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Canada

January 15, 2021

**VIA EMAIL and RESS**

Ms. Christine Long  
Registrar  
Ontario Energy Board  
2300 Yonge Street, 27th Floor  
Toronto, ON M4P 1E4

Dear Ms. Long:

**Re: Enbridge Gas Inc. (Enbridge Gas)  
Ontario Energy Board (OEB) File: EB-2020-0198  
NPS 20 Waterfront Relocation Project (Project)**

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In accordance with Procedural Order No. 3 dated December 22, 2020, enclosed please find Enbridge Gas' Reply submission on the two questions regarding the OEB's jurisdiction regarding cost allocation in the above noted proceeding.

Please contact the undersigned if you have any questions.

Yours truly,

Joel Denomy  
Technical Manager, Regulatory Applications

cc: G. Pannu – Counsel - Enbridge Gas Inc.  
S. Stoll – Counsel - Aird & Berlis LLP  
Intervenors (EB-2020-0198)



**ONTARIO ENERGY BOARD**

**IN THE MATTER OF** *The Ontario Energy Board Act, 1998, S.O. 1998, c.15, Schedule B, and in particular, S.90.(1) and S.97 thereof;*

**AND IN THE MATTER OF** an Application by Enbridge Gas Inc. for an Order granting leave to construct natural gas pipelines in the City of Toronto.

**REPLY SUBMISSIONS OF ENBRIDGE GAS INC.  
ON THE JURISDICTION OF THE ONTARIO  
ENERGY BOARD (“BOARD”)  
ON THE ALLOCATION OF COSTS**

**Introduction**

Enbridge Gas is replying to the submissions of the intervenors and Board staff in respect of the two questions that the Board has posed regarding its jurisdiction to effectively allocate costs to a third party. There is no doubt the current situation provides several unique legal issues with parties taking several different positions. Enbridge Gas notes the City of Toronto (“**City**”) letter purporting to terminate permission to locate the existing NPS 20 pipeline on the Keating Railway Bridge and the filing of the Notice of Application filed in Superior Court by the City further adds to the difficulty of these issues.

Enbridge Gas notes the development of the Application, including the selection of the preferred alternative, has been constrained by the need to meet the specified timelines of removing the pipe from the Keating Bridge by May 2022 and the risks posed by the future work of Waterfront Toronto. The need to meet the timing requirements was described as “critical”.<sup>1</sup> But for the timing constraints imposed by the Waterfront Toronto, and subsequently reflected in the City’s letter of October 30, 2020, Enbridge Gas may have chosen a different option.

Enbridge Gas notes the complexities and uncertainty of issues raised by the Application and the Board’s decision to schedule a mediation session. Enbridge Gas hopes that the mediation will result in a settlement proposal that would be acceptable to the Board and obviate the need for continuation of the court application initiated by the City.

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<sup>1</sup> EB-2020-0198, Exhibit A, Tab 2, Schedule 1, page 6, paragraph 15.



The Board has requested the parties address the following questions:

*a) Does the OEB have the jurisdiction to determine cost responsibility for the Proposed Pipeline, including any allocation of costs to Waterfront Toronto? If the answer, to this question is “yes”, what steps, if any, should the OEB take to address this situation?*

*b) If the answer is “no”, what steps can the OEB take to ensure that the costs of the Proposed Pipeline are not unfairly shifted to ratepayers and that the OEB is able to meet its statutory objectives which include protecting the interests of consumers with respect to prices and the adequacy, reliability and quality of gas service (OEB Act, s. 2)?*

Enbridge Gas submits the answer to a) must be developed understanding the Board's obligations under the OEB Act, the regulatory compact and the law regarding the City's ability to terminate Enbridge Gas' right to be situated on the Keating Railway Bridge. Further, the Waterfront Toronto and City position regarding contribution has changed. Enbridge Gas submits the notion that a non-customer cannot be imposed costs is contrary to law. To this end, it would be useful to understand the current practice in similar situations and further background of the discussions between the City of Toronto, Waterfront Toronto and Enbridge Gas.

### **Submissions of Waterfront Toronto and Others**

Enbridge Gas agrees with Waterfront Toronto that statutory decision interpretation is informed by the Supreme Court of Canada's decision *Rizzo & Rizzo Shoes Ltd. (Re)*<sup>2</sup>. However, Enbridge Gas disagrees with the interpretation Waterfront Toronto has derived from the principles enunciated in that case. The Waterfront Toronto submission fails to account for the current practice for relocation work, the potential for a multiplicity of proceedings with different outcomes and the societal benefit of minimizing the aggregate cost of public infrastructure.

In addition, Waterfront Toronto relies upon the Divisional Court decision in *Advocacy Centre for Tenants of Ontario v. Ontario Energy Board*<sup>3</sup> for the proposition that the Board's role is to act as a proxy for competition to protect consumers. Waterfront Toronto seems to overlook the fact that Waterfront Toronto is setting out a position where based upon the premise that neither it nor the City are customers and therefore the Board lacks jurisdiction. Enbridge Gas' application is protecting ratepayers by requiring the party causing the relocation to fund the relocation. Enbridge Gas will provide comments regarding the impact of the letter from the City of Toronto. Enbridge Gas further notes it had understood its position was consistent with that being advanced by Toronto Hydro in respect of its relocation.

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<sup>2</sup> [1998] 1 SCR 27 at paragraph 21.

<sup>3</sup> 2008 CanLII 23487, 293 DLR (4<sup>th</sup>) 684.



Enbridge Gas rejects the submission that Waterfront Toronto does not have a budget for contributing to the relocation. First, this position seems to have evolved over time from when the City/Waterfront Toronto were advancing the position that the *Public Service Works on Highways Act* (“**PSWHA**”)<sup>4</sup> applied. Second, a lack of foresight in planning and estimating its costs does not excuse Waterfront Toronto from paying its proper share. Third, acceptance of this position would lead to other parties needing relocation work to have similar financial shortcomings.

Enbridge Gas expressly rejects the notion that the legislation does not imply a power upon the Board for the reasons discussed herein. Acceding to Waterfront Toronto’s position on jurisdiction necessarily means that ratepayers will pay 100% of the project for prudently incurred costs caused by the Waterfront Toronto PLFPEI. Further, it could set a precedent for cost shifting to ratepayers in other situations.

Enbridge Gas reminds the Board of the changes the City sought to the *Building Transit Faster Act, 2020*<sup>5</sup> which is referenced at Exhibit B, Tab 1, Schedule 1, pages 44-45. In submissions in 2020 to the province, the City sought to expand the definition of entities that could shelter under the provisions of the PSWHA, it was acknowledging liability – Waterfront Toronto – was explicitly identified. The Province, one of 3 levels of government comprising the Waterfront Toronto had the opportunity to expand the legislation and chose not to do so. If there was no liability or no jurisdiction for the Board to order costs against Waterfront Toronto or the City, there would have been no need to seek the amendment.

Enbridge Gas notes that the *Building Transit Faster Act, 2020*, section 46, obligates Metrolinx to pay for 100% of the actual costs of the relocation absent an agreement to the contrary. Clearly, the Provincial Government turned their mind to whether a utility should bear the costs of relocation caused by Metrolinx and determined neither the utility nor the ratepayer should pay. Enbridge Gas notes that Metrolinx is not a consumer. Enbridge Gas sees no reason why the City or Waterfront Toronto should be in a better position when the amendments the City sought to the *Building Transit Faster Act, 2020* were rejected by the Province.

