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SENT VIA ONLINE PORTAL AND BY EMAIL TO: PlanningConsultation@ontario.ca

Planning Consultation
Ministry of Municipal Affairs and Housing
777 Bay Street
Toronto, Ontario
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To whom it may concern:

**Re: Community Infrastructure and Housing Accelerator – Proposed Guideline under the
Planning Act, R.S.O. 1990
Canadian National Railway Company (“CN”)
ERO Number: 019-5285
Notice Type: Policy**

We are counsel for CN with respect to the above-noted matter.

As part of the updates to the *Planning Act*, R.S.O. 1990 (the “**Act**”), which were introduced through Bill 109, the *More Homes for Everyone Act, 2022*, the Ministry of Municipal Affairs and Housing has released proposed guidelines regarding the Community Infrastructure and Housing Accelerator (the “**Guidelines**”). The Minister of Municipal Affairs and Housing (the “**Minister**”) would have the power to make orders to respond to municipal council resolutions requesting expedited zoning reviews outside of the Greenbelt Area. A community infrastructure and housing accelerator order can be used to regulate the use of land and the location, use, height, size and spacing of buildings and structures to permit certain types of developments.

Background: Facilities in the Province of Ontario, Railway Noise and Adverse Effects

CN owns and operates a number of freight rail yards (inclusive of intermodal terminals) located throughout the Province of Ontario, with railway lines which run through municipalities throughout Ontario. These railway lines and freight rail yards are used to support the frequent bulk transfer of cargo, including dangerous goods throughout Canada. These railway lines and freight rail yards continue to be of importance and used to support Ontario’s growing economy. The railway lines include connections to the MacMillan Yard (as an example) in the City of Vaughan, being one of the largest freight rail yards in North America.

The MacMillan Yard and other rail yards owned by CN, are considered industrial rail yards that can operate 24 hours per day, seven days per week. Rail yards are considered a Class 3 Industrial Facility, as defined

in the Ministry of the Environment, Conservation and Parks' D-Series Guidelines (the "**D-Series Guidelines**"). Rail yards, such as the MacMillan Yard, are used to connect customers to eastern and western Canada, as well as, major rail hubs in the United States. Rail yards experience high traffic of rail and rail-related operations. For example, annually over 1 million freight cars are processed at the MacMillan Yard. In addition, where CN has divested of railway lines to other operators, CN often maintains "running rights" to carry freight on those lines when needed to serve customers. These freight rail yards and railway rights-of-way have the possibility of being detrimentally impacted by changes proposed by the Guidelines. This in turn will impact Ontario's economy.

The coordination of land uses along railway corridors poses a unique set of challenges. The development of sensitive uses beside railway lines and rail yards, which experience high traffic of train operations, leads to increased potential for conflict between the rail operations and adjacent land uses. The Federation of Canadian Municipalities and The Railway Association of Canada Guidelines for New Development in Proximity to Railway Operations (the "**FCM-RAC Guidelines**") recommend that municipalities take a proactive approach to identifying potential land use conflicts.

The nature and operations of the railway lines are such that there is the potential for adverse effects within 300 metres of the railway line. The nature of the operations of railyards are wholly incompatible with sensitive land uses, including residential uses. Sensitive uses should not be permitted within 300 metres of rail yards and the area of influence for potential adverse effects is 1000 metres from rail yards. The ability for CN to effectively use its rail yards is critical to the economy of the Province of Ontario, and to Canada's economic prosperity.

Preliminary Comments

We provide the below comments on behalf of CN regarding the proposed Guidelines.

When making a community infrastructure and housing accelerator order, subsection 34.1 (15) of the Act would allow the Minister, upon request of a local municipality, to provide that specific subsequent approvals are not subject to provincial plans, the Provincial Policy Statement ("**PPS**"), and municipal official plans. The Guidelines state that the Minister can impose conditions on the municipality and/or the proponent. The Guidelines do not reference land use compatibility and cross-jurisdictional considerations (i.e. federal/provincial jurisdiction). These concerns should be addressed in the Guidelines. For example, land use compatibility can be addressed as part of the potential impacts that could arise from the exemption and/or as part of the conditions on the approval of a community infrastructure and housing accelerator order.

Proper mitigation measures need to be implemented where incompatible uses are located beside one another. Policy 1.2.6, Land Use Compatibility, of the PPS requires avoidance in locating sensitive land uses in proximity to a major (rail / industrial) facility. Where avoidance is not possible, an assessment is required as to whether there is an identified need for the proposed use, whether alternative locations for the proposed use have been considered and whether there are other reasonable alternative locations for the use. The PPS strives to ensure that major facilities and sensitive 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.

If the development is exempted from the Provincial Policy regime, it will become increasingly difficult to ensure that compatibility including safety, air quality, noise and vibration concerns, are adequately addressed. Further, as previously noted, the Guidelines do not address cross-jurisdictional matters. The doctrine of federal paramountcy would apply where both the provincial and federal government may legislate on a common matter. Thus, the Guidelines must ensure that the legislation cannot create a situation where provincial legislation conflicts with the federal legislation and requirements.

CN is federally regulated, and is governed by federal legislation, including the *Canadian Transportation Act* (the “**CTA**”) and the *Railway Safety Act*, among others. In its decisions, the Canadian Transportation Agency (the “**Agency**”) has concluded that municipalities have a responsibility to assess compatibility issues before approving housing developments along railway rights-of-way. The Agency also commented that where a municipality approves development, it has a responsibility to ensure that the necessary mitigation measures are implemented. One example of such a decision is Decision No. 69-R-2014, dated February 27, 2014. As such, the Guidelines should be amended to include reference to the above comments, to ensure that safety, air quality, noise and vibration concerns are adequately addressed, and that Ontarians are protected.

We look forward to working collaboratively with the Province to address the above matters. Should you have any questions regarding the above, please do not hesitate to contact the undersigned.

Yours truly,

Dentons Canada LLP

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Client