

Court File No. CV-17-11679-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

B E T W E E N:

**CENTURION MORTGAGE CAPITAL CORPORATION**

Applicant

- and -

**TERRASAN 327 ROYAL YORK RD. LIMITED**

Respondent

**AFFIDAVIT OF ANN XIE**

I, Ann Xie, of the City of Oakville, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am an assistant in the law firm of Borden Ladner Gervais LLP
2. Now shown to me and attached hereto are the following documents attached hereto as the following exhibits:

<b>Document</b>	<b>Exhibit</b>
Email from Sean Gosnell To Robert Kennedy, counsel to the receiver, and others, dated May 8, 2017 with two attachments, one being a document titled "Metrolinx-GO Transit Adjacent Development Guideline" dated April 1, 2013 and the other being a letter from Sean Gosnell to Robert Kennedy dated May 8, 2017	<b>A</b>
Email from Sean Gosnell to Robert Kennedy, counsel to the receiver, and others, dated May 16, 2017 with two attachments, one being a letter dated June 29, 2016 from Metrolinx to the City of Toronto and the other being a letter dated June 29, 2016 from Metrolinx to Terrasan 327 Royal York Road Limited	<b>B</b>

Document	Exhibit
Two emails from Robert Kennedy, counsel to the receiver, to Sean Gosnell and others dated August 22, 2017	C

SWORN BEFORE ME at the City of )  
 Toronto in the Province of Ontario )  
 this 24<sup>th</sup> day of August, 2017. )



A Commissioner, etc.

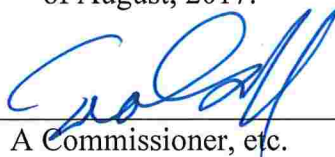
SEAN GOSNELL

C.S. No.: 2405 9P



ANN XIE

This is Exhibit "A" referred to in  
the Affidavit of Ann Xie  
sworn before me, this 24<sup>th</sup> day  
of August, 2017.

A handwritten signature in blue ink, appearing to be "C. Wald", is written over a horizontal line.

A Commissioner, etc.

**Xie, Ann**

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**From:** Gosnell, Sean L.  
**Sent:** May-08-17 10:57 AM  
**To:** 'Parisi, Josie'; 'robert.kennedy@dentons.com'  
**Cc:** Jaipargas, Roger; Iris Tam (Iris.Tam@metrolinx.com); Xie, Ann  
**Subject:** 315/327 Royal York Road - Terrasan  
**Attachments:** Adjacent Development Guidelines - RC-0401-01.pdf; TOR01 -#6812734-v2-Metrolinx - 315327 Royal York Road - Letter to Receiver of Terrasan - May 8, 2017.DOCX

Ms. Parisi and Mr. Kennedy,

Please see letter attached.



**Sean L. Gosnell, LLM**  
**Incorporated Partner**

T 416.367.6120 | F 416.367.6749 | [SGOSNELL@blg.com](mailto:SGOSNELL@blg.com)

Bay Adelaide Centre, East Tower, 22 Adelaide St W, Toronto, ON, Canada M5H 4E3

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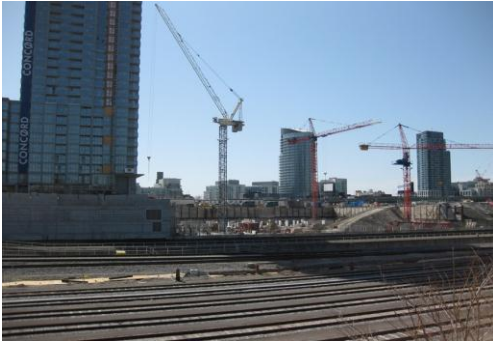
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# Metrolinx - GO Transit

## Adjacent Development Guidelines



### Document Approval Information

Document	Effective Date	Approved By
Adjacent Development Guidelines	01 April 2013	Grant Bailie

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### Document Approval History

Version #	Date	Approved By	Description
1.0	10 January 2013	Grant Bailie	

### Document Revision History

Version #	Date	Revised By	Description
1.0	10 January 2013	Jeff Bateman	Final
2.0	01 April 2013	Jeff Bateman	Updated - new corridor purchase

### Document Details

Issuing Department	GO Railway Corridors
Document Owner	Director, Railway Corridors, Operations
Update Authority	Director, Railway Corridors, Operations
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File Name	Railway Corridor Management Office Adjacent Development Guidelines
File Location	Railway Corridors

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## 1. Introduction

GO Transit manages approximately 288 kilometres of Metrolinx-owned railway corridors, corresponding to about 68 per cent of the total railway network that GO Trains regularly operate over. By properly managing and maintaining these corridors and the nearly 535 kilometres of track they contain, GO Transit's Railway Corridors division helps to ensure that, every week, approximately one million train passengers travel to their destinations, safely and reliably.

