

March 18, 2020

Submission

Environmental Registry of Ontario Proposal #019-0614

Regulatory Changes to Expedite Four Priority Transit Projects in the GTA and Hamilton Area

1. INTRODUCTION

The Residential and Civil Construction Alliance of Ontario ('RCCAO') is submitting its comments and recommendations on the proposals contained in the Environmental Registry of Ontario Instrument #019-0614 on February 18, 2020 by the Ministry of the Environment, Conservation and Parks ('MECP' or the 'Ministry') regarding the *Environmental Assessment Act* (the "Act") and expediting four priority transit projects:

2. ABOUT RCCAO

RCCAO is an alliance of key labour and management stakeholders derived from the residential and civil construction sectors. The Alliance was formed to address the challenges affecting the delivery of projects, such as the Municipal Class Environmental Assessment (MCEA) process. We work together with government and industry experts to offer realistic solutions to problems in the areas of infrastructure delivery, growth planning, regulatory reform and labour shortages.

3. SUBMISSION ISSUES

RCCAO welcomes the opportunity to provide its comments and recommendations on the following two proposed regulations:

- A. **PROPOSED ONTARIO LINE PROJECT REGULATION** to be made under the *Environmental Assessment Act*; and
- B. **PROPOSED AMENDMENTS TO ONTARIO REGULATION 231/08** under the *Environmental Assessment Act*.

3.A PROPOSED ONTARIO LINE PROJECT REGULATION

Section 2 - EXEMPTION FROM PART II ORDER REQUESTS

A Part II Order Request ("PIIOR"), at any stage of this project, would likely delay this Project by two years or more, based on the timeframes for recent PIIOR's on large municipal infrastructure projects. RCCAO supports the proposed PIIOR exemptions and would like to see the government implement changes to shorten the delays for PIIOR on other projects,

such as those subject to the MCEA process. As of mid 2019, the percentage of MCEA Schedule B and Schedule C projects which incur a PIOR request was still relatively high.

Section 3 – LIST OF INDIGENOUS COMMUNITIES

The provision by the Director of the Ministry's Environmental Assessment Branch of a list of Indigenous communities that, in the opinion of the Director, have or may have constitutionally protected aboriginal or treaty rights that may be negatively impacted by the project is an important time saving measure to expedite this project. RCCAO also recommends that this list, together with contact information for the relevant Indigenous communities, should be published by the Ministry so that municipalities and other infrastructure project proponents might be better prepared to effectively communicate with all affected stakeholders.

RCCAO would further recommend that the Ministry be required to provide similar information to other proponents, such as municipalities, with respect to larger infrastructure projects, such as MCEA Schedule C projects.

Section 4 – DRAFT ENVIRONMENTAL CONDITIONS REPORT

With respect to the proposed section 4(2), it is unclear whether the proponent (Metrolinx) would need to take further steps if one or more Indigenous communities refuses to respond, or requires a significantly longer period of time and other resources (e.g. funding) to provide a written assessment of any negative impact on their constitutionally projected aboriginal or treaty rights. RCCAO notes that many smaller northern and rural municipalities proceeding with infrastructure projects have been asked by Indigenous communities for funding and/or other technical assistance to prepare a written response/statement regarding proposed MCEA class infrastructure projects.

Section 5 – NOTICE OF PUBLICATION

With respect to the proposed section 5(4), Metrolinx "shall have regard to" Schedule 2 of Ontario Regulation 231/08 in identifying persons who may be interested in the Ontario Line project. The proposed section 5(4) does not require Metrolinx to comply or follow Schedule 2. RCCAO submits that the proponent Metrolinx should be required to do more than "have regard to" Schedule 2. The list of persons Metrolinx should include in its stakeholders list should be as described and/or listed in Schedule 2. In the spirit of transparency, RCCAO contends that the list of interested persons established by Metrolinx for this project should be available to the public on the Metrolinx website.

