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Sent via email to: phc@toronto.ca

Mr. John Elvidge
City Clerk, Planning and Housing Committee
10th Floor, West Tower
100 Queen Street West
Toronto, Ontario
M5C 2N2

Dear Mr. Elvidge:

**Re: Canadian National Railway Company (“CN”)
Official Plan Amendment Pertaining to Development in Proximity to Rail Facilities
Official Plan Amendment 536
Notice of Public Meeting on February 15, 2022 at 9:30 AM**

We are counsel for CN with respect to the above noted matter. Kindly ensure that this correspondence is provided to the Committee in advance of the meeting on February 15, 2022.

As you know, CN owns and operates a number of freight rail yards (including intermodal terminals) located throughout the Greater Toronto and Hamilton Area, with railway lines, which run through the City of Toronto (the “**City**”). These railway lines and freight yards are used to support the frequent bulk transfer of cargo, including dangerous goods, throughout Canada. The rail lines include connections to the MacMillan Yard, being one of the largest rail freight yards in North America. In addition, where CN has divested of rail lines to other operators, CN often maintains “running rights” to carry freight on those lines when needed to serve customers.

CN appreciates that the City continues to recognize the importance of careful consideration and planning in proximity to rail facilities, rail freight yards and rail right-of-ways. CN acknowledges and appreciates that the City has historically been vigilant in planning around rail facilities in accordance with The Federation of Canadian Municipalities and The Railway Association of Canada Guidelines for New Development in Proximity to Railway Operations (the “**FCM-RAC Guidelines**”).

On behalf of CN, we appreciate the opportunity to provide comments on the City Initiated Official Plan Amendment 536 (“**OPA 536**”) which addresses development in proximity to rail facilities. CN has

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reviewed the Development in Proximity to Rail: Amendment to the Official Plan – Final Report, dated January 27, 2022, and draft OPA 536, and has the following comments:

1. The text in Section 3.6 Rail Facilities and Public Safety (*unshaded text*) references the appropriate separation of uses from rail facilities, and the provision and construction of risk mitigation design solutions on site, such as crash walls or structures. This reference could be strengthened by including “prohibiting sensitive land uses in certain circumstances”, to highlight that sensitive uses should not be located within proximity to rail facilities, including rail right-of-ways. This is consistent with the Provincial Policy Statement, 2020 (the “**PPS 2020**”) and the FCM-RAC Guidelines and would ensure that when certain sensitive uses are permitted within proximity to a rail facility, the site is properly mitigated and safety concerns are appropriately addressed. It would also recognize that not every site is appropriate for sensitive land uses near rail facilities.
2. Although Policy 1 of OPA 536 speaks to land uses within the area of influence, it does not define what is considered the ‘area of influence’. The policy should include reference to a one (1) kilometer area of influence from rail freight yards and a three hundred (300) metre area of influence from a rail right-of-way.
3. As commenting agencies under the *Planning Act*, rail operators are circulated on all proposed development applications within proximity to rail facilities. In policy 2 “reviewed by the applicable rail operator” should be changed to “reviewed and comments satisfactorily addressed by the applicable rail operator”.
4. With regard to the third policy, CN appreciates that the City has included clear reference to the FCM-RAC Guidelines. The FCM-RAC Guidelines are also applicable to plans of condominium and consent to sever applications, and as such, this section should be amended to clearly reflect this. These types of applications are required to be evaluated against the criteria established in the FCM-RAC Guidelines, when in proximity to rail facilities, inclusive of rail right-of-way.
5. Section 3.6 Rail Facilities and Public Safety (*unshaded text*) should be revised to include land use compatibility and land uses near rail facilities. In particular, this section should include requirements in accordance with policy 1.2.6 of the PPS 2020.

As you know, policy 1.2.6 Land Use Compatibility of the PPS 2020 requires an assessment, where avoidance of a sensitive land use in proximity to a major facility is not possible, of whether there is an identified need for the proposed use and whether alternative locations for the proposed use have been considered and there are no reasonable alternative locations for the use. The PPS 2020 strives to ensure that major facilities and sensitive land uses are planned and developed to avoid, or if avoidance is not possible, to 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. The current draft

of OPA 536 does not respond to the PPS 2020 requirement for examining 'needs and alternatives'. The requirement should be considered and included in OPA 536.

We look forward to continuing to work collaboratively with the City to address the above considerations. Should you have any questions regarding the above, please do not hesitate to contact the undersigned.

Yours truly,

Dentons Canada LLP

DocuSigned by:
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Katarzyna Sliwa
Partner

KS/kv

Copy: Client