The Railway Corridors Management Office (RCMO) resides within the GO Transit, Railway Corridors Division.

The RCMO supports safe and reliable train service through a variety of initiatives that include, but are not limited to, trespassing prevention, vegetation management (siteline preservation), anti-whistling initiatives, and general landlord responsibilities, such as debris and graffiti management. To achieve these goals, the RCMO oversees the railway right-of-way maintenance contractor and liaises with the municipalities our corridors pass through and other government agencies such as Transport Canada.

In addition, the RCMO reviews and provides comments on various development related applications for projects located within 300 metres of GO Transit managed railway corridors (including railway yards), to ensure a safe and reliable system and to minimize conflicts between proposed developments and current or planned GO Transit rail services.

## 2. Purpose

One of the key objectives of this document is to communicate relevant information to interested parties so that they may understand the implications of undertaking a development project in proximity to a GO Transit managed rail corridor and, as necessary, incorporate appropriate standards and "best practices" into their development plans.

The GO Transit adjacent development review process is in place in order to safeguard the integrity of the railway corridor and ensure that all development proceeds in a safe manner and that construction activities do not interfere with the maintenance or operations of GO Transit, nor obstruct future expansion of rail facilities.

GO Transit is committed to providing advice and support to proponents who are planning activities that interface with GO Transit managed railway corridors. As such, the RCMO is the first point of contact for all parties wishing to carry out new construction, repairs, and maintenance or demolition activities on any property adjacent to the railway corridor. Proponents are encouraged to contact GO Transit early in the development approvals process to discuss how these guidelines may be applicable to their project.



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GO Transit’s rail corridors are a critical component of the Greater Toronto and Hamilton Area’s (GTHA) urban fabric and pass through a diverse range of communities comprised of residential, commercial/industrial, and agricultural uses, as well as vacant lands. GO Transit has an established history of reviewing and commenting on applications for development sites along its respective corridors and has adopted a set of standards and “best practices” intended to enhance safety and compatibility between railway corridors and adjacent development activities.

### 3. Planning Framework

Land use decisions along railway corridors are generally fragmented and no single level of government has sole jurisdiction to address adjacent development issues.

Under the Provincial Planning Act (RSO2006 – through Ontario Regulations 543/06, 544/06 and 545/06), municipal planning departments must notify railway companies regarding proposed development activity within a 300 metres zone of influence adjacent to railway corridors. Through this process GO Transit has provided comments on a wide range of municipal land development matters including:

- Official Plan Amendments;
- Zoning By-Law Amendments;
- Plans of Subdivision;
- Site Plan Control Applications; and
- Minor Variance or Consent Applications.

The standards or “best practices” referenced in this document are intended to inform and influence municipal land development approval processes and provide a consistent framework for land use decisions made in proximity to GO Transit operated railway corridors. The measures have been developed through years of technical analyses and operational experience, and have been implemented by other rail operators such as CN and CP Rail.

While GO Transit’s railway corridors play a critical role from a commuter transportation perspective, they can also serve as physical barriers within a land development context. As communities mature on opposite sides of the corridor, pedestrian desire lines may be created (e.g., between a residential community on one side of the corridor and a school on the other side) and informal connections arise when holes are cut in fencing and pedestrians become trespassers on railway lands.

As such, GO Transit will also provide comments on various land development applications to discourage the creation of new desire lines across rail corridors and pursue formal (grade separated) connections to ensure that safe conditions are maintained, rail activity is not interrupted, and transit services are easily accessible. This approach complements the wider Metrolinx strategy of creating integrated mobility, as well as contributing to the development of higher quality infrastructure for pedestrians and cyclists and providing safer and more pleasant environments.

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It is acknowledged that past planning decisions and administrative practices have resulted in a multitude of development circumstances on properties adjacent to GO corridors, some of which are not consistent with the practices set out in this document and which may consequently be regarded as 'legal non-conforming' development. GO Transit's intent is to ensure that all new development incorporates the measures identified herein. When considering re-development proposals for non-conforming properties, the existing rights will be considered, but any modifications extending beyond the established rights will not be permitted without the implementation of appropriate mitigation measures.

