

**MANAGEMENT REPORT TO METROLINX**

<b>Report Title:</b>	Update on Federal Environmental Assessment for Transit Projects				
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<b>Report Referred From:</b>	N/A				
<b>Author(s):</b>	James O'Mara		<b>Telephone:</b>	416-874-5920	
			<b>E-mail:</b>	James.OMara@metrolinx.com	
<b>Item Class:</b>	IN CAMERA	<input type="checkbox"/>	DECISION	<input checked="" type="checkbox"/>	INFORMATION <input type="checkbox"/>

**1.0 RECOMMENDATION:**

*RESOLVED:*

**THAT** the Board of Metrolinx recommends to the Minister of the Environment and the Minister of Transportation that a protocol be developed between the Government of Canada and the Government of Ontario to expedite the environmental assessment processes of Canada and Ontario as they affect transit and transportation projects and undertakings in the GTHA

**2.0 PURPOSE & EXECUTIVE SUMMARY:**

There are two opportunities to address the application of the federal Environmental Assessment (EA) process to transit projects in the Greater Toronto and Hamilton Area (GTHA). Similar to the provincial EA process, one of the opportunities involves increasing the effectiveness, efficiency, and economy of the federal EA process. The other opportunity involves further dovetailing federal and provincial EA processes so that the advantages gained as a result of the six-month provincial process are not delayed by protracted federal EAs and uncoordinated federal and Ontario EAs. The opportunities could lead to:

- Significantly greater coordination at the federal level for transit projects;

- A strategic focus on transit projects; and
- An Ontario project-specific agreement.

### 3.0 BACKGROUND:

Similar to a provincial EA, an EA carried out to meet the requirements of the *Canadian Environmental Assessment Act* (CEAA) assesses a project in order to:

- Identify possible environmental effects
- Propose measures to mitigate adverse effects
- Predict whether there will be significant adverse environmental effects, even after mitigation has been implemented.

The federal EA process is applied whenever a federal authority has a specified decision-making responsibility for a project. This is called a “trigger”.

An EA commences when a federal authority triggers the requirements of CEAA by:

- Proposing a project ;
- Providing financial assistance to a proponent to enable a project to be carried out;
- Selling, leasing, or otherwise transferring the control or administration of federal land to enable a project to be carried out; and
- Providing a licence, permit or an approval that is cited in the Law List Regulation.

There are no examples of a federal authority being a proponent of a transit EA in Ontario. However the Spadina Subway Extension triggered CEAA on funding, and there are impacts on federal lands in Downsview Park, and potential impacts to Black Creek. The Mississauga Bus Rapid Transit project triggered federal EA under funding, with potential impacts on pipelines and three water crossings.

A project may not trigger CEAA, but still be required to carry out an EA. The Minister of the Environment has the discretion to refer a project to a mediator or a review panel if the project may cause significant adverse environmental effects when a request is received from an interested province or when a petition is received from one or more persons. This discretion is exercised when there are trans-boundary effects which cross boundaries between federal lands and non-federal lands or cross provincial or international borders.

### 4.0 DISCUSSION:

In November 2005, the federal government issued a *Cabinet Directive for Implementing the CEAA*. As a result of the Directive, changes have been made to enhance the federal EA process. The changes are both policy and operational in nature.

The policy changes require greater timeliness in the processing of EAs. The changes strengthen the hand of the Canadian Environmental Assessment Agency (Agency) to facilitate the implementation of CEAA so that high quality EAs are prepared by federal

authorities in a predictable and efficient process. The Directive also encourages the use of Strategic Environmental Assessments (SEA).

Major natural resource projects in Western Canada have had the benefit of two operational initiatives carried out as EA pilot projects. Natural Resources Canada established a major project management office for resource development undertakings. The Agency and the British Columbia Environmental Assessment Office (BCEAO) concluded a project-specific agreement to streamline the approval of a mine project and utilize provincial documents in the federal EA process.

