



Hamilton

INFORMATION REPORT

| | |
|-------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| TO: | Mayor and Members General Issues Committee |
| COMMITTEE DATE: | April 7, 2021 |
| SUBJECT/REPORT NO: | Building Transit Faster Act, 2020 (LS21013/PED21091) (City Wide) |
| WARD(S) AFFECTED: | City Wide |
| PREPARED BY: | Bryan Boodhoo (905) 546-2424 Ext. 7164 Brian Hollingworth (905) 546-2424 Ext. 2953 Steve Robichaud (905) 546-2424 Ext. 4281 Gord McGuire (905) 546-2424 Ext. 2439 Ed VanderWindt (905) 546-2424 Ext. 2574 |
| SUBMITTED BY: SIGNATURE: | Michael Kyne Acting City Solicitor, Legal Services  |
| SUBMITTED BY: SIGNATURE: | Jason Thorne General Manager Planning and Economic Development Department  |

COUNCIL DIRECTION

None.

INFORMATION

On March 8, 2021, the Ministry of Transportation (“**MTO**”) proposed that the Hamilton Light Rail Transit (LRT) project be added as a priority transit project under the *Building Transit Faster Act, 2020* (the “**Act**”), by way of regulation. The regulation defines the LRT line as “extending east from McMaster University”. If the Hamilton LRT is added as a priority project, the MTO and Metrolinx could use many of the measures under the Act to expedite construction of the Hamilton LRT.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

Currently, the following are already identified as “priority transit projects” under the Act:

- the Ontario Line,
- the Scarborough Subway Extension,
- the Yonge North Subway Extension; and
- the Eglinton Crosstown West Extension.

For the City of Hamilton (the “**City**”), adoption of the Hamilton LRT as a “priority transit project” under the Act would have the most impact, for the City and its residents, in the following areas, which are discussed further below:

- (1) Municipal road, water and sewer services;
- (2) Temporary access for due diligence work;
- (3) Clearance of obstructions; and,
- (4) Development Control through a Provincial permitting system.

As a general comment, the Act addresses various matters that are typically dealt with through a series of agreements between the Province, the project proponent, and the other parties such as the municipalities or utilities (e.g. Master Agreement, Project Agreement, Easement Agreements, Utilities Agreements). By prescribing timelines and provincial authorities, the Act seeks to eliminate the significant risk to the Province with respect to the timing of these agreements.

The proposed regulation is open for comment until April 23, 2021.

It is important to note that the Building Transit Faster Act already received Royal Assent in June 2020 and is now law. Additionally, placing the Hamilton LRT on the list of “priority transit projects” under the Act does not obligate the Province to construct the project.

Municipal Service and Right of Way Access

The Act provides the Minister the authority to develop a municipal service and right of way access order with respect to:

- (a) the use, occupation, modification or temporary closure of a municipal highway or municipal right of way; and,
- (b) the use of, access to, or modification of infrastructure that is, related to sewage works, water works or fire hydrants under municipal ownership or control and municipal services related to that infrastructure.

The Act requires notice and consultation with the municipality prior to the issuance of such an order, and states that “Metrolinx and the municipality shall enter reasonably promptly into negotiations to agree on terms for the municipal service and right of way access”.

If, in the Minister’s opinion, Metrolinx and the municipality will not be able to agree on terms for the municipal service and right of way access even though Metrolinx made reasonable efforts to reach an agreement, the Minister may at any time develop a municipal service and right of way access order. The order can include terms and conditions such as measures to mitigate the impact on the public, provision of resources and compensation to address the impact on the municipality, measures to address potential municipal liability, and technical standards that must be met to support the municipal service and right of way access.

Temporary Access for Preview Inspections

The Act allows Metrolinx to conduct preview inspections “for the purpose of carrying out due diligence in planning and constructing a priority transit project”. This would allow the Province to enter a property (but not a dwelling) “that is at least partly either on transit corridor land or within 30 metres of transit corridor land”, make records of the property and surrounding area, and conduct tests. The Act sets out provisions for providing notice, for seeking to establish mutually convenient times, or if no mutually convenient time can be found, to undertake the inspection during business hours.

Obstruction Removal

The Act gives Metrolinx the powers of “obstruction removal” and “danger inspection and elimination”. These powers allow the Province to inspect and remove any obstruction within 30 metres of the transit corridor, including obstructions inside a building. There are, however, some exceptions to these powers. It cannot be exercised, for example, in a dwelling. The Act states that a structure “does not include the removal of a building, road or utility infrastructure, but does include the removal of part of a building.”

The Act states that “the Minister shall attempt to enter into negotiations, and negotiate in good faith, to reach an agreement on how to carry out the work” but provides that if negotiation fails and agreement has not been reached within 30 days, “the Minister may carry out an obstruction removal.”

For the City, there is a foreseeable impact on trees and other landscaping, as some tree removal was already identified as necessary under the 2017 Environmental Project Report. Under the Act, the Province is required to plant replacement trees in accordance with the applicable municipal by-laws. The Province cannot circumvent the requirement to replace trees without amending the Act.

For private property owners, the Act requires compensation for any damages that may occur resulting from the work and for the Province to “make reasonable efforts to restore the property to its conditions prior to the work”. If agreement cannot be reached as to compensation, the Act allows either party to appeal to the LPAT.

For municipalities and local boards, the Act states that “the Minister may compensate the owner for any damages resulting from the work, but does not have to” and the Act further states that “if the Minister compensates the owner, the Minister shall decide the quantum of compensation and may provide only partial compensation”.

Development Control and Provincial Permitting

Currently, land use on the Hamilton LRT corridor is regulated through the City’s Official Plan and Zoning By-law, and the corridor is also under Site Plan Control, which requires Site Plan Approval for most developments. While the Act does not repeal or replace these powers, the Act creates an additional provincial permitting and development control regime in and around the transit corridor.

