally, the information regarding the community meeting was posted on the Development in Proximity to Rail webpage of the City, and was provided to all of the Councillor's offices which included a request for inclusion on Councillor's webpages and advertisement through Ward communications, including newsletters. One hundred and four individuals registered for the virtual community meeting.

The virtual community meeting consisted of a presentation, followed by a question and answer period. The presentation provided an overview of the study, the regulations and guidelines directing Rail Safety in Canada, as well as the proposed OPA and ZBLA approach under consideration. The presentation has been posted on the City's Development in Proximity to Rail webpage. A recording of the Community Consultation session is available from staff upon request.

Staff received questions regarding implementation of the RSRM process, and requests for clarification of the roles of rail operators and the City respectively when addressing the public safety requirements of our RSRM process.

### **Conformity and Consistency with Provincial Policies and Plans**

Both the PPS (2020) and Growth Plan (2020) contain policies that identify the objectives of land use compatibility between land uses, protection of major facilities and transportation corridors, and supporting the ongoing viability of goods movement, while supporting and emphasizing intensification as part of the development of complete communities in municipalities. The PPS (2020) and Growth Plan (2020) policies addressing these issues provide a strong foundation for the introduction of Official Plan and Zoning By-law amendments to protect both public safety and the viability of rail infrastructure in Toronto, while recognizing the need to safely support intensification.

The recommended amendment to the Official Plan addresses this balance. It is staff's opinion that the draft amendments (once approved) will appropriately balance intensification and transportation corridor protection. The amendments will also enable the City to apply a public safety lens when reviewing future development applications proposed on lands in proximity to rail infrastructure. The proposed amendments are consistent with the PPS (2020) and conform to the Growth Plan (2020).

### **Recommended Official Plan Amendment and Proposed Zoning By-law Approach**

Development in proximity to rail facilities, in the municipal context, can introduce risk to both those occupying the developed lands and to the long term viability of the rail facilities. The proposed amendment to the Official Plan balances land use planning

objectives by protecting public health, protecting the viability of major facilities and transportation corridors, and supporting intensification across the city.

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. The resulting Rail Safety and Risk Mitigation Report would then be peer reviewed to ensure that the proposed approach to risk mitigation meets the intent of the Rail Association of Canada/ Federation of Canadian Municipalities Guidelines for New Development in Proximity to Railway Operations.

Staff have also considered, and consulted on, implementation of this Official Plan policy through as-of-right zoning via city-wide Zoning By-law 569-2013 and the applicable Former General Zoning By-laws. Incorporating rail safety requirements into as-of-right zoning permissions would provide additional certainty. The approach proposed by staff in December 2020 was to introduce a holding provision into By-law 569-2013, as well as into 25 Former General Zoning By-laws. Staff are not recommending to proceed with this approach at this time.

The holding provision in the Zoning By-laws would introduce a consistently applied set of requirements for the protection of public safety on all land parcels within 30 metres of rail, through the requirement for a rail safety and risk mitigation report. The holding provision would apply to approximately 3,000 land parcels across the city. In this way, rail safety requirements would apply to development, even when no planning application would otherwise be required. Zoning by-law amendments, or minor variance applications, would trigger the requirement for a Rail Safety and Risk Mitigation Report to be prepared, as these by-laws are required to be in conformity with the Official Plan when they are passed. This will ensure that rail safety will be addressed through these processes. As-of-right development will not be required to meet this standard.

Upon thorough review and discussion with internal stakeholders, staff have determined that applying a holding symbol to existing zoning for the purpose of rail safety would be onerous on proposals that reflect little change to existing properties, requiring the holding provision to be lifted through an additional application process.

It is staff's opinion that the recommended amendment to the Official Plan, included as Attachment 1, maintains the intent of the Federation of Canadian Municipalities and Rail Association of Canada Guidelines for New Development in Proximity to Railway Operations.

## **Official Plan Amendment**

The recommended Official Plan Amendment will introduce a new Section 3.6 Rail Facilities and Public Safety to address considerations for accommodating development and intensification, while balancing the protection of public safety and ongoing viability

of rail facilities. The new section expands consideration of the impacts of new or intensified land use development on a city-wide basis, and requires that public safety in relation to rail facilities and rail operations be considered in a consistent manner.

The purpose of the new Section 3.6 Rail Facilities and Public Safety is to protect residents and occupants of new development from potential hazard as a result of accidents occurring during the normal operation of rail transport. The new section also serves to protect rail operations from introducing incompatibilities of land use that would result from the introduction of nearby development.

Through the consultation process, as well as the development of the amendments, staff recognized that there are no uses which can be considered to be immune to the effects of train derailment. As such, all development applications which propose to result in development of new or intensified land uses will need to address rail safety and risk mitigation through the Rail Safety and Risk Mitigation reporting and peer review process to ensure that risk mitigation is undertaken on the development site.

The policies included in the Official Plan Amendment introduce the requirement for a Rail Safety and Risk Mitigation Report that is deemed acceptable through a third party peer review process, and specify the required components of the report to be provided and peer reviewed. Additionally, Schedule 3 Application Requirements is recommended to be amended to include the Rail Safety and Risk Mitigation Report as part of a complete application. The Official Plan Amendment is attached to this report as Attachment 1.

## **Implementation**

Based on comments and feedback received as part of the consultation process, implementation of the rail safety planning framework will focus on continued coordination with Rail Operators to permit coordinated review of rail safety reports. As the City and Rail Operators have separate, but abutting jurisdictions, this coordination improves the effectiveness and efficiency of the rail safety reporting and review process.

## **Conclusion**

The recommended draft Official Plan amendment will put in place a city-wide planning framework to address and reduce the risk associated with new development that is in proximity to rail facilities across Toronto. The amendment provides a consistent approach to undertaking rail safety and risk mitigation review as part of the development application process. The amendment is informed by the City's Rail Study and the Pilot on Rail Safety and Risk Mitigation, as well as the feedback received through consultation, including from applicants, rail safety consultants, and rail operators among others. The Official Plan amendment is consistent with the policies and intent of the Provincial Policy Statement, has regard for matters of Provincial interest listed in Section 2 of the *Planning Act* and conforms with the Growth Plan.

This report recommends that Council adopt the attached recommended Official Plan Amendment.

## **CONTACT**

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## **SIGNATURE**

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Gregg Lintern, MCIP, RPP  
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## **ATTACHMENTS**

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Attachment 1: Official Plan Amendment