GO Transit may appeal any potential land use compatibility issue to the Ontario Municipal Board, within the legislative appeal period, for Official Plan and Zoning By-law Amendments, Plans of Subdivision, and Minor Variance of Consent applications. Site Plan applications not associated with the above-noted planning applications are not subject to appeal.

#### **4. GO Transit Operated Corridors Map**

**Figure 1** provides an overview of all GO Transit managed railway corridors. It should be noted that some of these corridors are currently owned by other operators, such as CN and CP Rail and as such, they are the primary commenting agencies for adjacent development activities along their lines. The principles set out in this document are also upheld by these operators.

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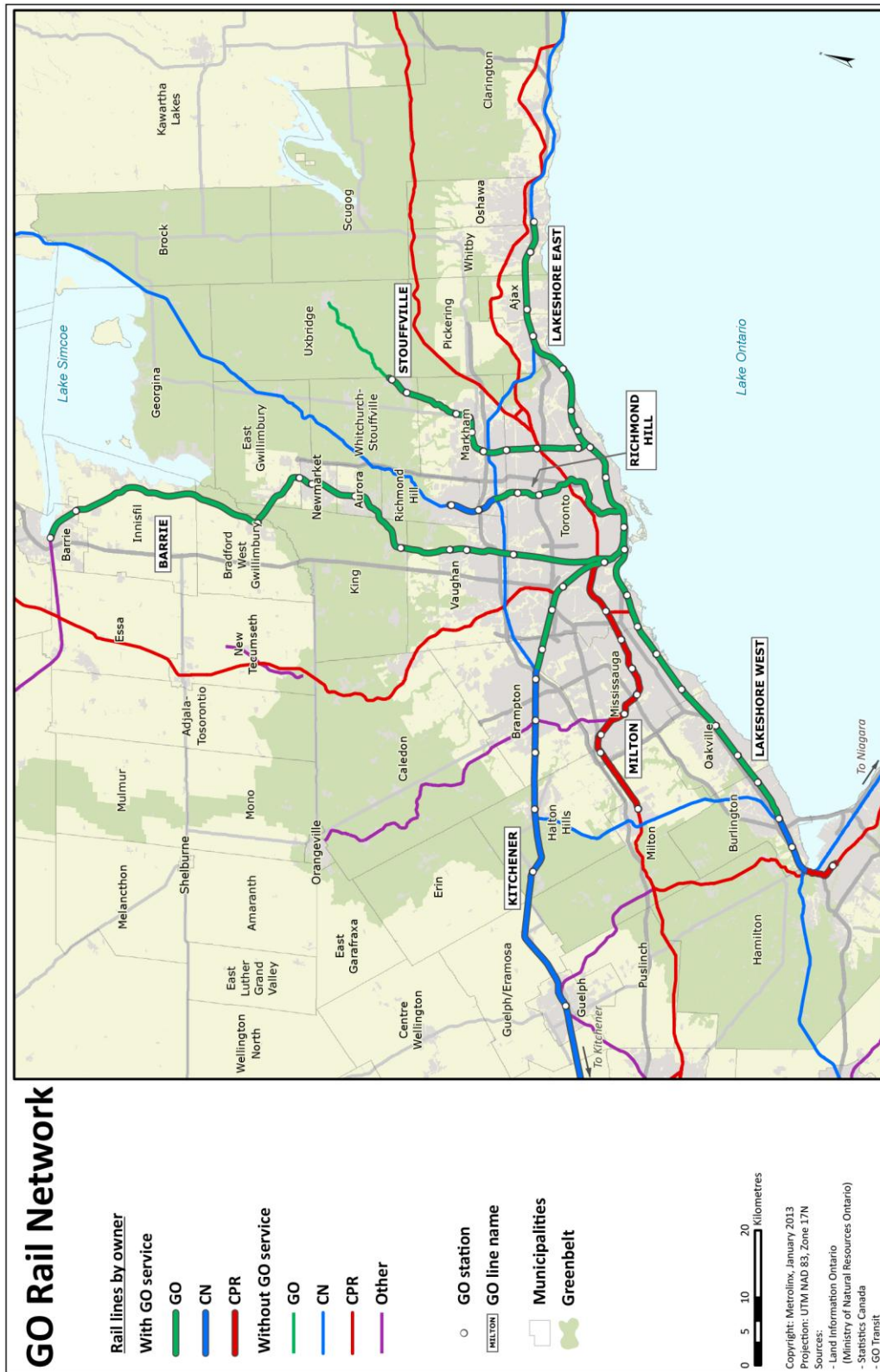


Figure 1: GO Transit Managed Railway Corridors

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## 5. GO Transit Land Use Guidelines

A list of general safety measures, technical studies, and legal agreements typically considered for developments adjacent to the rail corridor are presented in **Table 1**, with each organized on the basis of the applicable land use.