Under the Act a Ministerial permit would be required to:

- build, alter or place a building, other structure or road, or conduct excavation or dewatering, on or under transit corridor land, or land within 30 metres of transit corridor land; and
- build, alter or place utility infrastructure that would require grading or excavation on or under, transit corridor land, or land within 10 metres of transit corridor land.

There are certain exceptions, such as emergency work (e.g. a burst City pipe). In addition, work does not need a permit if that work got all legally required approvals before the land was designated as transit corridor land; however, the Minister may, by notice to the work’s proponent, impose a requirement that, if the work is not completed during the period ending on the day that is six months after the day that the notice was served, the work needs a permit after that time, unless an alternative approach is negotiated.

The Minister may attach terms and conditions to a permit, or change such terms and conditions, at the Minister’s discretion at any time. And the Minister may cancel a permit at the Minister’s discretion at any time.

The Act does not provide significant detail about how the permit system would work. It only states that the “Minister may establish a review process with respect to permits” and that the “Minister may set fees for the review process”.

A provincial land use permitting process through the MTO has existed for many years around 400-series highways. For highways, an MTO land use permit is considered applicable law under the Ontario Building Code and must therefore be received prior to issuance of a Building Permit. The City typically makes the obtaining of such a permit from MTO a condition of the Site Plan Approval process. Typically, the MTO requires information and bases its issuance of a permit around considerations such as the impact a given development would have on traffic flows, queuing impacts, etc. on the 400-series highway. The Act does not explicitly repeal or replace the City's authority over the corridor with respect to permits or municipal consents, such as those for road cuts, water services or sewer services.

The stated purpose of the Act is to prioritize transit projects, and it is foreseeable that the Hamilton LRT project construction schedule would be prioritized over the construction schedule of other development along the Hamilton LRT corridor. At the time of the introduction of the Act, the Ontario Home Builders Association indicated to the Province that, while it is generally supportive of the Act and is also not necessarily opposed to the concept of permits to improve communication and alignment of construction processes, they had a number of areas of concerns/questions. These generally related to uncertainties around permit timelines, submission expectations, application fees, and risk on construction due to the potential for permits to be revoked and the stated prioritization for the transit project.

Expropriations and Hearing of Necessity

The Act allows the Province to expropriate land without the need for a hearing of necessity. The purpose of a hearing of necessity is to confirm the necessity of the expropriation. It does not impact valuation.

Bill 197, the COVID-19 Economic Recovery Act, 2020, has already eliminated hearings of necessity for any expropriation made under the Public Transportation and Highway Improvement Act, which governs the construction of provincial highways by the Ministry of Transportation. Bill 197 also eliminated hearings of necessity for the construction of transit stations on specified priority transit lines and on lands declared by the Province as transit-oriented community lands.

It is important to note that the Province already has the power under the Expropriations Act to dispense with a Hearing of Necessity where "it considers it necessary or expedient in the public interest to do so."

Utility Relocation

The Act states that “Metrolinx may by notice require a utility company to take up, remove or change the location of the utility company’s utility infrastructure if, in the opinion of Metrolinx, it is necessary for a priority transit project”. The Act sets out requirements with respect to notice and timelines, and at default is set at 60 days after the notice is served. The utility company may apply to a judge of the Superior Court of Justice for an order altering the date specified in the notice to a later date. Metrolinx and the utility company may agree on the apportionment of the actual cost of the work, but if no agreement is reached, Metrolinx must bear the actual cost of the work.

Enforcement

The Act sets out various measures to enforce the provisions of the Act, including the power to issue a Stop Work Order, Administrative Penalties, and court orders.

Impacts on Completed Environmental Assessments

The Hamilton Light Rail Transit (LRT) 2017 Environmental Project Report (“EPR”) Addendum is unchanged and remains in force.

The EPR Addendum was submitted to what is now the Ministry of the Environment, Conservation and Parks, following Council approval of PED17056 in April 2017 and remains in effect. The 2017 EPR Addendum was completed to update previous Environmental Assessments (EA) to reflect changes to alignments and other project elements. The approved alignment option extends from McMaster to Eastgate Square via the Main/King/Queenston Road corridors. The Hamilton LRT 2017 EPR Addendum was conducted following Ontario Regulation 231/08, the Transit Project Assessment.

The primary purpose of the Environmental Project Report was to assess the potential environmental impacts associated with the Hamilton LRT project, identify measures to mitigate those impacts, and to develop systems to monitor the progress of implementing those mitigation measures. As it is primarily intended to accelerate timelines, reduce project delivery risk, and enable stronger partnerships in respect of the delivery of transit projects that have been approved under an EA process, the Act does not replace or negate any previously established environmental commitments.

One implication of the Act on the EA process is that the Act relies on the identification of a well-defined transit corridor (e.g. several provisions are tied to being within 30 metres of the transit corridor). If the transit corridor remains per the approved EPR, then the corridor definition is clear. If there are changes to the alignment of the corridor then follow-on environmental approvals may be required to establish the transit corridor.

Summary

By adding the Hamilton LRT to the list of priority projects, the regulation would confer on Metrolinx the same powers with respect to the Hamilton LRT that it currently possesses with the four other priority transit projects located in Toronto and York Region, as identified in the Building Transit Faster Act. The Act requires good faith negotiations with the City for a number of key elements of the Hamilton LRT, including use of the City's roads, water systems and sewer systems. It does, however, confer powers on the Province and Metrolinx to proceed with construction of the Hamilton project, if negotiated agreement cannot be reached in a timely manner.

APPENDICES AND SCHEDULES ATTACHED

None.

MK/JT:clt