The environmental assessment process in Ontario has benefited from the close working relationship between the Agency and Responsible Authorities, such as Transport Canada and Environment Canada, which carry out federal EAs and the Ministry of the Environment (MOE). But the federal EA process in Ontario and the combined federal and provincial EA processes have not benefited to the same degree from changes in federal policy and from operational innovations which have occurred elsewhere in the country.

The options for enhancing federal EA and joint federal-provincial EAs for transit projects include changes which lead to:

1. A significantly greater level of coordination at the federal level for transit projects, with one agency having overall responsibility for leading project-specific federal EA processes;
2. A strategic focus for transit projects; and
3. A project-specific agreement.

### **GREATER COORDINATION**

A process characterized by greater coordination would rest upon:

- A single point of entry into the federal regulatory process for transit projects;
- An agreement on timelines and service standards for transit projects;
- Open lines of communication among federal agencies on their roles and responsibilities;
- A tracking and monitoring system for transit projects;
- A report back on progress to achieve greater coordination;
- A mandate to make recommendations for further enhancements in the federal process;
- Greater integration of federal and provincial processes for transit projects; and
- Dedicated staff resources to carry out EAs for transit projects.

There is a potential for other Canadian regional transportation authorities to urge for and participate in a coordination initiative for federal transit EAs. The chances of a coordinated federal initiative for transit projects may actually be improved by the participation other regional transportation authorities in Canada.

### **STRATEGIC FOCUS**

The Directive sets out an obligation for federal departments and agencies to carry out an SEA for a policy, plan, or a program. The advantage to a federal proponent in completing a SEA is that its findings and conclusions may be relied upon for project-specific EAs which may result from a policy, plan, or program. By being able to rely on a SEA, the process for similar project-specific EAs in, for example, a region could be streamlined significantly. Through this streamlining, repetition and duplication of effort are avoided, making the EA process for individual undertakings timelier than may have otherwise been the case.

The Regional Transportation Plan (RTP), which is being prepared by Metrolinx, has many of the characteristics of a federal policy or plan. While the RTP is not a federal plan, it can be argued that its strategic level of analysis satisfies some or all of the requirements of a SEA.

The acceptance of the RTP as being similar to a SEA would mean that it could inform later project-specific transit EAs. The RTP would enable federal officials to carry out transit EAs out in a predictable and efficient manner. A SEA-like process would also benefit stakeholders in a number of ways. They would be able to appreciate better the area-wide positive and negative impacts of related projects, the cumulative benefits and effects of those projects, and the environmental quality objectives associated with the projects.

This is not to suggest that a separate and distinct SEA process for transit projects in the GTHA is being proposed. As much as possible, the RTP would be used to satisfy the analytic requirements of the SEA process. The only parts which may need to be added would be those items of information needed to satisfy the requirements of the federal EA process, if any, which the RTP may not be designed to generate.

### **PROJECT-SPECIFIC AGREEMENT**

The federal government entered into a site specific arrangement with British Columbia to enhance federal and provincial EA process for the Galore Creek Mine as a pilot project carried out under the Directive. The Agency and BCEAO agreed to streamline the EA process for a project in the northern part of the province. The agreement enabled the Agency to better coordinate the involvement and input federal departments and agencies in the EA process. The Agency and BCEAO coordinated consultations, prepared a joint report, and developed mutually agreed upon mitigation measures and a follow-up program.

There are differences between an arrangement for transit in the GTHA and the agreement between the Agency and BCEAO. There were triggers associated with the Galore Creek Mine project which necessitated a federal EA. There are a few federal EAs. But there is some uncertainty about the eventual number. It is likely, however, that there will be others, even if there is no federal funding. An arrangement modelled after the Galore Creek Mine agreement could position project-specific assessments to be carried out in an efficient, effective, and economic manner.