The majority of these measures are to be considered for development located immediately adjacent (with direct exposure) to rail corridors. However, certain measures (such as noise studies and environmental easements) are applied within a zone extending 300 metres from the rail corridor. These measures are also primarily directed at Principal Main Line applications, where train volumes generally exceed 5 trains per day, higher train speeds may be observed, and crossings, gradients and other factors may increase normal railway noise and vibration. All GO Transit corridors are considered Principal Main Lines.

GO Transit considers the measures identified for *residential* development to be mandatory and may refer cases that fail to incorporate these requirements to the Ontario Municipal Board. Measures identified for other (*non-residential*) land uses are recommended and final decisions regarding their applicability are to be established by the local municipal staff together with the proponent. In a case where the proposed development incorporates mixed uses, including residential, the more stringent (residential) requirements would apply.

The general safety measures identified in Table 1 are discussed in section 6 of this report; technical studies are identified in section 7, and warning clause and legal agreements are reviewed in section 8.

Land Use	General Safety Measures			General Technical Studies			Dev. Agreement / Env. Easement
	Setback	Berm	Fencing	Drainage	Noise	Vibration	
<b>Residential</b>	Mandatory 30 Metres	Mandatory 2.5 Metres	As Required 1.83 Metres	As Required	Mandatory	Mandatory	Mandatory
<b>Commercial</b>	Recommended 30 Metres	Recommended 2.5 Metres	As Required 1.83 Metres	As Required	Recommended	Recommended	Not required
<b>Industrial</b>	Recommended 15 Metres	Recommended 2.0 Metres	As Required 1.83 Metres	As Required	Recommended	Recommended	Not required
<b>Institutional</b>	Recommended 30 Metres	Recommended 2.5 Metres	As Required 1.83 Metres	As Required	Recommended	Recommended	Not required
<b>Intensively Used Grounds</b>	Recommended 30 Metres	Recommended 2.5 Metres	As Required 1.83 Metres	As Required	Recommended	Recommended	Not required
<b>Low Occupancy Land Uses</b>	Not Required*	Not Required*	As Required 1.83 Metres	As Required	Not Required	Not Required	Not required
<b>Zone of Influence</b>	Immediately Adjacent Sites (up to 120 Metres)				Sites within 300 Metres	Sites within 75 Metres	Sites within 300 Metres

**Table 1:** GO Transit Land Use Guidelines - Standard Measures and Studies for Adjacent Development

\*Protection for certain uses (e.g., parking garages) may be desirable – to be determined at the discretion of the proponent/municipality.

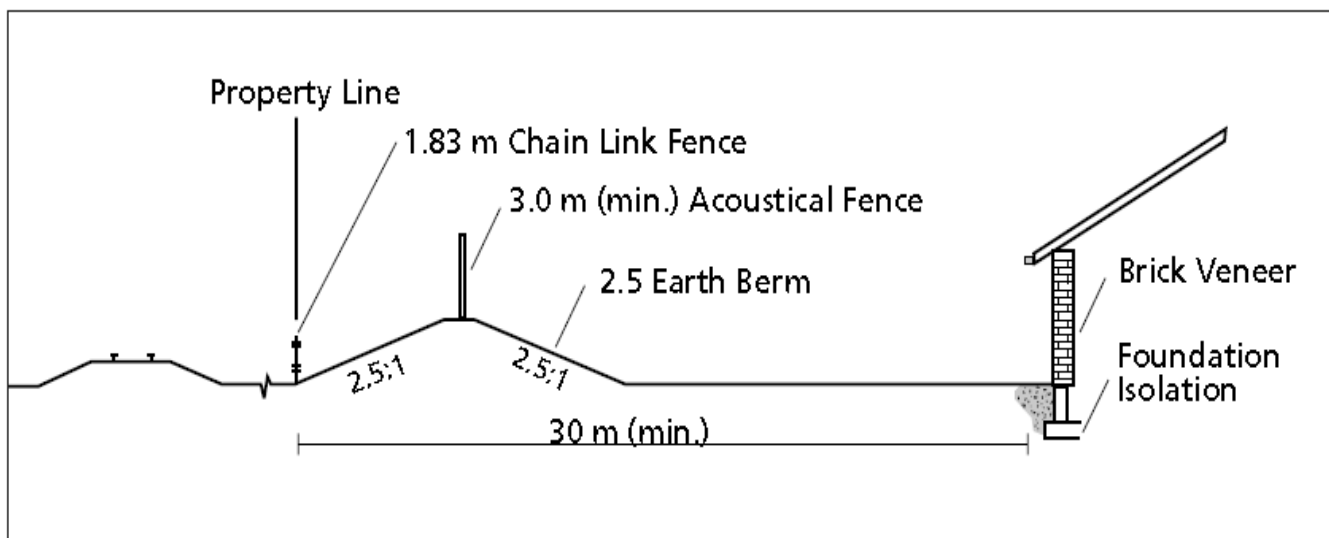
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## 6. General Safety Measures