### **Broad Public Interest Consideration**

Enbridge Gas submits its position is consistent with the policy captured in section 46 of the *Building Transit Fast Act, 2020*. Enbridge Gas submits that the broader public interest is served where a party proposing a project is responsible for the cost consequence of that project as this allocation of responsibility reduces the overall cost which are either directly or indirectly borne by society. This may be illustrated with an example.

**Example 1** - Suppose an entity, Requestor 1, requires utility infrastructure to be relocated, can impose costs on a utility who has 2 potential solutions, Solution A

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<sup>4</sup> R.S.O. 1990, c. P-49.

<sup>5</sup> S.O. 2020, Chapter 12.



requiring the utility to spend \$10 million which can be completed in 2 years or Solution B which requires the utility to spend \$20 million but can be completed in 1 year. Now assume Requestor 1 has no responsibility to reimburse the utility. Requestor 1 is incented to require the utility to undertake the more expensive, faster option for convenience as such choice has not adverse consequence for Requestor 1. In that situation, the utility is faced with a request to relocate on the faster timeframe. It has provided the solution that meets those needs and understanding those needs the Board determines the project, as proposed, is in the public interest. The utility would expect, and the regulatory compact, would support recovery of the \$20million through rates from ratepayers.

**Example 2** - Now, assume Requestor 1 may be responsible for some or all the costs of the proposed utility relocation. The Board in assessing the public interest can indicate that ratepayers should not bear the entire cost of the utility relocation. In that way, Requestor 1 can determine the appropriate balancing of its various objectives: Is the expenditure of \$10million appropriate or should it redesign its project? Is the expenditure of \$20 million required given time constraints and other benefits that will flow from Requestor 1's project? In that way society is better served through consideration of the overall costs driven by Requestor 1's project and the allocation of those costs to the party causing such costs to be incurred.

Enbridge Gas submits the second scenario is consistent with the broad definition of public interest used to determine whether a project should be approved, consistent with the obligation to protect the interest of consumers and consistent with the establishment of just and reasonable rates and the regulatory compact.

### **Third Party Relocations – Being a Customer is not Determinative.**

Every year Enbridge Gas undertakes multiple relocations at the request of third parties that do not require Enbridge Gas to obtain leave to construct for the replacement project. In these situations, Enbridge Gas would first seek the appropriate recovery from the third party. Absent recovery from the third party, Enbridge Gas would not undertake work. Enbridge Gas notes the provision of the *Building Transit Fast Act, 2020* expressly provided that Metrolinx would pay 100% of the actual costs absent an agreement to the contrary.

Many times, the relocation is associated with a road reconstruction project and subject to the cost sharing provisions of the *Public Service Works on Highways Act* ("**PSWHA**")<sup>6</sup> which provides for a sharing of costs. Road authorities are not customers but are statutorily obligated to contribute to certain relocation work using the allocation provided in the PSWHA. Enbridge Gas notes that the Board approved Alectra's expenditures for certain transit related projects in EB-2017-0024 based upon cost sharing pursuant to the PSWHA.

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<sup>6</sup> R.S.O. 1990, c. P-49.



However, the PSWHA only applies to road authorities undertaking certain types of projects. Further, the expectation is that the road authority contributes more where its request is considered betterment. This principle would most often be associated with additional costs of burying overhead wires. However, where the utility proposes to complete the relocation which includes an element of betterment to the benefit of ratepayers, it is proper that ratepayers should pay for the betterment.

However, where the relocation is not subject to a statutory regime such as the PSWHA, the party requesting the relocation is expected to pay 100% of the relocation. For example, Enbridge Gas recovers 100% of relocation costs when the Toronto Transit Commission (“**TTC**”) requests relocation. In such cases, the TTC is not a customer yet pays 100%.

If the TTC or a third party disputed the allocation of the costs in such situation, Enbridge Gas submits the Board would be the appropriate body to determine the prudence and allocation of such costs. Enbridge Gas notes that the Ontario Municipal Board is specifically identified in the PSWHA where there is a dispute regarding the appropriateness of the apportionment of costs under the PSWHA.<sup>7</sup> As such, absent extenuating circumstances, Enbridge Gas submits that the Board has the jurisdiction to determine the proper allocation of costs in the present circumstances.

Therefore, whether the party requesting relocation is a customer of the utility does not determine the Board’s jurisdiction to allocate costs. While the Board may not have the jurisdiction to obligate the party to enter into an agreement, it can decide the project is not in the public interest and it could prohibit Enbridge Gas from completing the project absent contribution. Enbridge Gas submits its position is consistent with the principles of cost causality utilized in the utility industry.

### **Prior Discussions with the City and Waterfront Toronto**

In discussions leading up to the Application, Enbridge Gas had several discussions with the City and Waterfront Toronto. During these discussions it was not asserted there was no ability or jurisdiction to force Waterfront Toronto or the City to pay for any of the relocation. Rather, the City made clear its position that the project would be subject to contribution in the amount specified under the PSWHA. In 2019, the City indicated that the relocation was subject to the PSWHA. Enbridge Gas notes that on March 9, 2020 the City wrote to Enbridge Gas acknowledging the need for the relocation of the pipeline was driven by the PLFPEI and that there were also 2 roadway projects. Enbridge Gas has attached records of those communications. It now appears, the City has not decided what to do with the Railway Bridge so it would appear the actual relocation is driven by the PLFPEI. In the Notice of Application filed in the Superior Court, the City has resiled from its position that it contributes in accordance with the PSWHA and is seeking a declaration that it has no responsibility for the removal of the pipeline from the Keating Railway Bridge.

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<sup>7</sup> Section 3.



Enbridge Gas did not agree the relocation was being requested by a road authority nor did it view the work being related to a *highway* given the location of the pipeline on the abutment of a railway bridge. The relocation was being required by the proposed work of Waterfront Toronto. Waterfront Toronto is a separate legal entity from the City and is not an agent of the City. As such, Enbridge Gas sought complete recovery from Waterfront Toronto. This is confirmed in the correspondence from the City.

Absent the fact that the City is responsible for funding a proportion of Waterfront Toronto, it would not have been incented to deliver the letter purporting to terminate Enbridge Gas' right to be located on the bridge abutment. The City has noted in its materials, it has made no decision about the future of the Keating Railway Bridge. The timing of its purported termination is to satisfy the schedule and timing sought by Waterfront Toronto rather than for its own legitimate reasons.

Enbridge Gas' right to locate on the Keating Railway Bridge is subject to a 1955 letter granting permission. There is no express right of termination or revocation. As such, Enbridge Gas submits the City's right of termination or revocation, to the extent it exists, must be consistent with applicable legal principles, including the fairness and equity in the circumstances. – including the regulatory context within which Enbridge operates. In the present situation the following context is important:

- a) Enbridge Gas cannot complete a relocation that meets the threshold for leave to construct without approval of the Board. The termination of permission cannot be interpreted as for requiring Enbridge Gas to undertake an illegal activity. As such, absent Board approval, Enbridge Gas cannot undertake the proposed project. Without the new facilities, elimination of the existing NPS 20 pipeline across the Keating Railway Bridge would put the supply of natural gas to customers at risk and under design day conditions, Enbridge Gas could not continue supply its thousands of customers in downtown Toronto.
- b) Enbridge Gas submits that the City's rights must be interpreted considering Enbridge Gas' role as a public utility providing an essential service in a regulated environment. This is not a contract between two private parties but rather a relationship between a municipality acting in the interests of its constituents and a publicly regulated utility operating under the regulatory authority of the Board and its statutory obligations and consideration of the interests of a different set of constituents. Enbridge Gas cannot be forced to undertake a project in violation of the regulatory compact. The regulatory compact requires that Enbridge Gas be permitted to recover prudently incurred costs and expenses. As such, the City should not be able to unilaterally impose its will in such a situation.
- c) Nor can the City arbitrarily revoke its permission without consideration of the consequences. Enbridge Gas notes that the City's purported termination was issued prior to any decision in respect of the bridge. Further, the date specified by the City is based upon Waterfront Toronto's requirements, not the City's requirements and that time restriction has impacted the alternatives available to



Enbridge Gas. The termination letter is intended to provide cover and avoid cost responsibility for Waterfront Toronto. As such, it is not evident that the termination is effective and therefore, Enbridge Gas still retains the right to occupy the bridge.