One option is a pilot project agreement involving a lead federal agency and Metrolinx representing the proponents of transit projects in the GTHA. Under this pilot project, project-specific EAs in the GTHA would be treated as a class. The agreement would set out:

- Context, including the goals and objectives of the RTP and the principles for defining the goals and objectives for any project-specific EAs;
- Objectives, including enhanced EA cooperation, greater effectiveness and efficiency in EA processes, and improved adherence to current and future time lines;
- Resource contributions, including staff and operating funds, to enable the agreement to be implemented quickly and fully;
- Public consultation, by acknowledging the activities of Metrolinx in carrying out the development of the RTP and having that work satisfy some or all federal public consultation requirements;
- An issues resolution process on technical matters and in matters where there is overlapping jurisdictions or interests; and
- A joint report to confirm opportunities to broaden the application of the arrangement.

A second option would be an agreement between a lead federal agency and a lead provincial ministry. Transit EAs, once again, would be treated as a class. The geographic scope of the agreement could be the GTHA. But it is more likely that a provincial ministry would proceed on a province-wide basis from the start.

If the agreement is for transit projects the GTHA, it could build a case for an agreement for the province as a whole. It could also build a case for broader application to other infrastructure which is subject to both federal and Ontario EA requirements.

## **NEXT STEPS**

At the present time, there is some momentum for enhancing federal EA processes and for improving the coordination of federal and provincial EA processes. The Directive for implementing the CEAA acknowledges the need to make the federal EA process more effective and efficient. It has pointed to several opportunities, including the use of SEAs which have the potential to streamline subsequent project-specific EAs.

A major project management office has been opened which focuses on natural resource projects subject to the requirements of CEAA. An argument could be made that transit projects could benefit from similar treatment. The establishment of a major transit project management office could help build a case for an infrastructure project management office for a broader range of undertakings which may be subject to CEAA.

Finally, there is the potential for an Ontario agreement for project-specific transit EAs. It would highlight the relevance and importance of transit projects to achieve a range of federal and provincial policy objectives such as:

- Reducing greenhouse gases which underlie the processes leading to climate change;
- Enhancing air quality by reducing the emission of airborne toxic substances from single-occupant vehicles;
- The development of transit infrastructure to address gridlock and congestion; and
- Resource conservation through decreasing demand for non-renewable fuels.

**5.0 FINANCIAL MATTERS:**

Improvements in federal and provincial EA coordination may have the additional benefit of facilitating the transfer of federal funds for transit projects in the GTHA.

**6.0 HUMAN RESOURCES MATTERS:**

NA

**7.0 ENVIRONMENTAL MATTERS:**

NA

**8.0 COMMUNICATION MATTERS:**

If any of the opportunities proposed is implemented, it is recommended that a communications plan be developed. The plan would focus on advising stakeholders, media and the general public of the direction in which Metrolinx is proceeding, outlining the benefits of the selected approach, as well as its goals and objectives. The messages can stress how the selected approach or approaches will be designed to facilitate transportation improvements while assuring environmental sustainability.

**9.0 LEGAL MATTERS:**

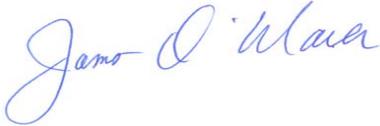
Depending on the option or options chosen, there are different legal consequences which may include legal agreements with the federal government and new or amended Ontario regulations. The legal agreement with the federal government could include measures to coordinate consultations and prepare of joint EA reports. There may also be a need for third-party arrangements with, for example, GO Transit and the Municipal Engineers Association because of the potential for impacts on their respective Class EAs.

**10.0 CONCLUSION:**

A federal EA process that works effectively, efficiently and with economy, which integrates well with the provincial EA process, will support Ontario's transit development objectives. The achievement of those objectives, in turn, will lead to cleaner air, less congestion, and reduced losses in productivity due to congestion.

Respectfully submitted,

Approved for Submission to the Board



James O'Mara, Executive Lead  
Environment Policy and Planning

W. Michael Fenn, CEO

**Appendices:**

N/A

**Staff & Others  
Consulted:**

Name	Telephone
Mary Martin, General Counsel and Corporate Secretary	416 874 5915
John Howe General Manager Strategic Initiatives & Investments	416 874 5912
Joe Perrotta, Director Policy and Planning	416 874 5911
Rita Scagnetti, Director Public Affairs & Communications	416 874 5910

**Notifications:**

N/A

**Special Instructions:**

N/A