### 6.1 Building Setback Requirements

Building setback requirements are established to provide a buffer zone that contains the impacts associated with a potential train derailment; permits dissipation of rail-oriented emissions, vibration, and noise; and accommodates a safety barrier. As indicated in Table 1, setback distances vary by land use and occupancy status. The following provides an overview of building setback requirements and conditions:

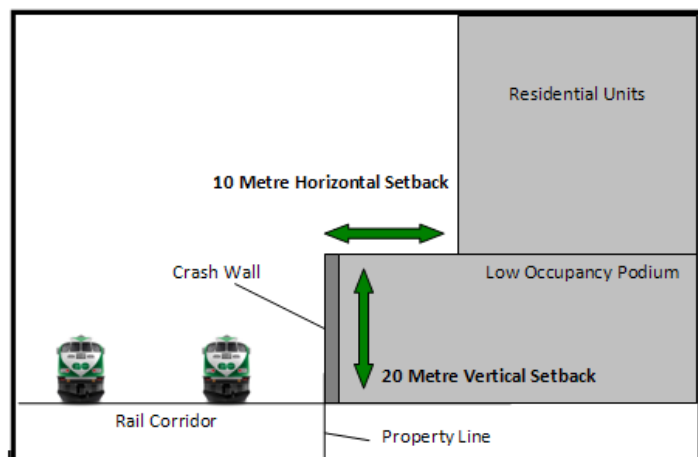
- The minimum building setback distance is measured from the mutual property line to the building face. The mutual property line is always the reference point for building setbacks, regardless of area conditions.
- Under typical conditions, the setback is measured as a straight-line horizontal distance. **Figure 2** below provides an illustration of a typical setback and berm installation for residential construction.



**Figure 2:** Typical Building Setback and Berm for Residential Construction

Source: Earthtech Canada, "Final Report; Proximity Guidelines and Best Practices", RAC/FCM Proximity Guidelines

- Where circumstances dictate (e.g. spatially constrained urban sites), the building setback distance may be measured as a combination of horizontal and vertical distances, as long as the horizontal and vertical value add up to meet the 30m requirement (illustrated in **Figure 3**).



**Figure 3:** Building Setback - Spatially Constrained Site

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- When the adjacent rail line is located in a cut measuring in the order of 4.0 metres deep or greater, the slope may be included as part of the building setback (measured from the toe of the slope).
- Low occupancy land uses (such as parking, storage, open space) do not require a specific setback and are acceptable uses within the setback zone of another use.
- The mutual property line may be redefined in cases where rail corridor expansion is required and the minimum setback distance would be measured from the new property line.
- Existing building setbacks may vary by location and do not set the precedent for new development.