Section 6 – CONSULTATION ON ENVIRONMENTAL CONDITIONS REPORT

With respect to the proposed section 6, no time frame is specified for Metrolinx to complete the relevant consultation efforts. If the purpose of the new regulation is to expedite the

planning, assessment and construction of the Ontario Line, RCCAO recommends that there be a specified timeframe, similar to those in sections 11 and 18 of the proposed regulation.

Section 8 – DRAFT EARLY WORKS REPORTS

RCCAO acknowledges and agrees that the planning, assessment and construction timeframe can be shortened by commencing certain elements associated with the project as soon as possible. The term ‘Early Works’ is defined in section 1 of the proposed regulation as activities including, but not limited to, station construction, rail corridor expansion, utility relocation or bridge replacement or expansion.

The proposed section 8 requires Metrolinx to prepare a Draft Early Works Report that describes the specific early work being contemplated, but only an assessment and evaluation of the impacts of the “preferred method”. **RCCAO recommends that the Early Works Report should include a summary of the impacts of the alternative methods of carrying out the Early Work, not just the preferred method of carrying out the Early Work.**

RCCAO recommends that, subject to a limited number of exceptions such as the sublevel Queen Street subway station, there should be a very restricted number of permitted ‘Early Works’. ‘Early Works’ should not be an ‘open ended’ term, it should be narrowly defined. For example, it may be in the best interests of the project to put certain sections of the proposed line underground instead of above ground.

It is understanding of RCCAO that the precise route of the Ontario Line has not yet been finalized, nor has the decision about which sections of the Ontario will be above ground and which sections will be tunnels. Although some elements are understood, such as the existence of the roughed in sublevel station at Queen and Yonge streets which was constructed in the early 1950’s for a streetcar subway station, many other engineering and design variables have not yet been finalized.

It would be preferable to have the precise route and alignment finalized before most of the work can commence. For example, the footings, and other support elements of a bridge are expensive and difficult to change if there is even a modest change in the elevation and/or alignment of a bridge. While speed is important in the delivery of new transit systems, certainty and accuracy are critical to achieve cost-effective delivery.

Two recent examples: (a) Six months after the launch of Ottawa LRT project, the Ottawa Citizen has called this disaster a “case of seemingly reasonable risks compounding in unpredictable ways thanks in part to compressed budgets and timetables.” This transit project experienced political influence which included major route changes. These interventions resulted in numerous delays, change orders and complications, with the City pursuing “contradictory objectives of speed and low cost”, according to reporter James Bagnall. (b) The TTC extension to Vaughan was also behind schedule and over budget, due

in part to unanticipated changes. To start building key structural elements of a transit line even before the route is finalized may yield serious and expensive consequences. Similarly, relocation of certain underground utilities might be counterproductive if the final alignment and elevation is altered by even a few metres.

The current proposal for the Ontario Line contemplates the use of rolling stock that is separate and distinct from the units in use on the Yonge and Bloor subways, and different from the LRT trains being produced for the Eglinton Crosstown LRT. The selection of train types and specifications needs to be finalized before final design of the rail beds, switches, curves and passenger platforms. The Ottawa LRT project encountered significant difficulties with its new trains, which resulted in operational issues.

Another example: The TTC encountered significantly higher costs and delays when it rebuilt the streetcar system on Roncesvalles Avenue in Toronto. The platforms were designed and fabricated before the streetcars were available for testing, with the result being that the passenger platforms were too short. Millions of dollars of additional costs were incurred on change orders and alterations of recently installed structures.

Section 9 – NOTICE OF DRAFT EARLY WORKS REPORT

With respect to the proposed section 9(5), Metrolinx “shall have regard to” Schedule 2 of Ontario Regulation 231/08 in identifying persons who may be interested in the early works. RCCAO’s comments and recommendations regarding the proposed section 5(4) above also apply to the proposed section 9(5).