If the City's position is correct that the delivery of the termination letter eliminates Enbridge Gas' right to seek contribution from Waterfront Toronto there is nothing to prevent the City from adopting a practice of giving notice to Enbridge Gas to relocate wherever the TTC requires relocation. Such a tactic would then reduce the City/TTC share from 100% to the amount prescribed by PSWHA and impose harm upon Enbridge Gas' ratepayers.

### **Multiplicity of Proceedings and Inconsistency in Results**

Waterfront Toronto has taken the position that the Board lacks jurisdiction to obligate it to contribute to the relocation as it is beyond the Board's jurisdiction. However, there is no dispute regarding the Board's jurisdiction to approve projects that require leave to construct; that Enbridge Gas is subject to the Board's oversight; and that costs are usually a considered by the Board in assessing the public interest. The OEB Act expressly provides the Board with authority to grant leave to construct where such it determines the Application is in the public interest.

Examining the potential outcomes of a leave to construct application may be helpful:

- a) The Board could determine that granting leave to construct is not in the public interest regardless of who bears the cost burden. In such a case, Enbridge Gas would be precluded from doing the project. In this instance another solution would have to be determined.
- b) The Board could determine the Application is in the public interest on the basis ratepayers do not contribute to the recovery of expenditures. In such a case it would be unreasonable to expect Enbridge Gas to pay for the project contrary to its expectations and the regulatory compact.
- c) The Board could determine that ratepayers should bear no more than a specified amount – be it in dollars or as a percentage of total costs. That determination could be informed by the PSWHA, a Board approved financing agreement or other applicable legal obligations. Or it could be informed by the need to accommodate an accelerated schedule specified by Waterfront Toronto/City or avoid specific safety risks posed by future construction that prevents alternative less expensive proposals from being implemented. In such case, Enbridge Gas would be within its right to seek compensation from an appropriate third party or not complete the project. It would then be up to the third party contribute to the project or accept that project will not proceed.

Permitting the court to determine that the termination is effective, the City should not contribute directly or indirectly to the costs of the project, and removal must occur by May



2022 certainly results in a multiplicity of proceedings, has the potential to fetter the Board's decision in granting leave to construct and may very well result in inconsistent decisions. In general, a multiplicity of decisions with inconsistent results should be avoided. In *Emkay Canada Fleet Services Corp. v Imperial Oil* this principle was captured in the following:<sup>8</sup>

In civil matters, it has long been an underlying goal of our administration of justice to avoid an unnecessary multiplicity of actions dealing with the same events or concerns. We seek to save costs of the parties, conserve court time and avoid the risk of decisions which conflict with each other:

The avoidance of multiple proceedings was one of the major goals of the great *Judicature Acts* that began in England in 1873 and came to Ontario in 1881.<sup>[2]</sup> Section 138 of the Courts of Justice Act,<sup>[3]</sup> states that, as far as possible, multiplicity of legal proceedings shall be avoided, and for decades the trend of the jurisprudence on the joinder of causes of action and the joinder of parties to proceedings is to allow Joinder and to avoid a multiplicity of proceedings if at all possible.<sup>[4]</sup>

Enbridge Gas submits the Board has on several occasions interpreted agreements and the interaction of the OEB Act with other statutes in exercising its statutory decision-making obligations. Recently, in EB-2020-0160, the Board was called upon to interpret a franchise agreement within the context of the interaction of the OEB Act, the Board's authority, furtherance of the public interest and a municipality's authority under the Municipal Act. While it may do so on a standard of correctness that is no reason to relieve it of jurisdiction.

Enbridge Gas submits that the potential for inconsistent decisions is avoided if the Board has jurisdiction to consider the purported termination by the City as a factor in allocating costs of the project. Such interpretation and allocation would be subject to the court's oversight through an appeal to the divisional court.

## **Board Objectives**

Section 2, paragraph 2 of the OEB Act provides that the Board is "*To inform consumers and protect their interests with respect to prices and the reliability and quality of gas service*".

Enbridge Gas submits that this objective informs the Board's consideration of the public interest in granting leave to construct and in setting just and reasonable rates. As such, the Board is not directly concerned about "*protecting the interests*" of the City and

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<sup>8</sup> *Emkay Canada Fleet Services Corp. v Imperial Oil*, 2016 ONSC 2710 (CanLII), <<http://canlii.ca/t/gr6vq>>, retrieved on 2021-01-14.



Waterfront Toronto as set out in Section 2 but rather is concerned in the context of its examination of the broad public in the exercise of its powers.

Enbridge Gas notes the Board's general powers to impose conditions it determines are proper pursuant to Section 23 of the OEB Act. As such, given the broad, exclusive authority and public interest mandate there is no reason the Board is not able to fulfill its objectives set out in Section 2 while considering the broader public interest.

**23 (1)** The Board in making an order may impose such conditions as it considers proper, and an order may be general or particular in its application.

Should be the Board determine the Application is in the public interest but under the assumption that ratepayers would bear 100% of the costs, then any cost sharing from third parties would necessary be in the public interest as the financial burden on ratepayers would be reduced. In such a determination, the Board is allocating 0% to the third party and has decided about the allocation of costs. If, however, the Board determines another allocation is appropriate, it could prevent Enbridge Gas from undertaking such project prior to obtaining a specified contribution.

## **Conclusion**

Enbridge Gas has made an Application and sought contribution that would most protect the interests of its ratepayers. Enbridge Gas could have applied seeking 100% recovery from ratepayers. In such an Application, the Board could determine the Application was not in the public interest as ratepayers should not contribute to the recovery and Enbridge Gas would be prohibited from completing the project.

At the end of the day, Enbridge Gas is seeking leave to construct the facilities described in the Application. It is not seeking approval of, nor does the Board have, any other competing application before it. As such, the Board lacks the ability to grant leave to construct in respect of any other project which has not been studied, has not been the subject of an application, has not been tested and determined to be in the public interest.

Should the Board find the Application is not in the public interest, Enbridge Gas will have to work to find another solution that is acceptable. However, that will necessarily take time and will jeopardize the requested move date. The backdrop upon which such undetermined project will be judged will not be the same as applied to the current project.



**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

**ENBRIDGE GAS INC.**

By its Counsel

A handwritten signature in blue ink, appearing to read "Scott Stoll", is positioned above a horizontal line.

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Scott Stoll





City Planning  
Gregg Lintern, MCIP, RPP  
Chief Planner and Executive Director

481 University Avenue  
6<sup>th</sup> Floor  
Toronto, Ontario M5G 2E9

David Stonehouse  
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July 18, 2019

Mr. Byron Madrid, P. Eng  
Manager Capital Development & Delivery  
System Improvement  
Enbridge Gas Inc.  
500 Consumers Road  
Toronto, ON M2J 1P8

Dear Byron:

**Re: Lakeshore/Keating Rail Bridge – Proposed Relocation of Gas Infrastructure**

Further to your letter of June 5, 2019, I am writing to provide you with an update regarding the status of discussions between the City of Toronto, Waterfront Toronto and Enbridge Gas Inc., regarding the proposed relocation of the gas infrastructure that currently crosses the Don River on abutments immediately north of the Lakeshore/Keating Rail Bridge.