## 6.2 Safety Barrier Requirements

Safety Barriers in the form of a berm or crash wall are required to absorb the impacts of a possible derailment and provide physical protection for adjacent properties. As indicated in Table 1, safety barrier requirements vary by land use and occupancy status. The following provides an overview safety barrier requirements and conditions:

Berm:

- Where full building setbacks can be provided, safety barriers are constructed as *berms*. Setbacks and berms are to be provided together in order to afford a maximum level of mitigation (refer to Figure 2).
- In the absence of intervening uses, safety barriers are required for lands within up to 120 metres from the railway corridor, with the required barrier height diminishing with distance.
- Berm heights (measured from the property line elevation) may vary by land use (refer to Table 1).
- Alternate berm designs (e.g., using retaining walls) may be considered for spatially constrained locations. The intent is to provide a level of energy absorption equivalent to that of a standard berm. Such designs will be subject to review/approval by GO Transit's Third Party Project consultant (refer to Section 9.0)
- Berms are to be located adjoining and parallel to the railway property line, entirely on the adjacent private property.
- Returns are to be provided at the ends of the berms, with placement subject to site specific conditions, such that buildings with direct exposure to the rail corridor are suitably protected.
- When the adjacent rail line is located in a cut measuring in the order of 4.0 metres or deeper, no supplemental safety barrier is required.

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#### Crash Wall:

- Where circumstances dictate (e.g. for spatially constrained urban sites), a crash wall may be required (refer to Figure 3).
- Crash wall specifications are set out in the *Crash Wall Guidelines* document prepared by GO Transit's Third Party project consultant. The proponents engineer must demonstrate that the crash wall will afford a level of protection at least equivalent to a standard berm (with a higher level of protection if no setback will be provided and the subject land use involves a high level of human occupancy). Such designs will be subject to review and approval by GO Transit's Third Party Project consultant (refer to Section 9.0).
- Low occupancy uses (such as parking, storage, passive parks) may not require a safety barrier, although the proponent/area municipality may wish to provide such protection for insurance or other purposes.

### 6.3 Fencing Requirements

Fencing is established to define railway property and discourage trespassing onto the railway corridor. As indicated in Table 1, new fencing installations are required irrespective of the land use and occupancy status. The following provides an overview of fencing requirements and conditions:

- For all new developments adjacent to the rail corridor, an appropriate fencing type along the boundary line is required to be installed by the property developer as a condition of subdivision/site plan approval.
- The current minimum standard is a 1.83 m high chain link fence. GO Transit also reserves the right to advise the developer whether a higher security fencing type is required. All costs for fencing associated with new developments are paid in full by the property developer.
- In the case of private fencing (residential, commercial, industrial, institutional etc.), the adjacent landowner is responsible for the continued maintenance and upkeep of fencing systems along the mutual property line.
- Noise attenuation and crash barriers are acceptable substitutes for standard fencing installations, although additional standard fencing may be required in any location with direct exposure to the rail corridor.



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- If the selected fencing is comprised of a solid surface, efforts should be made to discourage graffiti – for example, through the use of visually appealing landscaping that prevents direct access to the barrier face.

## 7. General Technical Studies

### 7.1 *Noise and Vibration Studies*

Noise and vibration studies may be required to ensure, through an analysis of the surrounding environment, that suitable measures are introduced to mitigate rail oriented noise and vibration impacts. As indicated in Table 1, noise and vibration study requirements vary by land use and occupancy status. The following provides an overview of noise and vibration study requirements and conditions:

- Noise standards are to be applied to residential development within 300 metres of the rail corridor.
- Acoustical analysis is recommended for other non-residential uses where there may be sensitivity to noise (e.g., day care centres, offices with sensitive equipment etc.).
- Noise attenuation barriers may be required for projects (primarily residential) that include outdoor amenity areas. These barriers shall be located adjoining and parallel to the railway right-of-way, having returns at the ends and a minimum total height of 5.5 metres above top-of-rail.
- Other measures (e.g. provision of air conditioning, enhanced windows and building materials, etc.) may also be recommended by a qualified acoustical consultant.
- Trees and standard fencing are not acceptable substitutes for noise barriers.
- Warning Clauses are mandatory for residential units within 300 metres of the rail corridor and may suitably address noise concerns for other non-residential forms of development.
- Special considerations may apply at locations where trains are stored and/or operate at reduced speed/idle, as well as in areas with unique operating characteristics (e.g. use of snow blowers, specialized machinery, etc.).
- Vibration standards are to be applied to development within 75 metres of the rail corridor.
- Isolation measures will be required where vibration levels exceed the established standards.



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## 7.2 Drainage and Other Technical Studies

Drainage and other studies may be required to ensure, through an analysis of the surrounding environment, that the rail corridor is not adversely affected by, or does not adversely affect area development.

