

Development Impacts of ‘Building Transit Faster’

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On February 18, 2020, the Province introduced the much anticipated Bill 171, *An Act to enact the Building Transit Faster Act, 2020*. The purpose of the Act is to expedite the delivery of the four priority transit projects for the Greater Toronto Area, namely:

1. The Ontario Line
2. The Scarborough Subway Extension
3. The Yonge North Subway Extension
4. The Eglinton Crosstown West Extension

Landowners with property located on or within 30 metres of lands designated as “transit corridor land,” being land that is or may be required for one of the four priority transit projects, should review the Bill carefully as it may impact development approvals, timing and compensation. As designated transit corridor land will overlap with lands where development is encouraged by applicable provincial and municipal planning policies, the Act’s requirements will need to be factored into any plans for transit-oriented development.

Key provisions of the Bill are outlined below.

Corridor Development Permit Requirements

- A development permit will be required to build, alter or place a building, structure or road, or conduct excavation or dewatering, on, under or within 30 metres of transit corridor land. This is in addition to the existing permit and approval process for land development.
- A development permit will be required to build, alter or place utility infrastructure that would require grading or excavation on, under or within 10 metres of transit corridor land.
- Permits may be required for any other prescribed work.
- The terms and conditions of a permit may be changed at any time at the discretion of the Minister, and the Minister may cancel the permit at any time.
- While a permit is not required for any works that received all required approvals prior to designation as transit corridor land, the Minister may by notice impose a 6-month time limit before a permit will be required unless an alternative approach is negotiated. The Minister is required to attempt to enter into negotiations in good faith to enable the work to be carried out, failing which a permit will be required.

Cassels

- A person may seek a review of a decision respecting permits, if the Minister establishes a review process.

Other Corridor Protection

- The Minister may require the alteration or removal of structures, including part of a building, and other prescribed things, if required for construction of a priority transit project. No obstruction removal shall take place in a dwelling.
- The Minister is required to attempt to enter into good faith negotiations to reach an agreement on how to carry out the work, failing which after 30 days the Minister may carry out the removal.
- Additional rights of entry and inspection are granted to the Minister if in the Minister's opinion there is an immediate danger to construction. The right of entry, while excluding a building, may include a part of building.
- For the purpose of carrying out due diligence in planning and constructing a priority transit project, the Minister is granted a right of entry on lands on or within 30 metres of transit corridor land, other than a dwelling, for a preview inspection, including the right to make records and conduct tests.
- The Act provides requirements for notice, compensation and restoration.

Compensation

- The Act sets out a process for determining compensation for an agreement for obstruction removal, obstruction removal itself, construction danger inspection and elimination, and a preview inspection, with the right to apply to the Local Planning Appeal Tribunal to determine compensation.
- If the affected landowner is a municipality, the Minister may compensate the owner but is not required to, and may provide only partial compensation.

Expedited Expropriation Process

- The Bill eliminates the right to request a Hearing of Necessity under the *Expropriations Act* for lands that are along transit corridors where the expropriation is for a priority transit project.
- The elimination of the Hearing of Necessity removes a step in the expropriation process, thereby accelerating the legislative timelines. The Bill provides that this new provision prevails despite existing conflict provisions in the *Expropriations Act*.
- In place of the Hearing of Necessity, the Bill proposes that the Minister establish a process to receive and consider comments from property owners about a proposed expropriation. This alternative process would be established by way of Regulation.

Utility Cooperation, Municipal Service and Right of Way Access

- The Bill provides a mechanism by which Metrolinx may require utility companies to remove or change the location of utility infrastructure to accommodate a priority transit project.
- Similarly, a mechanism is provided for obtaining access to or modification of municipal infrastructure or a municipal highway/right of way, if required for the construction or operation of a priority transit project.
- If required, the Bill proposes that Metrolinx and the municipality enter into negotiations to agree on terms of access, and the Minister only has the authority to make a municipal service and right of way access Order if negotiations fail and under certain terms which require consultation with Metrolinx and the municipality.

Administration, Enforcement and Offences

- The Bill authorizes the Minister to delegate a majority of its powers under the proposed Act to Metrolinx or to prescribed public bodies. In turn, Metrolinx has the ability to delegate its authority with respect to utility infrastructure to other entities engaged by Metrolinx to plan or construct priority transit projects.
- The Bill includes enforcement tools which enable the Minister to issue stop-work orders and the Superior Court to issue court orders on an application made by Metrolinx. The Bill also allows the Minister to inspect properties to ensure a permit or stop-work order is being complied with and authorizes a justice of the peace to issue a warrant to carry out such inspections.
- To ensure compliance with the Act, the Bill authorizes the Minister to impose administrative penalties and identifies specific contraventions of the Act that are deemed to be offences.

Changes to the *Ontario Energy Board Act, 1998* and *Public Service Works on Highways Act* are also proposed by Bill 171.