In your letter you requested clarification regarding the legal status of Waterfront Toronto as an "agent" of the City of Toronto. On July 9, our solicitor Michael Smith spoke to Enbridge's Senior Legal Counsel Scott Wallace. Mr. Smith explained that while City Council authorized the Port Lands Flood Protection and Enabling Infrastructure Project Contribution Agreement, City Council did not specifically appoint Waterfront Toronto as an "agent" of the City. The relationship as set out in the agreement clearly establishes that Waterfront Toronto is undertaking the Port Lands Flood Protection Project on behalf of, at the direction of and with the full approval of the City of Toronto, and is not unlike other types of relationships that municipal road authorities enter into with third parties to deliver major redevelopment projects. Mr. Smith also noted that the chosen method of procurement and funding does not remove the Contribution Agreement from the application of the *Public Service Works on Highways Act*.

Based on the above, the proposed reconstruction of the Lakeshore/Keating Rail Bridge can be considered a "road improvement" project for the purposes of the *Public Service Works on Highways Act*. Messrs. Smith and Wallace also discussed the possibility of a "Master Agreement" between or among the City of Toronto, Waterfront Toronto and Enbridge Inc., which would address both this and other pipeline relocation projects within the Port Lands area. Mr. Smith indicated that the City, in its role as road authority, could potentially support such an approach.





It was also noted that a separate concurrent agreement and discussions regarding cost sharing arrangements would be required for the relocation of Enbridge's Keating Channel pipeline within the alignment and on newly constructed abutments as proposed by Waterfront Toronto and the City. It is acknowledged that this proposed option represents a "temporary design solution" until such time as Enbridge completes its preferred alternative, however, it is currently the only viable option that both Waterfront Toronto and the City are willing to consider as the basis for a cost sharing agreement at this time. A diagram of the proposed Waterfront Toronto solution is attached.

It should be noted that the Port Lands Area will undergo significant change over the next 50 years, consistent with Port Lands Planning Framework approved by City Council in December 2017 (See link: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.PG24.6>). As such, the Port Lands Flood Protection and Enabling Infrastructure Project represents just the first of what is anticipated to be numerous major investments in infrastructure in the area as the Planning Framework is implemented. Other major projects are already currently underway including the realignment and rehabilitation of the Gardiner Expressway, Metrolinx's Wilson Yard expansion and RER program and the re-development of First Gulf's lands within the Unilever Precinct.

Within this context, the temporary design solution proposed by Waterfront Toronto and the City addresses short-term requirements. Over the next 50 years, it is reasonable to assume that there will be opportunities to potentially coordinate implementation of Enbridge's preferred alternative of the long-term as the Port Lands Area continues to re-develop. Indeed, there may be advantages to waiting for future implementation, given that most of the projects in the area have been designed in concept only and are subject to change through further stages of detailed design.

I would like to suggest a meeting to discuss next steps, including the Waterfront Toronto temporary design solution. Please suggest some dates in the coming weeks.

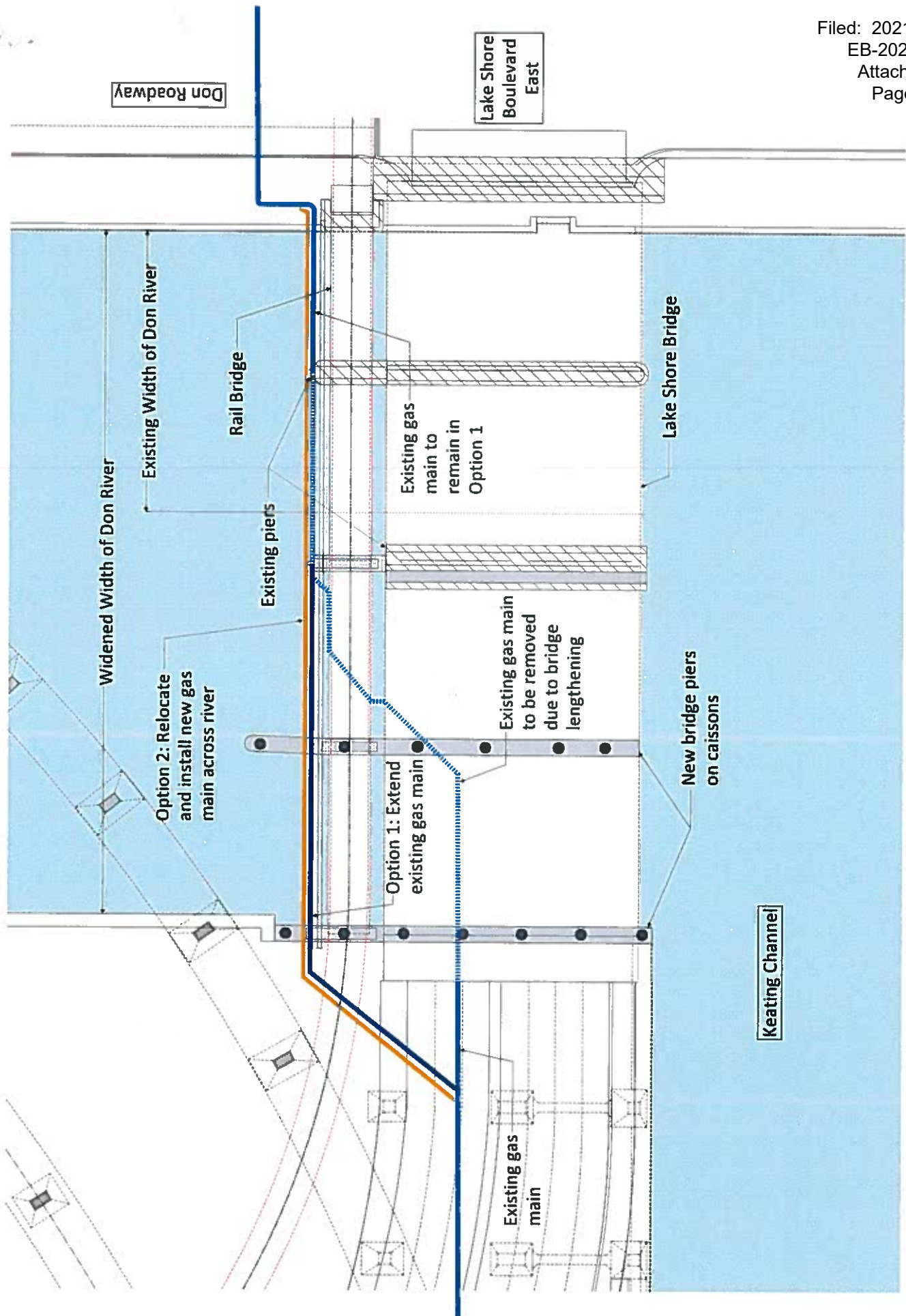
Many thanks,

A handwritten signature in blue ink that reads "David Stonehouse". The signature is fluid and cursive, with the first name "David" and last name "Stonehouse" clearly legible.

