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VIA EMAIL

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City of Burlington City Council
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127446-1589

Dear Members of Council:

Re: 1200 King Road, City of Burlington
Official Plan Amendment and Zoning By-law Amendment Applications: DGM-28-26
Agenda Item 13.3, Committee of the Whole and Statutory Public Meeting on July 7, 2026

Comments of the Canadian National Railway Company

We are counsel to the Canadian National Railway Company ("**CN**"). CN is the owner and operator of significant railway infrastructure located in the City of Burlington (the "**City**"), including the Aldershot Freight Rail Yard (the "**Aldershot Yard**").

We are writing regarding Official Plan Amendment ("**OPA**") and Zoning By-law Amendment ("**ZBA**") applications for the property municipally known as 1200 King Road, in the City. The property is located immediately adjacent to the Aldershot Yard, a major freight rail yard which is the subject of intense, heavy industrial operations that occur 24 hours per day, 7 days per week, 365 days per year.

The OPA and ZBA applications facilitate the construction of an expansive mixed-use community, including approximately 8,800 residential units and a range of sensitive land uses, in direct proximity to the Aldershot Yard. The proposal to locate sensitive uses in such close proximity to a major freight rail yard gives rise to significant land use compatibility concerns and conflicts with applicable provincial policy where appropriate avoidance or mitigation has not been demonstrated or secured.

For the reasons set out below, CN respectfully submits that approval of the applications is premature and should be deferred until the concerns set out in this letter have been addressed.

1. **The Approval is Based on Information that is not Available to the Public**

As a threshold matter, Council should not approve the OPA and ZBA where materials that support the approvals are not publicly available. In this case, the Staff Report recommends approval of the OPA and ZBA subject to the securing of draft plan of subdivision conditions contained in a confidential legal report (LLS-31-26), which is not available to the public or to CN.

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The Staff Report expressly acknowledges that key issues related to land use compatibility and rail remain outstanding that will be addressed, in part, through the confidential draft plan conditions. It is therefore concerning to CN that Council is being asked to approve the OPA and ZBA on the basis of materials that are not publicly available and that provide critical insight into how land use compatibility matters will be addressed.

The purpose of the *Planning Act* is to provide for land use planning processes that are fair, transparent, and accessible. Approving an OPA and ZBA on the basis of information that is not available to the public is procedurally flawed and undermines the transparency and fairness required by the *Planning Act*. Ultimately, the OPA and ZBA must stand on their own planning merits and be capable of approval based on the public record, rather than on the basis of undisclosed materials that address fundamental issues, such as land use compatibility, of concern to the public and CN.

2. Mitigation Measures have not been Finalized or Secured

As noted above, operations at the Aldershot Yard are significant, continuous, and involve intense industrial operations, including switching, idling, coupling, braking, and the loading/unloading of freight rail cars. Accordingly, the Aldershot Yard is recognized as a *major facility* by the *Provincial Planning Statement, 2024*, and a Class III industrial facility by the D-Series Guidelines, with recommended setbacks of 300 m for sensitive uses.

The record before Council does not establish that the proposed sensitive uses can be appropriately located on the property and within the appropriate setback or that compatibility with the Aldershot Yard can be achieved through feasible and secured mitigation measures. In this regard, both CN's Peer Review and the Staff Report confirm that critical compatibility analysis remains outstanding.

On April 10, 2026, CN provided a Peer Review from Jade Acoustics evaluating the Noise Study prepared by the developer's consultants against the applicable provincial policies and guidelines, including NPC-300. The Peer Review concludes that the Noise Report submitted by the developer fails to provide "sufficient information regarding the mitigation measures and how they will be implemented, to indicate that the development, as designed is feasible", and identifies a number of areas where additional analysis and information are required to demonstrate that the development is feasible and that impacts from the Aldershot Yard can be appropriately mitigated.

The Staff Report further confirms that critical technical work has not been finalized, including the submission of a revised noise and vibration study to determine appropriate railway setbacks and additional analysis to confirm that there are no adverse noise impacts for development areas in proximity of the railway right-of-way. The Staff Report indicates that these matters will be partially addressed through an extensive series of holding conditions in addition to draft plan conditions which, in the latter case, is inherently problematic given that such conditions are not publicly available.

In CN's submission, the necessary mitigation measures must be identified and secured prior to any approval of the development applications. Deferring the identification of mitigation measures to the detailed design stages is not appropriate where development is proposed immediately adjacent to an industrial freight rail yard and feasibility is a key aspect of the land use planning evaluation.

This approach is also inconsistent with Section 3.5 of the *Provincial Planning Statement, 2024*, which requires planning authorities to protect the long-term economic viability and operation of major facilities and to ensure that sensitive land uses are planned to avoid, or where avoidance is not possible, minimize and mitigate adverse effects from such facilities. Where the development of sensitive uses is proposed in direct proximity to major industrial infrastructure, these determinations must be made at the OPA and ZBA stage on the basis of sufficient information. In the present case, the record before Council establishes that critical technical work relating to land use compatibility remains outstanding and that appropriate mitigation measures have not yet been identified, finalized, or secured.

CN views any development approval that fails to implement appropriate and enforceable mitigation measures as premature. Accordingly, CN requests that Council defer its consideration and approval of the OPA and ZBA applications to allow further work to be completed with respect to land use compatibility and mitigation.

3. Restrictive Covenant on Title

A portion of 1200 King Road is subject to a restrictive covenant registered on title as Instrument No. HR253285, which provides that the owner: “shall not develop the Property or any portion of the Property for residential use, hospital use, daycare use, school use and/or nursing home use (a ‘Sensitive Land Use’), as the Owner acknowledges and agrees that any such Sensitive Land Use is not compatible with the use of the…Aldershot Rail Yard.” The existence of the restrictive covenant, in and of itself, reflects the owner’s express acknowledgment that portions of the property are not appropriate for residential and other sensitive uses given proximity to the Aldershot Yard.

The current proposal contemplates the introduction of sensitive residential land uses at Block 12 and Block 14 on the Concept Plan, which fall within the boundaries of the restrictive covenant. Approval of the OPA and ZBA on lands that are subject to a restrictive covenant will facilitate the breach of those covenants through the construction of residential uses, which increases the potential for future disputes, including between the developer, CN, and future occupants or owners of the property.

In CN’s submission, the City should not approve development applications that will facilitate the breach of a restrictive covenant and the proposal must be revised accordingly.

4. Conclusions and Next Steps

Deferring approval of the OPA and ZBA applications so that CN’s concerns can be addressed is in the public interest, constitutes good planning, and will secure important provincial objectives, including protecting the long-term viability of the Aldershot Yard, a critical piece of national transportation infrastructure, while ensuring that future residents of the proposed development are not exposed to adverse noise, vibration, and other impacts. It will also reduce the risk of conflict at subsequent approval stages and avoid potential appeals or disputes.

CN would be pleased to participate in a meeting with City Staff and the developer to discuss how CN’s concerns can be addressed in a timely and coordinated manner.

Kindly provide this letter to Council in advance of any decisions regarding the development applications. We also request notice of any decisions by Council in relation to this matter.

We look forward to hearing from you.

Yours truly,

Dentons Canada LLP

Max Reedijk
Senior Associate

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Copy: Client