



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

OLT Appeal of OPA 536 – City-Wide Rail Safety – Request for Directions

Date: March 6, 2024

To: City Council

From: City Solicitor

Wards: All Wards

REASON FOR CONFIDENTIAL INFORMATION

This report contains advice or communications that are subject to solicitor-client privilege. This report contains information regarding potential litigation.

SUMMARY

City Council adopted Official Plan Amendment 536 ("OPA 536") on March 9, 2022. OPA 536 sought to establish a consistent city-wide approach to public safety for development when an application is submitted to introduce, develop or intensify land uses in proximity to rail facilities.

OPA 536 sought to introduce a new section, Section 3.6 titled Rail Facilities and Public Safety, which contains 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. It also included an amendment to Schedule 3 of the Official Plan (Application Requirements) adding the requirement for a Rail Safety and Mitigation Report for applications for an Official Plan Amendment, Zoning By-law Amendment, Plan of Subdivision and Site Plan Approval for lands abutting rail facilities. OPA 536 also included non-policy explanatory text.

OPA 536 was appealed to the Ontario Land Tribunal ("OLT") by 44 appellants. A first Case Management Conference was held on July 21, 2022. A second Case Management Conference is scheduled to be held on April 22, 2024.

The City Solicitor requires further instructions on this matter. This matter is urgent as it pertains to an upcoming hearing event at the OLT and cannot be deferred.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the recommendations contained in Confidential Attachment 1 to this report from the City Solicitor.
2. City Council authorize the public release of the confidential recommendations contained in Confidential Attachment 1 to this report from the City Solicitor, if adopted by City Council, and relevant Confidential Appendices at the discretion of the City Solicitor.
3. City Council direct that all other information contained in Confidential Attachment 1 to this report from the City Solicitor is to remain confidential at the discretion of the City Solicitor, as it contains advice which is subject to solicitor-client privilege.

FINANCIAL IMPACT

There is no financial impact arising from the adoption of the Confidential Recommendations beyond what has already been approved in the current year's budget.

DECISION HISTORY

In 2020, City Council received a proposed draft amendment to the Official Plan and a proposed approach for an amendment to the City-wide Zoning By-law 569-2013 for public consultation in order to establish a city-wide approach to public safety for new development of sensitive or high occupancy land uses in proximity to rail infrastructure. Council directed staff to engage in further public and stakeholder consultation and report back to Council. The City's decision can be accessed at this link:

<https://secure.toronto.ca/council/agenda-item.do?item=2020.PH19.2>

In 2022, City Council considered a revised Official Plan Amendment respecting rail safety. Council adopted OPA 536 on March 9, 2022 to add additional Official Plan policies respecting the circumstances where a Rail Safety and Risk Mitigation Report will be required as part of a development approval involving lands in the area of influence of rail. The City's decision can be accessed at this link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.PH31.1>

COMMENTS

OPA 536 was appealed to the OLT by 44 appellants, including Canadian National Rail ("CN"), 4 engineering firms (the "engineering appellants") and 39 landowners with real estate holdings proximate to rail (the "developer appellants"), as set out in Public

Appendix "A". At the first Case Management Conference, the OLT granted party status to an additional 8 parties, including 2 bodies representing professional engineers and 6 landowners/developers.

In their notices of appeal, the developer and engineering appellants raised three primary objections in respect of the OPA, namely that:

- It did not define the area of influence of rail with sufficient precision;
- It was inappropriate to require landowners, engineers providing a Rail Safety and Risk Mitigation Report ("RSRM") and engineers peer reviewing an RSRM to provide the City with an indemnity of indeterminate and potentially unlimited scope; and
- It was not sufficiently clear when an RSRM would be required in the context of developments proceeding through multiple types of *Planning Act* approvals and whether the City would require duplicative and costly RSRMs at each stage of the development process.

CN raised additional issues with respect to OPA 536, namely that:

- It did not prohibit sensitive land uses within 1000 metre of rail facilities;
- It did not integrate the PPS 2020 requirement to examine alternatives to locating a sensitive land use near a major facility; and
- It did not recognize the right of commenting agencies such as rail operators to review proposals for development in the area of influence of rail and have their concerns satisfactorily addressed.

All of the appellants indicated that they were largely supportive of the City's overall objective of regulating development near railway facilities and protecting public safety. Appeal 19 was withdrawn, leaving 43 outstanding appeals as of March 2024.

The City Solicitor requires further instructions on this matter prior to the upcoming OLT hearing date.

This report is about litigation before the OLT and contains advice or communications that are subject to solicitor-client privilege.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

1. Public Appendix "A" - Appellants to OPA 536
2. Confidential Attachment 1 - Confidential Information
3. Confidential Appendix "A" - Confidential Information
4. Confidential Appendix "B" - Confidential Information
5. Confidential Appendix "C" - Confidential Information