



**Andrea Paterson**  
Land Use Planner  
andrea.paterson@dentons.com  
D +1 416 863 4770

Dentons Canada LLP  
77 King Street West, Suite 400  
Toronto-Dominion Centre  
Toronto, ON, Canada M5K 0A1

dentons.com

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**DELIVERED VIA EMAIL AND OVERNIGHT COURIER**

[grichards@mhbcplan.com](mailto:grichards@mhbcplan.com)

Planning Department  
Township of Cramahe  
1 Toronto Street, P.O. Box 357  
Colborne, ON K0K 1S0

Attention: Mr. Graham Richards, Township Planning Consultant

Dear Mr. Richards:

**RE: Application No. D10-CNR-18-23 - Consent to Sever and Creation of Easement  
- Part of Lots 31 and 32, Concession 1, Township of Cramahe, County of Northumberland,  
in the Province of Ontario, being part of PIN 51144-0155  
- Canadian National Railway Company ("CN")**

Thank you for meeting with us to review your comments regarding the above noted application which requests consent to sever lands deemed surplus to CN's needs. This letter is specifically in response to your comments noted below:

- The Township Zoning By-law requires a 30m setback from a railroad right-of-way (Section 17.2.7)
- The setback requirements cover most of the proposed severed lot and restricts development.
- Without a viable building envelope demonstrated on the proposed severed lot, staff would not recommend the creation of a new lot.
- If there is reasoning as to why the setback should be reduced, then that can be included as part of the planning justification for the application.
- A potential option is to complete a lot boundary adjustment and convey the lands to the adjacent property owners to the north.

Setback from Railroad Right of Way

As you know, interprovincial railways in Canada are Federally regulated. The municipality, through jurisdiction for regulating land uses, including lands that are adjacent to railway infrastructure, has the authority to require public safety and hazard condition mitigation measures through various land use planning instruments. The Federation of Canadian Municipalities and Railway Association of Canada Guidelines for New Development in Proximity to Railway Operations (the "Guidelines") assist municipal governments and railways on matters related to land use decisions. In terms of a setback, these Guidelines recommend a standard 30 metre setback from the property line of the rail property to the

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nearest sensitive or high occupancy use. Respecting smaller parcels that can be found in developed, serviced areas, the Guidelines provide that alternative mitigation measures may be considered if physical constraints of a proposed development site prevent the implementation of the recommended standard mitigation measures.

We note that the Township of Cramahe Zoning By-law No. 08-18, as amended, requires a 30m setback from a railroad right of way for all uses within the General Industrial (MG) Zone. We further note that the Guidelines recommend that a 30m setback apply to a **sensitive or high occupancy use** [writer's emphasis]. The proposed use of the severed lands is for a warehouse use with outside storage. No change to the Zoning By-law respecting use is proposed in conjunction with this consent application.

We have reviewed the municipality's setback requirement with our client, CN, who confirmed that a minimum 30m setback from the principal main line railway right of way is only required for residential and certain commercial uses. CN further advised that for non-residential uses such as heavy industrial, warehouse and manufacturing, a minimum 15 metre building setback from the railway right-of-way is acceptable. (Please see enclosed summary of CN requirements for non residential developments adjacent to a main line).

The purpose of the setback is to ensure public safety by requiring sufficient distance separation between the active rail corridor and any adjacent development. In this case, CN has advised that a 15m setback is sufficient to achieve this objective. Accordingly, it is our submission that a 15m setback from the railway right of way is appropriate for a warehouse use at this location.

#### Potential Development Area

In order to demonstrate the potential developable area, based on a 15m setback from the railway right-of-way, we have enclosed a graphic which shows the lands to be severed outlined in blue. Within the severed lands, we identify a 15m setback from the railway right of way, shown in pink shading, together with two areas for potential development, shaded in green. The westerly potential development area is approximately 2600m<sup>2</sup> in size and the easterly area is approximately 900 m<sup>2</sup> in size. Please note that the purpose of this graphic is to demonstrate the area within which a future building could be developed, in keeping with the safety requirements as set out by CN. It should also be noted that any development occurring on these lands would be subject to further municipal approvals such as Site Plan Control.

