

Attachment 4



March 19, 2020

BY E-MAIL ONLY (ken.cunningham@ontario.ca)

Ken Cunningham
Environmental Assessment Branch
Ministry of the Environment, Conservation and Parks
135 St. Clair Avenue West
Toronto, Ontario M4V 1P5

Dear Mr. Cunningham:

Re: Proposed regulations for how the Environmental Assessment process will apply to four priority transit projects in the Greater Toronto and Hamilton Area (ERO #019-0614)

Thank you for the opportunity to comment on the Ministry of Environment, Conservation and Parks' Environmental Registry (ERO) posting on the proposed regulations for how the Environmental Assessment process will apply to four priority transit projects in the Greater Toronto and Hamilton Area.

Toronto and Region Conservation Authority (TRCA) is a key participant in the environmental assessment (EA) process within its watershed-based jurisdiction, both as a reviewer of EAs and as a proponent of undertakings under the *Environmental Assessment Act*. TRCA conducts itself in accordance with the objects, powers, roles and responsibilities set out for conservation authorities (CAs) under the *Conservation Authorities Act* and the MNR Procedural Manual chapter on CA policies and procedures. TRCA's roles are:

- A public commenting body under the *Planning Act* and *Environmental Assessment Act*;
- An agency delegated the responsibility to represent the provincial interest on natural hazards under Section 3.1 of the Provincial Policy Statement;
- A regulatory authority under Section 28 of the *Conservation Authorities Act*;
- A service provider to municipal partners and other public agencies;
- A Source Protection Authority under the *Clean Water Act*;
- A resource management agency; and
- A major landowner in the Greater Toronto Area.

In these roles, TRCA works in collaboration with municipalities and stakeholders to protect people and property from flooding and other natural hazards, and to conserve natural resources.

Government Proposal

We understand the government's current proposal would modify the existing environmental assessment process for four priority transit projects in the Greater Toronto and Hamilton Area. It will modify the existing Transit Project Assessment Process (TPAP), as set out under Ontario Regulation 231/08 for Transit Projects and Metrolinx Undertakings, to better suit a public-private partnership (P3) project delivery model, while ensuring appropriate consultation occurs, and that the protection of the

environment remains a priority. Specifically, the proposal is to enact a new regulation pertaining specifically to the Ontario Line Project, and to amend O. Reg. 231/08 Section 15.

The existing TPAP is a scoped environmental assessment process for certain classes of transit projects specified in Schedule 1 of O. Reg. 231/08. These project classes are exempt from the more rigorous class environmental assessment process required by Part II.1 of the *Ontario Environmental Assessment Act*. We understand that the current government proposal is for a further scoped EA process, as compared with the TPAP, for the four priority transit projects, and furthermore that substantial components of the process will be completed within the coming months so construction may begin before the end of 2020.

General Comments

TRCA staff have reviewed the proposal and generally support streamlining the delivery of priority public transit projects while maintaining environmental oversight. TRCA works regularly with its provincial and municipal partners on public infrastructure projects while avoiding duplication and delay. At the same time, we recognize the importance of a robust assessment of environmental, social and economic considerations and public consultation processes, appropriately scoped for project scale and location.

Proposed Ontario Line Regulation

Issues resolution

TRCA supports that objections to the proposed projects are addressed through an issues resolution process that Metrolinx manages. It has been our experience working on other Metrolinx projects, that when Metrolinx maintains full control of their project from a project management perspective, a timelier review and commenting process is facilitated.

Early Works

The Provincial Policy Statement (2020) states the objective to direct development away from areas of natural and human-made hazards, which protects public health and safety, and minimizes cost, risk and social disruption. Through this lens, TRCA has a long-standing relationship with Metrolinx working on major facilities to ensure they are planned and developed to avoid and or minimize impacts from the provincial interest on natural hazards, specifically flood risks.

TRCA emphasizes that natural hazards associated with flooding and erosion must be accounted for during the EA phase in order to properly manage their associated risk to infrastructure investments and the public users of transit projects. The proposed early works process may not account for this, which is of concern to TRCA due to the Ontario Line's location within the lower Don River flood plain and in an area particularly affected by the fluctuating Lake Ontario levels. Considerable financial resources are currently being channeled towards addressing flood risk to over 290 hectares of downtown Toronto and the Port Lands. The studies, monitoring and information arising from the Port Lands Flood Protection initiative should be considered, maintained and incorporated into the planning and development of the Ontario Line. It will be critical that Metrolinx engages with key stakeholders of the Port Lands Flood Protection Initiative to identify and avoid these flood risks as well as develop mitigation measures. TRCA is recommending that the responsibility and accountability for planning, design and implementation of mitigation measures remain with Metrolinx and not be assigned to contractors.