David Stonehouse

Copy: David Kusturin, Waterfront Toronto  
Michael Smith, Legal Services  
Scott Wallace, Enbridge  
Aron Murdoch, Enbridge  
Melany Afara, Enbridge







March 9, 2020

Ms. Kelsey Mills  
Environmental Advisor  
Enbridge Gas Distribution Inc.  
3rd Floor, 101 Honda Boulevard  
Markham, ON  
L6C 0M6

**Re: NOTICE OF PROJECT CHANGE - PROPOSED 20 INCH NATURAL GAS PIPELINE  
WATERFRONT RELOCATION PROJECT**

Dear Ms. Mills,

This letter is in response to the Notice Of Project Change regarding the proposal from Enbridge Gas Distribution Inc. to replace and abandon a segment of 20 inch vital natural gas main that supplies the City of Toronto. We understand that this project is a continuation of the 20 inch Natural Gas Pipeline Replacement project which had been previously cancelled in August 2018.

City Comments are below. In order to ensure effective communication and a complete understanding of this project, the City recommends that a coordination meeting be held between Enbridge and the City of Toronto in Q2 2020, to be coordinated by the Waterfront Secretariat.

It is our understanding that the project would include:

- The segment of the NPS 20 gas main that crosses the Don River would be removed. This would include the portion on the Keating Rail Bridge, as well as portions on the east and west side of the current bridge that would be impacted by the future widening of the river.
- The existing segment of NPS 20 pipeline east of Cherry Street, currently located under Lake Shore Boulevard East, would be dead-ended west of the Don River, but that service on this pipeline stub would continue, in order to serve local customers.
- Similarly the pipeline on the east side of the river between Station B and the Don River would be dead-ended east of the river and service would continue for local customers.



- The pipeline west of Cherry to Bathurst street is to be replaced, and is the subject of the *NPS 20 Replacement Cherry To Bathurst EA*, also currently underway. This project includes a segment running north-south along Parliament Street, between Lake Shore Boulevard and Mill Street.

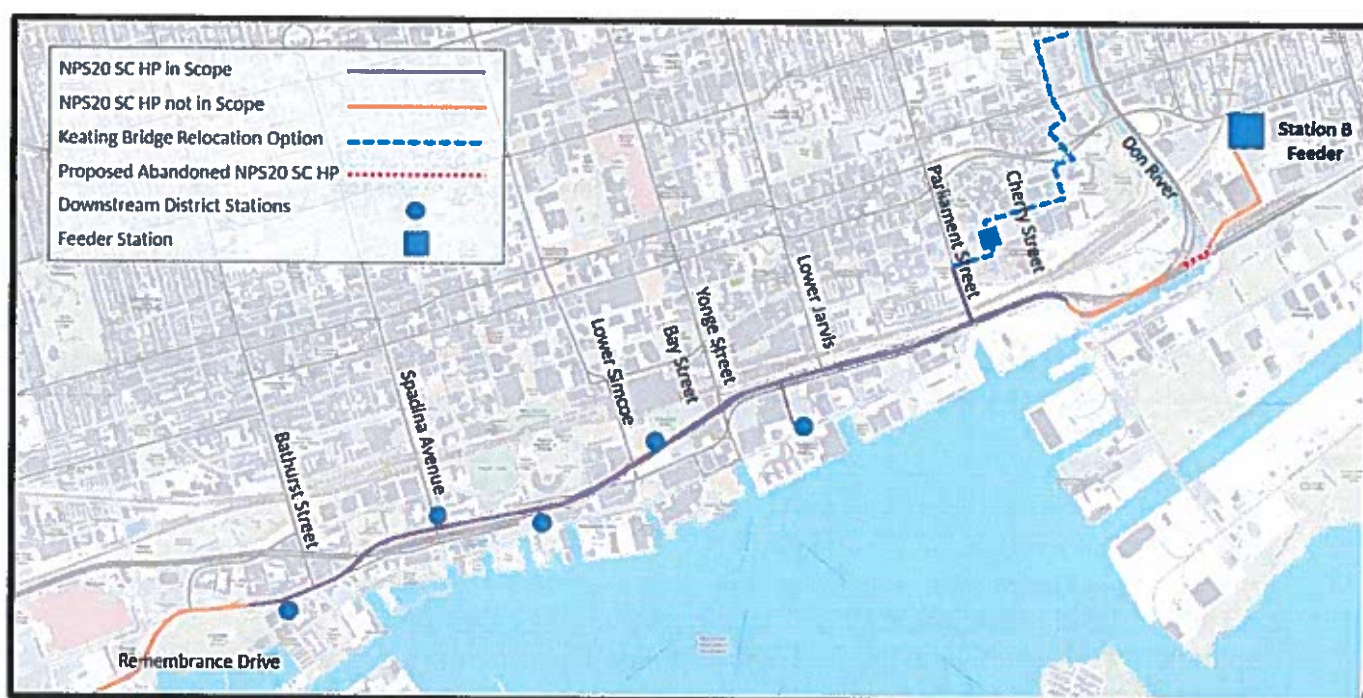


Figure 1- Enbridge: NPS 20 Replacement Cherry To Bathurst EA and the NPS 20 Waterfront Relocation Project

Our comments at this time are the following:

### 1. Need for Project

The need for this project is not simply that the location of the existing Enbridge natural gas main conflicts with the proposed Port Lands Flood Protection (PLFP) Waterfront Toronto project to manage flood control.

The City of Toronto, as Road Authority, has provided notification to Enbridge under the *Public Service Works On Highways Act*, that the existing Enbridge natural gas main must be removed from the existing location in order to accommodate changes required by two highway improvement projects. These projects are: the City of Toronto's *Gardiner Strategic Rehabilitation Plan*, which is being implemented by the City of Toronto, and the road improvement projects that are part of the *Port Lands Flood Protection and Enabling Infrastructure Project*, a joint initiative of the Federal, Provincial and Municipal governments, which is being implemented by Waterfront Toronto.

The relocation off the Keating Bridge will also address the Project Need which Enbridge had originally identified in the May 2018 Notice of Study Commencement and Public Open House and in other project documents, specifically, "the replacement of the above ground river crossing (Keating Railway Bridge), as it is subject to risk from significant weather events and other elements".



The Notice of Change advises that investigative results indicated the pipeline east of Cherry Street is in good condition; without addressing the risk of significant weather events and other elements, such as the Regulatory Flood Plain, where the pipeline is located. Enbridge should investigate whether the appropriate risk mitigation measure to address weather events, including flood events and other elements, would lead Enbridge to relocate and abandon the segment of 20-inch natural gas main located on the Keating Railway Bridge.

## **2. West Donlands Diamond Jubilee Promenade**

A portion of the Preliminary Preferred Route is shown on Front Street from Rolling Mills Road west to Cherry Street. Note that this road, known as the Diamond Jubilee Promenade was the subject of significant recent public realm investments, including in the road right-of-way. This includes soil cells to support healthy trees, Pan Am trees, granite curbs and unit pavers. If possible, the pipeline route should avoid this section of Front Street. If this is not an option, Enbridge must work with City staff to ensure that these streetscape elements are protected.

## **3. Trinity Street Feeder Station – Development Review Process**

Our understanding is that an intrinsic component of the Preferred Route is a new feeder station at the Enbridge property on Trinity St., and that this has been the subject of pre-application discussions with Community Planning and the local Councillor. City comments regarding that project will be provided in the context of the development application process and are not included in this letter.

## **4. Gardiner Strategic Rehabilitation Plan**

Please note that under the *Gardiner Strategic Rehabilitation Plan* the alignment of Lake Shore Boulevard between Cherry Street and the Don River will be shifting from its current location in the future (see Figure 2 below). This will potentially require the gas pipeline to be removed and replaced in the new Lake Shore Boulevard alignment. Enbridge should anticipate this future change in its planning and implementation of both the Waterfront and Cherry to Bathurst pipeline projects and should maintain consistent communication with the City's *Gardiner Strategic Rehabilitation Plan* team. Potentially, the replacement pipeline could be narrower than the current a 20-inch diameter, as the pipeline would only be required to serve local customers rather than a regional function.