The following provides an overview of drainage and other study requirements and conditions:



- Any proposed alterations to the existing rail corridor drainage pattern (i.e., into and/or out of) must receive approval by GO Transit and be substantiated by a drainage report completed by a Geotechnical Engineer.
- Any development related changes to drainage patterns must be addressed using infrastructure and/or other means located entirely within the confines of the subject development site.
- Other technical studies may be required depending on the characteristics and location of the subject project. For example, additional studies are typically required for properties within the vicinity of the Union Station Rail Corridor (USRC) due to the heavy rail traffic volumes and spatial constraints in that area. Typical studies may include:
  - ✓ Air Quality Study;
  - ✓ Micro Climate (Wind/Snow Accumulation) Study;
  - ✓ Structural Engineering Report; and
  - ✓ Pedestrian Management Plan

Drainage studies and other technical studies may be subject to review and approval by GO Transit's Third Party Project consultant (refer to section 9) depending on the prevailing circumstances.

## 8.0 Warning Clause and Development Agreements

A Warning Clause is required and may be delivered together with other legal agreements to formalize owner rights and responsibilities with respect to the purchase and development of lands in the vicinity of railway corridors. The need for and nature of development agreements will vary depending on the characteristics and location of the subject project.

The proponent is responsible for all costs related to the preparation and negotiation of the agreements.

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## 8.1 Warning Clause

To advise new or prospective property owners of the potential adverse impacts resulting from the adjacent railway operations, a Warning Clause will be pursued by GO Transit.

The Warning Clause will be inserted in all Development Agreements, Offers to Purchase, and Agreements of Purchase and Sale or Lease for any new residential dwelling unit within 300 metres of the railway corridor (as well as for other non-residential development projects with noise-related issues). The following is the current version of the warning clause:

*Warning: Metrolinx, carrying on business as GO Transit, and its assigns and successors in interest has or have a right-of-way within 300 metres from the land the subject hereof. There may be alterations to or expansions of the rail facilities on such right-of-way in the future including the possibility that GO Transit or any railway entering into an agreement with GO Transit to use the right-of-way or their assigns or successors as aforesaid may expand their operations, which expansion may affect the living environment of the residents in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual dwelling(s). Metrolinx will not be responsible for any complaints or claims arising from use of such facilities and/or operations on, over or under the aforesaid right-of-way.*

Other warning clauses may be applied depending on prevailing circumstances.

## 8.2 Development Agreements

In cases where a new development is located immediately adjacent to a railway corridor, the property owner will be required to enter into a Development Agreement with Metrolinx stipulating how GO Transit's interests will be protected throughout the lifetime of the project (from construction start to on-going building occupation). GO Transit's interests typically focus on ensuring that the applicable safety and noise/vibration mitigation measures are suitably provided and maintained.

The Development Agreement will also include an Easement for Operational Emissions, to be registered on title over all associated development property within 300 metres of the rail corridor. In the event that the subject property does not extend to the rail corridor, the easement can be registered through the use of an abbreviated agreement document.

Additional Development Agreements may be necessary on a short-term (e.g. during construction) or on an ongoing basis depending on the nature of the project and the proximity to the rail corridor. Examples of such agreements include:

- ✓ Crane Swing Agreement;
- ✓ Temporary Hording or Fencing Agreement;
- ✓ Tiebacks/Shoring Agreement;
- ✓ Required Maintenance Agreement; and
- ✓ Access Easements

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## 9.0 Third Party Project Approval

The Third Party Project approval process is in place to safeguard the integrity of the railway corridor and ensure that all work proceeds in a safe manner and that does not interfere with the maintenance or operations of GO Transit, nor obstruct future expansion of rail facilities. What may appear to be a corridor of land with rail lines running along it may in fact be a corridor of complex, tightly packed, high-tech communication and other public and private infrastructure that must be carefully managed.

Proponents of Adjacent Developments should also reference the GO Transit Third Party Approval Process Guidelines for more information.

### 9.1 Role of Third Party Consultant

In October 2012, GO Transit/Metrolinx awarded a new contract for management of all Third Party Projects to AECOM Canada Ltd. (RQQ-2012-RCM-019). Under the terms of this contract, it is AECOM's responsibility, under the direction of the RCMO, to protect the interests of GO Transit for all proposed works within and, in some cases, immediately adjacent to the railway corridor. Funding is obtained through the proponent to cover AECOM's review and coordination of services. There are different types and levels of analysis, approvals, consultation and timelines that can be expected depending on the nature of the project(s) in question. An overview of the types of projects and activities that will require AECOM's services as part of the approval process for adjacent development, as well as details pertaining to AECOM's typical role in relation to each case, is provided below.

