



Bennett Jones

Bennett Jones LLP
3400 One First Canadian Place, P.O. Box 130
Toronto, Ontario, M5X 1A4 Canada
T: 416.863.1200
F: 416.863.1716

Andrew Jeanrie
Partner
Direct Line: 416.777.4814
e-mail: jeanriea@bennettjones.com
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VIA EMAIL - phc@toronto.ca

Planning and Housing Committee
10th floor, West Tower, City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Attention: Nancy Martins, Committee Administrator

Dear Sirs/Mesdames:

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

We are counsel to Choice Properties, the owner of a number of sites located throughout the City of Toronto. It goes without saying, our client will be greatly impacted by the proposed Official Plan Amendment and understand the theoretical benefits of outlining a consistent set of rules when developing lands adjacent to rail facilities. That being said, we are writing to express our client's request to adjourn the matter and to outline its serious concerns regarding the details and impacts of the above-noted proposed Amendment to the City of Toronto Official Plan (the "**Rail Amendment**").

Draft OPA Should be Sent back for Consultation and Consideration and is not Necessary

As noted above, we request that the Committee **not** adopt Recommendation 1 of the Report being:

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, City Planning.

If the Committee sees the merits in this request it would provide time for the public to review and provide fulsome recommendations for the proposed Rail Amendment, and to finalize with the City the details of the Terms of Reference for the "Rail Safety and Risk Mitigation Report".

While we agree with the stated goal of the Official Plan Amendment to

"balance the interests of protecting public health, transportation corridors, and the viability of transportation corridors, while supporting intensification."

However, we believe that this goal is already met in the current planning process. Today any development next to a rail corridor already involves giving notice to the applicable railway and provides them, the experts on the matter, with the opportunity to provide comments and recommendations with respect to the same. This comments already follow the Guidelines for New Rail Development in Proximity to Railway Operations, while also allowing the rail operators to take considerations specific to their railway operations and any given proposal. As presently drafted, the proposed Official Plan Amendment will not change this process, while it will result in additional studies and delays for many development applications, all the while dragging City staff into matters they have no expertise in.

Specific Concerns with the Proposed OPA

We have been monitoring this Development in Close Proximity to Rail Policy review over the last several years and have participated in the consultation that has taken place. Unfortunately, the Rail Amendment has taken on a significantly different approach than the draft documents that were made available in the past, and the problem remains we would be working with insufficient direction regarding what is required to satisfy the City through the required Rail Safety and Risk Management Report (the "**Rail Report**").

Our client's concerns include what appears to be a "blanket" requirement for the preparation of a peer reviewed Rail Report at each stage of development (Official Plan, Rezoning, Plan of Subdivision and Site Plan). This creates a "moving target" for compliance. As drafted, a new Rail Report would be required at each stage of approval. We believe that there are more appropriate stages 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 Official Plan and zoning by-laws applicable in the municipality. Consideration of the rail impacts at the site plan stage and/or plan of subdivision is logical.

It should also 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.

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.

We are also greatly concerned 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. 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.

Finally, 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.


We would welcome the opportunity to discuss this matter further with staff in an effort to resolve our client's concerns.

Should you have any questions, please do not hesitate to contact me.

Regards,

BENNETT JONES LLP

Per:

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Andrew Jeanrie

ALJ/cmt

cc.