**Figure 2: Gardiner Expressway and Lake Shore Boulevard East Reconfiguration Project EA – Hybrid 3 Design**



## 5. Unilever Precinct and East Harbour Development

Please note that the existing NPS 20 pipeline east of the Don River is located within the Unilever precinct. Significant redevelopment is anticipated in this area, consistent with the Unilever Precinct Secondary Plan and East Harbour Zoning Bylaw (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.MM44.121>). The East Harbour redevelopment lands are owned by Cadillac Fairview.

Please ensure consistent communication with Community Planning and Cadillac Fairview regarding impacts of the project on these lands.

## 6. Comments Submitted in 2018

In July of 2018, the City provided Enbridge with a letter articulating our response to the EA as it stood at that time. I have attached this letter for reference. The comments provided at that time continue to be relevant today, as it appears that the characteristics of the Preferred Route are unchanged. If Enbridge chooses to explore additional alternate routes, or to explore other project changes, these should be communicated to City staff and other stakeholders for further analysis and comment.

## Conclusion

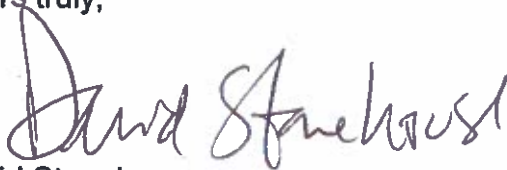
We encourage Enbridge to continue working with City staff and other stakeholders to address these items and ensure that these projects are designed and implemented in a way that supports the ongoing long term revitalization of Toronto's waterfront.

As noted above, the City recommends that a coordination meeting be held between Enbridge and the City of Toronto in Q2 2020, to be coordinated by the Waterfront Secretariat.

We look forward to continuing to work with Enbridge to address these and other related matters, to continue advancing this project.

Should you have any questions please contact Michael Noble at 416-397-4816 or by e-mail at [Michael.Noble@toronto.ca](mailto:Michael.Noble@toronto.ca)

Yours truly,



David Stonehouse  
Director, Waterfront Secretariat, City Planning



cc:

Rooly Georgopoulos, Stantec Consulting Ltd.  
Melany Afara, Enbridge Gas Distribution Inc.  
Michael Smith, Legal Services, City of Toronto  
Michael Noble, Waterfront Secretariat, City of Toronto  
Marc Kramer, Parks, Forestry and Recreation, City of Toronto  
Matthew Davis, Transportation Services, City of Toronto  
Doodnauth Sharma, Engineering Support Services, City of Toronto  
Tatiana Chiesa, Engineering and Construction Services, City of Toronto  
Carly Bowman, Community Planning, City of Toronto  
Anthony Kittel, Community Planning, City of Toronto  
Megan Rolph, Community Planning, City of Toronto  
Jian Lei, Toronto Water, City of Toronto  
Easton Gordon, Engineering and Construction Services, City of Toronto  
Bruce Clayton, Transportation Services, City of Toronto  
Leila Valenzuela, Real Estate Services, City of Toronto  
Renee Afoom-Boateng, Toronto Region Conservation Authority  
Ken Dion, Waterfront Toronto







# PROPOSED 20-INCH NATURAL GAS PIPELINE WATERFRONT RELOCATION PROJECT

## Notice of Project Change

Enbridge Gas Inc. ("Enbridge") indicated in its notification on May 17, 2018 that the intent of the Project was to replace and abandon a segment of 20-inch vital natural gas main that supplies the City of Toronto. The original Project involved the replacement of the above ground river crossing at the Keating Railway Bridge. Investigative work was completed on the pipeline and results indicated the pipeline east of Cherry Street is in good condition. As a result, the replacement project was cancelled on August 3, 2018.

Ongoing discussions with Waterfront Toronto have indicated that the existing Enbridge natural gas main conflicts with the proposed Port Lands Flood Protection (PLFP) Waterfront Toronto project to manage flood control. As a result of this conflict, Enbridge is required to relocate and abandon the segment of 20-inch natural gas main located on the Keating Railway Bridge.

As part of the planning process for the original replacement Project, Enbridge had retained Stantec Consulting Ltd. to conduct an Environmental Study of the construction and operation of the proposed natural gas pipeline replacement and abandonment. A draft Environmental Report was completed on July 19, 2018, for this study area which assessed route alternatives that will be considered for the relocation project. The revised Environmental Study for the relocation Project will fulfill the requirements of the Ontario Energy Board's (OEB's) "Environmental Guidelines for the Location, Construction, and Operation of Hydrocarbon Pipelines and Facilities in Ontario, 7th Edition (2016)".

The revised Environmental Report for the study should be completed by March 2020, after which Enbridge will file an application for the proposed pipeline to the OEB. The OEB's review and approval is required before the proposed natural gas pipeline project can proceed. If approved, construction of the pipeline is currently anticipated to begin by September 2020.

We request that any questions and/or comments regarding the Notice of Project Change or the proposed project be sent to the following contacts by February 21, 2020:

**Kelsey Mills**  
Sr. Environmental Analyst  
Enbridge Gas Inc.  
3rd Floor, 101 Honda Boulevard  
Markham, ON L6C 0M6  
Phone: (905) 927-3145  
Fax: (905) 927-3293  
Email: [Kelsey.mills@enbridge.com](mailto:Kelsey.mills@enbridge.com)

**Rody Georgopoulos**  
Senior Project Manager  
Stantec Consulting Ltd.  
300-675 Cochrane Drive, West Tower  
Markham, ON L3R 0B8  
Phone: (905) 415-6367  
Fax: (905) 474-9889  
Email: [EA.Replacement20@stantec.com](mailto:EA.Replacement20@stantec.com)

For more information about the proposed project, please visit our project website at: <https://www.enbridgegas.com/About-Us> under "Projects".











Waterfront Secretariat  
David Stonehouse, Director

100 Queen Street West  
City Hall, 12<sup>th</sup> Floor, East Tower  
Toronto, ON  
M5H 2N2

Tel: (416) 392-8113  
Fax: (416) 392-8805

July 13, 2018

Ms. Kelsey Mills  
Environmental Advisor  
Enbridge Gas Distribution Inc.  
3rd Floor, 101 Honda Boulevard  
Markham, ON  
L6C 0M6

**Re: NOTICE OF STUDY COMMENCEMENT AND INFORMATION SESSION  
PROPOSED 20 INCH NATURAL GAS PIPELINE REPLACEMENT**

Dear Ms. Mills,

This letter is in response to the Notice Of Study Commencement and Information Session regarding the proposal from Enbridge Gas Distribution Inc. to replace and abandon a segment of 20 inch vital natural gas main that supplies the City of Toronto. These comments reflect the analysis of City Planning and Engineering and Construction Services divisions. A response from Parks, Forestry and Recreation is also attached.

Beginning in February 2017, the Waterfront Secretariat has been coordinating with City of Toronto staff across multiple divisions to work collaboratively with Enbridge Gas Distribution staff regarding the replacement of the NPS 20 inch gas main, as well as the NPS 30 inch gas main that has been the subject of a complementary study in the same area. The most recent in-person meeting on the projects was April 17, 2018. City Staff have also been in discussions with other stakeholders such as the Toronto Region Conservation Authority (TRCA) and Waterfront Toronto. The comments provided in this letter are limited to the NPS 20 project. Discussions regarding the NPS 30 inch gas main continue to proceed through that process.