#### Planning Rationale

##### Provincial Policy Statement (PPS) 2020

The key objectives of the PPS 2020 include: building strong communities; wise use and management of resources; and protecting public health and safety.

Policy 1.1.1 states that "healthy, liveable and safe communities are sustained by...a) promoting efficient development and land use patterns".

Policy 1.2.6.1 states that: "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."

Policy 1.6.8.3 states that: "Planning authorities shall not permit development in planned corridors that could preclude or negatively affect the use of the corridor for the purpose(s) for which it was identified. New development proposed on adjacent lands to existing or planned corridors and transportation facilities should be compatible with, and supportive of, the long-term purposes of the corridor and should be designed to avoid, mitigate or minimize negative impacts on and from the corridor and transportation facilities."

Policy 1.6.9.1 states that: " Planning for land uses in the vicinity of airports, rail facilities and marine facilities shall be undertaken so that: a) their long-term operation and economic role is protected; and b) airports, rail facilities and marine facilities and sensitive land uses are appropriately designed, buffered and/or separated from each other, in accordance with policy 1.2.6."

The proposal is consistent with the PPS 2020 since severing the unused land from CN's operation and creating a new, infill, development lot that can be fully utilized in the future, allows for intensification in a built up area where services exist to support such future development. Furthermore, such development can occur in keeping with the Guidelines in order to minimize risk to public health and safety, while ensuring the long term operational and economic viability of the transportation rail corridor.

#### County of Northumberland Official Plan and Township of Cramahe Official Plan

As set out in our original application submission, the County of Northumberland Official Plan shows the Subject Lands as being located within the Urban Area of Colborne. The Township of Cramahe Official Plan designates the Subject Lands as Employment Areas, under Schedule 'C' Colborne Secondary Plan. This designation is intended to provide for a range of industrial and commercial uses. With regard to the type of infill that this Consent application would enable, the Township of Cramahe Official Plan establishes the following goal (s.4.3.2(c)): "To promote development on the lands traditionally designated for industrial uses for a boarder range of industrial and compatible commercial uses so as to promote economic diversity and strength in the Township". In addition, Policy 6.2 of the Official Plan sets out criteria for the evaluation of consent applications.

As previously submitted, the Subject Lands are not currently used as part of CN's operation. Accordingly, the creation of an adequately-sized and independent lot that could accommodate employment use infill, would allow the Subject Lands to meet the intent of the Official Plan to an equal or greater degree.

With respect to lot configuration, the lots fronting onto Earl Street are irregular in terms of frontage, depth and lot area. Accordingly, aside from having frontage on Earl Street, there is no typical, established lot pattern in the immediate vicinity.

The proposed Consent would allow for the creation of a lot suitable in size and configuration to accommodate development in compatibility with neighbouring properties, as demonstrated by the enclosed graphic, and based on CN's conclusion that a 15m setback is appropriate for the proposed use. Both the severed and retained lots maintain frontage on a public road.

### Conclusion

CN has, historically, accumulated land holdings to facilitate a nationwide transportation corridor. These land holdings often extend beyond the actual, linear railway corridor. Accordingly, certain portions of land owned by CN have been deemed to be surplus to CN's needs, and are made available for future development, where appropriate. Current Provincial policies encourage intensification and infill within developed areas. This, in turn, has encouraged and supported appropriate development of lands in proximity to railway corridors, within existing built up areas, subject to health and safety guidelines.

The current application is an opportunity to allow for such infill within a developed area. The Consent would permit the property to make far better use of existing infrastructure by allowing for development to occur, in-line with the County and Township Official Plan provisions.

The Subject Lands will continue to act as a buffer between the rail line and the lots fronting onto Earl Street. Both the severed and retained lots have frontage on a public road. Given that there is no typical, established lot pattern in the immediate vicinity, the proposed Consent would allow for the creation of a lot suitable in size and configuration to accommodate development in compatibility with neighbouring properties.

Accordingly it remains our respectful submission that this application for Consent for Severance supports the orderly development of the property and complies with all of those matters that one must have regard to, pursuant to Section 51(24) of the *Planning Act*, and that a plan of subdivision is not required in this instance.

Very truly yours,  
**Dentons Canada LLP**

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Andrea Paterson,  
Land Use Planner

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Enclosures

c.c.: Ernie Longo, Canadian National Railway Company