

27 June 2022

Sent via E-mail (scc@toronto.ca)

Scarborough Community Council
Toronto City Hall
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Toronto, ON M5H 2N2

Attn.: Julie Amoroso, Secretariat Contact

Dear Chair and Members of Community Council:

**Re: Item SC33.3, 25 Borough Drive - Official Plan Amendment and Zoning By-Law
Amendment - Final Report
City of Toronto File No. 19 241351 ESC 21 OZ and 20 206638 ESC 21 SA**

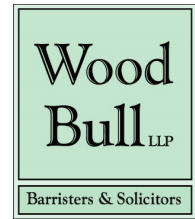
We are counsel for Mondelēz Canada Inc., the owner and operator of a bakery located at 370 Progress Avenue in the City of Toronto (the “**Bakery**”). We are writing with respect to the Oxford Properties Group’s (“**Oxford**”) applications for an Official Plan Amendment (“**OPA**”) and Zoning By-law Amendment (“**ZBA**”) for 25 Borough Drive (the “**Development Site**”) which is less than 500 metres away from our client’s Bakery.

The Bakery is located on the north side of Progress Avenue at Brimley Road. The Bakery produces hard baked products and operates 24 hours a day, 7 days a week. Oxford proposes a mixed-use development of various building heights less than 500 metres from the Bakery. The proposed development includes sensitive land uses that will adversely affect the Bakery’s ability to comply with provincial and municipal noise and air quality regulations.

Earlier this year, our client’s noise and air quality consultants provided data and analyses to Oxford demonstrating the need for a Class 4 noise classification under NPC-300 and detailed warning clauses to address potential noise impacts at the Development Site. The analysis also demonstrated the need for mitigation measures to address odour impacts at proposed outdoor amenity areas and within residential units. However, to date our client has not been able to reach an agreement with Oxford to implement the necessary mitigation measures and warning clauses.

While City Planning Staff’s recommendation of a Class 4 classification for the Development Site to address noise impacts is welcomed, the noise and air quality warning clauses recommended by Planning Staff are inadequate. In addition, Oxford’s proposed OPA does not contain any policies to ensure land use compatibility between the Bakery or other industrial uses and the Development Site, and the

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proposed built form does not include adequate measures to mitigate odour impacts at the Development Site from the Bakery operations.

In our submission, such measures necessary to ensure consistency with the Provincial Policy Statement, conformity with the Growth Plan, and conformity with the City of Toronto's Official Plan as outlined below.

Provincial Policy Statement, 2020

The Provincial Policy Statement ("PPS") includes policies that put the onus of ensuring land use compatibility on the planning authority, which in this case is the City.

The PPS includes the following policies regarding land use compatibility:

1.2.6.1 *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.

1.2.6.2 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.

Approval of Oxford's proposed development without ensuring adequate measures to mitigate noise and air quality impacts from the Bakery would not be consistent with policies 1.2.6.2 c) and d).

Growth Plan for the Greater Golden Horseshoe, 2019

The Growth Plan for the Greater Golden Horseshoe, 2019 ("**Growth Plan**") also includes land use compatibility policies with which developments containing sensitive uses must comply:

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2.2.5.8 The development of *sensitive land uses*, *major retail uses* or *major office uses* will, in accordance with provincial guidelines, avoid, or where avoidance is not possible, minimize and mitigate adverse impacts on industrial, manufacturing or other uses that are particularly vulnerable to encroachment.

Again, approval of Oxford's applications without ensuring adequate measures to address land use compatibility between the Development Site and the Bakery would not conform with this policy of the Growth Plan.

City of Toronto Official Plan, 2006

Section 2.2.4 of the OP states that "Even where new sensitive land uses are located outside of, but in close proximity to, *Employment Areas*, they should be designed and constructed to prevent residents or users from being affected by noise, traffic, odours or other contaminants from nearby industry." In the same section, the OP contains language highlighting the need for compatibility and mitigation between employment and sensitive land uses. It states "The City encourages applicants of sensitive land uses, including residential uses and major facilities to exchange relevant information, subject to appropriate measures to protect confidentiality, for the purpose of undertaking and completing all relevant required studies." As the Development Site is within 500 metres of an *Employment Area*, the Bakery (which is located in-between the *Employment Area* and Development Site) should be protected and new sensitive land uses should bear the onus of enforcing mitigation measures, ensuring compatibility between uses.

The below OP policies indicate that sensitive land uses should be appropriately planned.