Section 20 - ACCESS OF DATA BY THE PUBLIC

The decisions taken and the rationale behind those decisions, together with all reports, studies and related information should be readily available to the public by internet access right through to the first anniversary of commencement of operation of the Ontario Line. The availability of such information will allow the public to monitor progress of the project and enable interested parties to raise concerns in the event that the construction and operation of the project is inconsistent with the design that achieved a consensus with stakeholders.

If there are changes to the project after the Statement of Completion of the project assessment process, such changes should also be posted and retained at a publicly accessible website together with all relevant studies and reports associated with such changes.

3.B PROPOSED AMENDMENTS TO ONTARIO REGULATION 231/08

Section 15(4) – NOTICE OF ENVIRONMENTAL PROJECT REPORT ADDENDUM

The proposed changes alter the contents and timing for the posting of an Environmental Project Report Addendum for three specific transit projects, the Scarborough Subway Extension from Kennedy Station to Scarborough Town Centre (the “**Scarborough Subway**”); the extension of the Yonge Street subway from Finch Avenue in Toronto northwards into Richmond Hill (the “**Yonge North Extension**”) and the Western Extension of the Eglinton Crosstown LRT westwards to the Toronto Pearson International Airport area (the “**Eglinton West LRT**”).

It is noteworthy that one of the new metrics of adverse impacts is the requirement to determine “any impacts to the timeline for implementation of the transit project”. While no examples have been cited in the MECP materials, tunnelling a particular section of one of the transit projects instead of demolition or relocation of existing above ground structures, might add costs but save time.

Overall, the proponent, Metrolinx, has more control and requires less decision making by the Minister in order to obtain approval to proceed with any amendments to any one or more of the aforementioned transit projects. RCCAO recommends that these revised procedures should be available for all transit projects subject to Ontario Regulation 231/08, not only the three listed projects where Metrolinx is the proponent.

Section 15(22.3) – OPPORTUNITY TO PARTICIPATE IN CONSULTATION RE PROJECT REPORT ADDENDUM

The proposed new section 15(22.3) requires that the proponent, Metrolinx, give every person who receives a copy of the notice under 15(5)(a) an opportunity to participate in consultation. It is not clear how this section will be interpreted where, for instance, the proponent schedules two separate information open houses and a stakeholder who received the notice under 15(5)(a) is, for legitimate reasons such as illness, unable to attend either session. It is unclear whether “an opportunity to participate” is equivalent to a “right to participate”.

Section 15(22.11) – MINISTER MAY IMPOSE CONDITIONS

The Minister is provided with the power to impose conditions on the proposed Project Report Addendum, but only insofar as the conditions relate to a concern raised in the issues resolution process established by the proponent under 15(22.7). For transit projects other than the three designated projects, the Minister has a broader discretion to impose any conditions, whether or not they were raised in the issues resolution process. RCCAO notes that the reduced scope of potential conditions that the Minister may impose would eliminate the possibility that the Ministry will add conditions that were not raised or discussed by the proponent or participants in the consultation process. RCCAO believes that a similar reduced scope of potential conditions should be applicable to any PIORs whether the project is a transit project or an MCEA infrastructure project.

4. CONCLUSIONS

RCCAO supports most of the proposed changes in the two regulations as a means to expedite the assessment, planning and construction of the four specified transit infrastructure projects. There are several elements of the proposed regulations that should apply not only to other transit projects but to a broad array of MCEA municipal infrastructure projects.

RCCAO appreciates the opportunity to review MECP's proposed changes as described in ERO Instrument #019-0614 and to recommend specific improvements. While this submission is being made during a state of emergency due to the COVID-19 crisis, RCCAO hopes that this technical feedback will be considered by the Ontario government and its agencies.

Endnote: Ottawa Citizen (updated March 6, 2020) "Inside the slow-rolling disaster of Ottawa's \$9-billion LRT project" by James Bagnall.

End of Submission