Climate Change Considerations

The impacts of a changing climate should also be accounted for during the project's design phase in order to inform risk management measures. For the Ontario Line, as an example, this may include utilizing updated TRCA or other models to account for changing climate and including additional freeboard for planned infrastructure in flood prone areas to accommodate for rising Lake Ontario water levels. It is imperative that technical studies, including evaluating and planning for the mitigation of such risk using current methodologies, be completed by Metrolinx prior to the detailed design phase. These studies may take time to complete, and as such may cause conflict in the approval of some of the proposed early works, namely bridge structures and any other structures such as stations proposed in flood plain areas.

Accordingly, TRCA staff are concerned with the scope of the proposed "early works" definition of project components that will be allowed to proceed to construction before the completion of the draft Environmental Impact Assessment Report. Early works typically include activities such as land assembly, preloading and utility relocations. This contrasts with the currently proposed major structural realignment activities included as "early works" such as station construction, bridge replacements and expansions and rail corridor expansion. TRCA cautions that as currently proposed the broad definition of early works may result in major alignment challenges with unforeseen impacts to public safety related to flooding and erosion impacts, as well as negative impacts to natural systems that may include natural heritage features of provincial interest.

Another concern is existing riverine flood protection infrastructure that has been constructed to protect life and property, impacts to which must be avoided through the design of the Ontario Line. In addition, the groundwater conditions are a significant environmental factor along stretches of the proposed Ontario Line corridor, much of which is proposed to be tunneled. Developing mitigation strategies for groundwater impacts should be considered in the early works initiatives so as not to impact the overall project schedule. TRCA notes that groundwater conditions may affect the project's construction feasibility, and that groundwater issues are typically identified through the existing Environmental Assessment process.

Preliminary activities should also consider land assembly/acquisition in the early works phase if the entirety of lands within the project area are not owned by the Province. TRCA recognizes that TRCA-owned lands may be required for project completion in certain locations and would appreciate being involved early in the process as these negotiations can be lengthy.

Soil Considerations

TRCA has several planned erosion and hazard management infrastructure projects along the Toronto Waterfront that could be potential sites for the placement of soils. TRCA would appreciate continued engagement on potential soil management strategies as these projects evolve.

Draft Early Works Report

As proposed under Section 8(2).7, the Draft Early Works Report must include measures to mitigate the negative environmental impacts of the preferred alternative. This methodology is problematic as mitigation measures are proposed prior to assessment and evaluation of the impacts that the preferred method of carrying out the early works and other methods might have on the environment (and Metrolinx's criteria for assessment and evaluation of those impacts). Those steps occur as part of the Environmental Impact Assessment Report, however, if the early works as stated in the draft document can proceed prior to the Environmental Impact Assessment Report there could be

unforeseen issues in the future that result in project delays. TRCA would recommend that selection of the preferred alternative, including in the case of early works, include an evaluation of potential impacts and mitigation to confirm feasibility and that the proposed regulation be revised to account for an amendment process.

Preferred alternative determination

The Draft Environmental Conditions Report speaks to mitigating the environmental impact of the preferred alternative in draft regulation Section 4(3).7, suggesting the preferred alternative is determined based on minimal environmental information prior to completion of the Environmental Impact Assessment Report. This approach is problematic, as mitigation occurs prior to assessment and evaluation of the impacts that the preferred method of carrying out the works and other methods might have on the environment (and Metrolinx's criteria for assessment and evaluation of those impacts). Those steps occur as part of the Environmental Impact Assessment Report that follows the Environmental Conditions Report. TRCA would prefer that the selection of the preferred alternative include an evaluation of potential impacts and mitigation to confirm feasibility.

Assessment and reporting requirements

TRCA notes that the proposed regulation lacks a clear definition of "Environment" (draft regulation Section 1), and which studies are to be included in an Environmental Conditions Report (Section 4(3)), Environmental Impact Assessment Report (Sections 15(1) and 18(1)), and Early Works Report (Sections 8(2) and 11(1)). For example, stormwater, groundwater, natural hazards including flooding and erosion, natural heritage, terrestrial and aquatic habitat studies must be specified for the report. TRCA recommends these studies be clearly defined to ensure the proper information is assessed, mitigated and conveyed in the Environmental Conditions Report, Environmental Impact Assessment Report and Early Works Report.