2.2.4.5 Sensitive land uses, including residential uses, where permitted or proposed outside of an adjacent to or near to *Employment Areas* or within the influence area of major facilities, should be planned to ensure they are appropriately designed, buffered and/or separated as appropriate *Employment Areas* and/or major facilities as necessary to:

- a) prevent or mitigate adverse effects from noise, vibration, and emissions, including dust and odour;
- b) minimize risk to public health and safety;
- c) prevent or mitigate negative impacts and minimize the risk of complaints;
- d) ensure compliance with environmental approvals, registrations, legislation, regulations and guidelines at the time of the approval being sought for the sensitive land uses, including residential uses; and,
- e) permit *Employment Areas* to be developed for their intended purpose.

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“Major facilities” means facilities which may require separation from sensitive land uses, including but not limited to airports, transportation infrastructure and corridors, rail facilities, marine facilities, sewage treatment facilities, waste management systems, oil and gas pipelines, industries, energy generation facilities and transmission systems, and resource extraction activities.

“Influence Area” means any lands and land uses within the potential zone of influence of a major facility, taking into consideration both current and reasonable potential future operations, within which there could be a potential for adverse effect. A zone of influence may extend beyond the boundaries of *Employment Areas*, but does not include lands and land uses within *Employment Areas*.

The Development Site is proposed to have sensitive land uses near an *Employment Area* and within the influence area of the Bakery, which is a major facility as defined by the OP and the PPS.

The City’s obligation to protect the existing industrial uses, including the Bakery, is clear. In order to fulfill that obligation, the City should ensure that Oxford’s proposed development conforms with these OP policies.

Scarborough Centre Secondary Plan, 2005

Section One of the Scarborough Centre Secondary Plan sets out principles and strategic policies for the success of Scarborough Centre. One such strategic policy is policy 5.1.3 which states “Mixed-use growth will be encouraged while respecting and maintaining an environment that is supportive of existing employment, cultural, institutional, recreational and residential uses.” The Bakery is considered an existing employment use. Another strategic policy is policy 5.1.1.4(b) which requires adjacent employment areas to be protected by permitting the continuation of existing industrial uses. These general principles are further supported by other policies in recognition of the significance of the existing industrial and employment uses within the Scarborough Centre. These policies are quoted below.

5.4.6.3 ... Employment will continue to be an important element of the Brimley Precinct and existing industrial uses will be accommodated....

Proposed sensitive land uses within the Brimley Precinct, within which both the Bakery and the Development Site are located, are required to accommodate for nearby existing industrial uses, such as the Bakery.

5.4.8(f) Where new sensitive uses such as residential, mixed use or community facilities are proposed in close proximity to existing industrial uses, proponents will be required to submit studies

and analyses such as acoustic and/or air quality (including odour) reports in accordance with all Provincial guidelines. Buffering, screening, berming and/or other attenuation/mitigation measures will be required to be implemented based on the studies and analyses to the satisfaction of the City. Executed legally binding agreements that provide for the implementation of the recommendations of the studies/analyses, including the implementation of the required measures, prior to occupancy of the proposed new sensitive land use will be implemented.

5.4.8(g) For sensitive uses that are proposed to be developed in close proximity to industry, warning clauses may be required to be incorporated into agreements of purchase and sale and may be included in conditions imposed for approval of subdivisions and condominium, site plan agreements.

5.7.1.1 The existing employment uses in the area will retain their industrial zoning. Residential and mixed use permissions will be added, subject to provision that the use can only occur if the City is satisfied as to the availability of transportation improvements, infrastructure and servicing which are necessary to accommodate any proposed development, satisfaction of environmental concerns including compatibility with adjacent uses and provided that the City is satisfied the development is consistent with the urban design principles, guidelines and policies of this Secondary Plan and the Official Plan. [emphasis added]

The above-noted policies permit the use of legally binding agreements and warning clauses to ensure compatibility between existing industrial land uses and proposed sensitive land uses. The City is also responsible for ensuring proposed development is consistent with the policies both of the OP and Scarborough Centre Secondary Plan. The intent of these policies is to provide means to ensure any adverse effects on both industrial and sensitive lands uses are mitigated.

As such, our submission is the Planning and Housing Committee should defer its decision regarding Oxford's applications until such time as Oxford has agreed to implement the necessary mitigation measures and warning clauses required to address noise and odour impacts from the Bakery.

Additionally, we request that the City notify us of any meeting of this Committee, City Council, Community Council, or any other Committee of Council where any staff reports relating to the applications will be considered. We also ask to be provided with notice of any decisions of Council or any Committee of Council with respect to the Development Site.

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Yours very truly,

Wood Bull LLP



Kim Mullin

KM/tf

c. Client