City staff attended the Information Session on May 29, 2018 and have reviewed the related materials. We encourage Enbridge to continue working with City staff and other stakeholders to address outstanding items and required approval processes, and ensure that these projects are designed and implemented in a way that supports the ongoing long term revitalization of Toronto's waterfront. Below are our detailed comments at this time.

**Preferred Route**

**Preferred Route:** In comparison to other alternate routes identified, the route that Enbridge has identified as its preferred (attached – "Preliminary Preferred Route Alternative 1 with Alternative Tie in Point 1) has fewer conflicts and better reflects input submitted by the City through the process so far. Enbridge should explore opportunities to further refine this route and planned construction methodologies to reduce disruption.



**Preferred Feeder Station (Alternative Feeder Station Location B):** Enbridge has been in discussions with Toronto Building and City Planning regarding the modification of the existing Enbridge site at 60 Trinity Street. These discussions should continue in order to clearly define required next steps. This location is a better reflection of City staff input than alternatives requiring the establishment of a new Enbridge station in the Keating Precinct.

### Alternate Routes

**Alternative Routes and Alternative Feeder Station Location A:** Several of the options (Alternative 2 and Alternatives 3, 3A and 3B, Feeder Station Location A) are located within the Keating precinct. This is an area which has been and will continue to be the subject of significant physical change within the next decade, with major projects in different points of design and implementation. For example, the detailed design of the Gardiner Expressway and Lake Shore Boulevard has yet to be completed and the precise final alignment has not been finalized.

The Keating District Precinct Plan, which was approved in 2010, requires updating to reflect these changes. Ongoing projects include:

- Gardiner Expressway & Lake Shore Boulevard East - Rehabilitation and Realignment ;
- Port Lands Flood Protection and Enabling Infrastructure and Cherry Street Lake Filling;
- Metrolinx Union Station Rail Corridor, including changes to Don Yard and Wilson Yard;
- Coxwell Bypass Tunnel (Stage 1 of Don River & Central Waterfront Project);
- Waterfront Sanitary Servicing Master Plan Update (WSSMP);
- 3C Development Project (324 Cherry Street and 429 Lake Shore Boulevard East);
- Hydro Infrastructure Upgrades;
- Lower Don Bike Trail Realignment; and
- Keating District Precinct Plan Update.

It will be very difficult to integrate new pipelines and a feeder station into this complex and changing area in the near future. There are also specific issues with some of these options including:

- Alternative 2 is within a future private development block (currently old Cherry Street) that will be exchanged for the new Cherry Street alignment as part of the 3C mixed-use development. The construction of New Cherry Street and decommissioning of old Cherry Street will be undertaken between 2018 and 2021;
- Alternative 3 also impacts that 3C development block and is within proposed development blocks for Keating Channel – East Precinct;
- Engineering and Construction Services has concerns about conflicts between the potential Alternative Feeder Station Location B to the future alignment of the Gardiner Expressway and Lake Shore Road including safety concerns with the potential proximity of the feeder station to the structure of the Gardiner Expressway.



## Other Comments

**Construction and Traffic Coordination with Nearby Projects:** As currently proposed, the preferred route may require several lane and/or road closures and reconstruction with significant traffic impacts. These closures, and broader phasing of construction planning and traffic planning, must be coordinated with Transportation Services and other relevant City divisions. This will include a robust construction management plan and traffic mitigation strategy taking into account traffic and closures associated with other planned projects in and around the Lower Don Area and mitigation measures to minimize impact on traffic operations of the broader road network. The specific details of these requirements will be provided to Enbridge as work proceeds.

**Community Consultation and Communication:** City Staff recommend that Enbridge engage proactively and cooperatively with the local residents, community groups, such as the West Don Lands Committee, and the City Councillor, to ensure that residents have a clear understanding of construction timing, methodologies and impacts. Enbridge should make best efforts to respond to the concerns expressed by local residents.

**Decommissioning and Removal of Existing Pipelines:** A key benefit of this project is the removal of the gas pipeline from the existing bridge at the mouth of the Don River and along Lake Shore and Cherry streets. Further discussions are required regarding the decommissioning and removal of this infrastructure in coordination with other Lower Don projects.

**Coxwell Bypass Project:** Removal of existing Enbridge infrastructure from the Keating Railyard / southern side of First Gulf's property (7b - NPS 20) will need to be coordinated with the Coxwell Bypass Tunnel works. The Coxwell Bypass Tunnel works will be ongoing at the Keating Railyard / southern edge of First Gulf's property from Fall 2018 – 2023.

As part of the Coxwell Bypass Tunnel works, a drop shaft (referred to as the 7QUE connection) will be constructed below the overpass where King/Queen Street merge (Old Brewery Lane) which appears to be along the alignment of the NPS 20 project. The drop shaft will be constructed between 2018 – 2023, with additional work to be completed as part of a future contract (after 2028).



**Summary**

We look forward to continuing to work with Enbridge to address these and other related matters, to continue advancing this project.

Should you have any questions please contact Michael Noble at 416-397-4816 or by e-mail at [Michael.Noble@toronto.ca](mailto:Michael.Noble@toronto.ca)

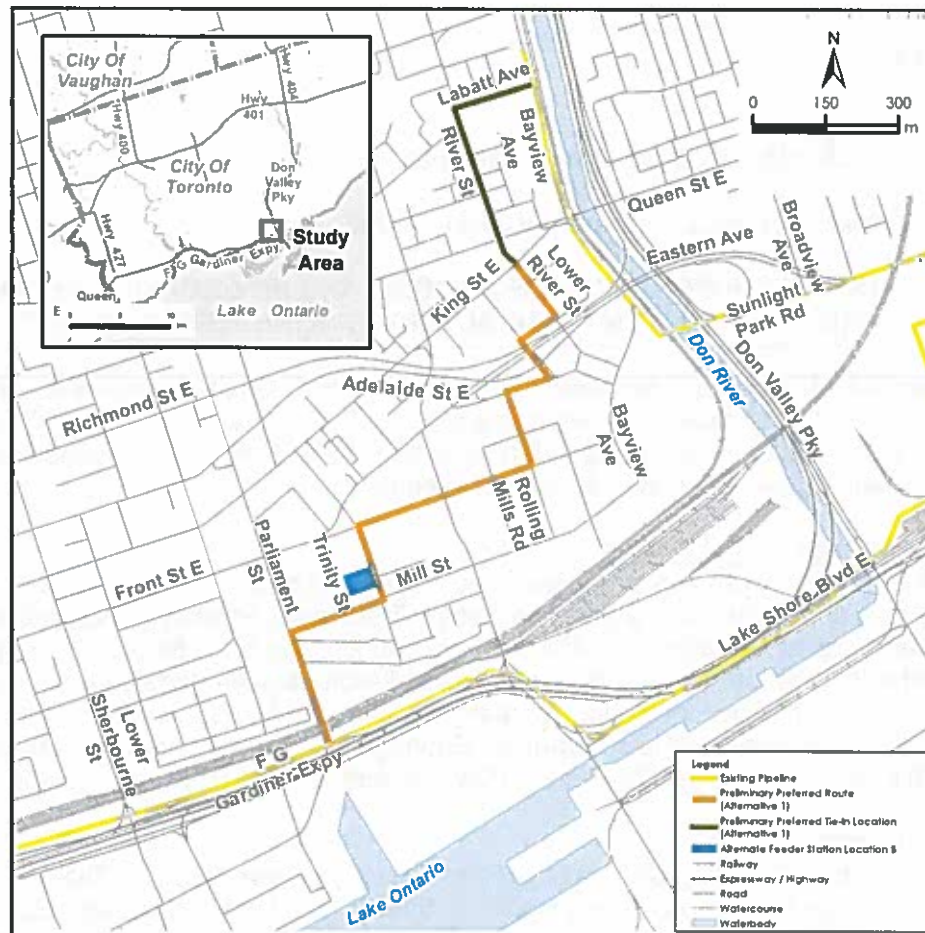
Yours truly,

  
David Stonehouse  
Director, Waterfront Secretariat, City Planning

cc:

Rooly Georgopoulos, Stantec Consulting Ltd.  
Chuck Reaney, Enbridge Gas Distribution Inc.  
Byron Madrid, Enbridge Gas Distribution Inc.  
Melany Afara, Enbridge Gas Distribution Inc.  
Michael Noble, Waterfront Secretariat, City of Toronto  
Rob Gibson, Parks, Forestry and Recreation, City of Toronto  
Caroline Kaars Sijpesteijn, Engineering and Construction Services, City of Toronto  
Anthony Kittel, Community Planning, City of Toronto  
Kate Goslett, Community Planning, City of Toronto  
Jian Lei, Toronto Water, City of Toronto  
Easton Gordon, Engineering and Construction Services, City of Toronto  
Bruce Clayton, Transportation Services, City of Toronto  
Leila Valenzuela, Real Estate Services, City of Toronto  
Renee Afoom-Boateng, TRCA  
Ken Dion, TRCA  
Shannon Baker, Waterfront Toronto  
Leonard Ng, Waterfront Toronto









Parks, Forestry & Recreation  
J. Romoff, General Manager

Planning, Design & Development  
Metro Hall 24th Floor  
55 John Street  
Toronto, Ontario M5V 3C6

## Memorandum

Marc Kramer  
Tel: (416) 392-7438  
Marc.Kramer@toronto.ca

July 13, 2018

**To:** Michael Noble, Waterfront Secretariat

**From:** Marc Kramer, Landscape Architecture Unit

**Subject:** **NOTICE OF STUDY COMMENCEMENT AND INFORMATION SESSION  
PROPOSED 20 INCH NATURAL GAS PIPELINE REPLACEMENT**

Please be advised that we have reviewed the proposal by Enbridge to remove the existing 20 inch diameter natural gas pipeline currently crossing the Lower Don River and to construct a replacement pipeline along various roads throughout the West Don Lands community. Please be further advised that we have the following comments:

Preliminary Preferred Tie-In Location:

The east limit of Labatt Avenue is proposed to be closed and designated as parkland through the development application for 1-25 Defries Street. The Parks, Forestry & Recreation Division (PF&R) generally does not accept parkland that is encumbered by utilities. If the pipeline is to be located within the future parkland, then the installation must be done before the property is handed over to PF&R. Once the subject property becomes parkland, no permanent easement for the pipeline will be permitted to be granted. Enbridge should coordinate the planning for the pipeline in this location with the City Planning Division and with the PF&R planners for the area.

Preliminary Preferred Route:

PF&R has a number of existing parks along the preliminary preferred route. These include the King-Queen Triangle fronting on River and Queen Streets, and Underpass Parks East and West fronting on Lower River Street, Trolley Crescent, Eastern Avenue and the Eastern Avenue Diversion. Further, Diamond Jubilee Park has frontages on either side of Rolling Mills Road and on the north side of Front Street East. Consequently, we require information regarding the specific location of the proposed pipeline within the various road allowances in order to assess whether there will be impacts on our assets. Enbridge should be advised that permanent easements cannot be granted over City parkland, and consequently must design the route accordingly.

There may be a future expansion of Parliament Square Park located on the west side of Parliament Street at Mill Street through the Master Plan currently underway for the First Parliament site. Consequently, we also require information regarding the specific location of the proposed pipeline within the Parliament Street right-of-way.

Alternative Routes:

PF&R assets are located along Alternative Route 3, including the Tannery Road frontages of Diamond Jubilee Park and a possible future joint-use school/community centre on Block 9 located south-west of the Bayview Avenue and Mill Street intersection. Enbridge should work with the City Planning Division and with the PF&R planners regarding the location and possible configuration of the latter.



Construction Details:

In addition to showing the preferred route, Enbridge must also provide information regarding the proposed installation methods (i.e. open trenching, tunneling or a combination of both), and the anticipated location of any launch-pit locations or other associated work areas. Enbridge should be advised that no construction staging, storage of materials or construction access will be permitted within City parkland.

Enbridge should be advised that special street trees and plaques commemorating the countries that participated in the 2015 Pan Am Games are situated along both the north and south sides of Diamond Jubilee Promenade (Front Street East). Enbridge must work with Urban Forestry with respect to inventories and assessments of any existing trees that may be affected by the proposed work, and with respect to any requisite permits to injure or remove trees, as applicable.

A plan showing the existing and anticipated future PF&R assets in the area, as well as the locations where there may be conflicts with the new pipeline routes is attached, for your information and use.

Should you have any questions or require additional information, please contact the undersigned.



Marc Kramer, Landscape Architect  
Landscape Architecture Unit  
416-392-7438

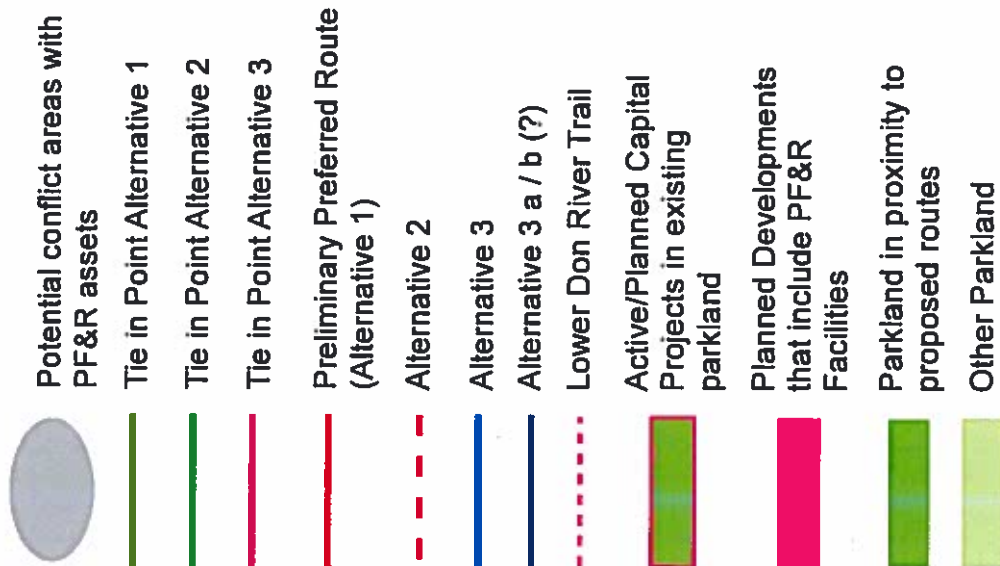
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Attach.

- C:    D. McLaughlin, Parks, Forestry & Recreation  
      R. Gibson, Parks, Forestry & Recreation  
      E. Stadnyk, Parks, Forestry & Recreation  
      M. Franko, Parks, Forestry & Recreation



# PF&R Assets and Projects near/adjacent to proposed pipeline route



Filed: 2021-01-15

EB-2020-0198

Attachment 10  
Page 16 of 30



Parks Development & Capital Projects  
PARKS, FORESTRY AND RECREATION