From TRCA's perspective, it is imperative that issues associated with transit construction in proximity to the Waterfront Toronto Port Lands and in particular the associated flood protection features in this area, which constitute technically complex areas prone to significant flooding, are addressed and confirmed through the preliminary Environmental Conditions Report. Satisfying complex technical concerns in this regard is paramount to ensuring the constructability of the project which will in turn reduce risk and save time during construction.

Given the inherent impacts on the natural heritage system associated with transit projects, ecosystem compensation should be addressed in the various project studies. Where impact assessment and mitigation measures are required, ecosystem compensation should also be included as a necessary consideration. This requirement to consider ecosystem compensation earlier in the project will streamline the approach to finalizing required compensation at later planning stages. TRCA recommends that ecosystem compensation should be included in the draft regulation within Sections 8(2).7, 15(2).7 and 21(1).4 of the proposed regulation.

Species at risk

TRCA supports that Metrolinx may apply for and obtain authorization to proceed with measures to accommodate any species at risk or provincial heritage properties in advance of completing the process outlined in the regulation, subject to any consultation or other requirements associated with those processes. In TRCA's experience, issues related to species at risk are raised at the detailed

design stage and can delay approvals, whereas this delay could be avoided if the issues are addressed earlier in the process. TRCA also recommends that the regulation include a protocol or agreement whereby Metrolinx can address issues requiring federal species at risk approvals, as well as approvals from Fisheries and Oceans Canada regarding harmful alteration or disruption, or destruction of fish habitat under the purview of the *Fisheries Act* in order to avoid review delays at the detailed design stage.

Project changes

Regarding how project changes are dealt with in the draft regulation, Section 21(2) states that the procedure in subsection (1) for addressing a change does not apply if the change is required to comply with another Act, a regulation made under another Act, or an order, permit, or approval or other instrument issued under another Act. However, there is no procedure outlined for changes required to comply with these elements (i.e., how changes required to comply with a permit issued under another Act will be incorporated into the project's assessment and approval process). TRCA suggests outlining how a change required to comply with another Act will be addressed and the protocol for circulating proposed changes in order that other agencies, such as conservation authorities remain informed.

Proposed Changes to O. Reg. 231/08

As noted in our comments on the proposed Ontario Line Regulation, given the inherent impacts on the natural heritage system associated with transit projects, ecosystem compensation should be addressed in the various project studies. Where impact assessment and mitigation measures are required, ecosystem compensation should also be included. It is our experience that the inclusion of ecosystem compensation considerations earlier in the planning process will streamline the approach to compensation at later planning stages. TRCA recommends that ecosystem compensation in accordance with Metrolinx's standard should be included in Sections 15(1).3 and (15).4 of O. Reg. 231/08, in the addendum to the environmental project report.

TRCA Recommendations

In order to achieve a streamlined priority transit project development process in a timely manner and continue to ensure the protection of people and property from natural hazards and the conservation of natural resources, TRCA recommends:

- 1) The proposed project assessment timeline ensures projects can demonstrate that they will avoid increasing risk of natural hazards (flood and erosion risks) to infrastructure or public health and safety through the completion of appropriate technical studies that inform detailed design.
- 2) The environmental studies required are clearly defined within the regulation to ensure the proper information is assessed, mitigated and conveyed in the Environmental Conditions Report, Environmental Impact Assessment Report and Early Works Report.
- 3) A protocol be developed for harmonizing federal approvals and any other required provincial approvals early in the process to avoid delays prior to detailed design. The Aquatic Habitat Toronto model involving DFO, MNRF, TRCA and other government agencies may be helpful to consider in this regard.

- 4) The scope of early works be limited to typical low risk activities such as land assembly, staging, stockpiling, in lower risk areas of the project.
- 5) Should the proposed scope of early works remain as proposed, that a 30% detailed design be required and reviewed by the government agency review team for the project to confirm potential impacts, feasibility and mitigation measures prior to the approval of the early works.
- 6) We recommend that consideration of sustainability strategies such as the placement or use of soil in nearby projects in support of nearby conservation authority flood and erosion control projects be considered to reduce GHG emissions be a requirement.

Thank you once again for the opportunity to provide comments on the proposed regulations for how the Environmental Assessment process will apply to four priority transit projects in the Greater Toronto and Hamilton Area. Should you have any questions, require clarification on any of the above, or wish to meet to discuss our comments, please contact the undersigned at 416.667.6290 or at john.mackenzie@trca.ca.

Sincerely,



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Chief Executive Officer

BY E-MAIL

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