**Drainage Review:** AECOM's role typically includes:

- reviewing drainage and grading plans/reports to ensure that post development flows do not increase and adversely impact the integrity of the railway corridor and that suitable infrastructure is in place to accommodate site-related drainage;

**Crash Wall Analysis:** AECOM's role typically includes:

- providing applicable guidelines to the proponent for reference (refer to Appendix A); and
- reviewing crash wall designs and plans to ensure compliance with railway standards and structural guidelines.

**Structural Analysis:** AECOM's role typically includes:

- reviewing structural (shoring/tieback) plans for any proposed structure(s) that could impact GO Transit facilities or infrastructure.

**Access for Working within or Adjacent to the Railway Right-Of-Way:** AECOM's role typically includes:

- reviewing and commenting on the scope of work proposed including type of construction activity and machinery to be utilized in order to protect the integrity of the railway and ensure that all operational and safety requirements of GO Transit are strictly followed;

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- ensuring there are no objections or conflicts to the proposed work;
- issuing a “Work Permit” on behalf of GO Transit when all requirements are satisfied.

**Railway Orientation/Security Awareness Course - Right-Of-Way Work:** AECOM's role typically includes:

- ensuring all persons performing work at track level have the necessary training to do such work: personnel must display the appropriate hard hat sticker or carry proof of training such as a wallet card and adhere to applicable rules and regulations at all times while within the rail corridor. AECOM also arranges for appropriate flagging protection for the subject work.

AECOM may also be required to review various studies including air quality and micro climate (wind/snow accumulation) studies or pedestrian management plans.

## 10. Role of Other GO Transit / Metrolinx Departments

RCMO coordinates internal GO Transit/Metrolinx review, comments and approvals as well as coordinating the execution of any required agreements or real estate related issues (e.g. easements, sale of property) as required. The following internal stakeholders may be consulted as part of the adjacent development review process:

**Realty Services** – provides direction on all property-related issues and is the primary business lead for utility crossing agreements, easements and other land transactions (e.g. sale of property) as required.

**Legal Services** – facilitates the execution of all legal matters including new and amended development agreements, crossing agreements, temporary use agreements (e.g. crane swing or tieback/shoring agreements) and land transactions.

**Risk Management** – provides direction for all liability and insurance requirements.

**Construction Management Office (CMO)** – conducts reviews and provides approvals for any construction or access requirements where GO Transit is the Constructor to ensure that work proceeds in accordance with Occupational Health and Safety best practices. CMO will also provide training to all construction personnel accessing the GO construction zone and coordinate with other contractors working in GO construction zones, and advise of conflicts if any.

**Corporate Infrastructure** – provides direction to ensure that existing and planned GO Transit infrastructure projects are coordinated with and, most importantly, not adversely affected by adjacent development activities.

**Policy Planning and Innovation** – provides direction on issues pertaining to GO Transit Service expansion plans and Mobility Hub development initiatives.



Sean L. Gosnell  
T (416) 367-6120  
F (416) 361-2711  
sgosnell@blg.com

Borden Ladner Gervais LLP  
Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada M5H 4E3  
T 416.367.6000  
F 416.367.6749  
blg.com



**File No.: 025575/000020**

May 8, 2017

**Delivered by Email**

Robert Kennedy  
robert.kennedy@dentons.com

Josie Parisi  
JParisi@bdo.ca

Mr. Kennedy and Ms. Parisi:

**Re: 315/327 Royal York Road – Proceedings Involving Terrasan 327 Royal York Rd. Limited (“Terrasan”)**

This letter arises from our meeting of April 26, 2017. During that meeting you asked for a letter providing further background and explanation to two letters previously sent to you by Metrolinx. Copies of these letters are enclosed with this letter and can be described as follows: (a) a letter agreement (the “agreement”) dated June 29, 2016 between Metrolinx and Terrasan; and (b) a letter (the “city letter”) also dated June 29, 2016 from Metrolinx to the City of Toronto (the “city”).

The further background and information is as follows:

1. The context of these letters was the desire of Terrasan to proceed as quickly as possible with the construction of a condominium development located at 315/327 Royal York Road (the “development”). To do that Terrasan needed site plan approval and a foundation building permit (that is, a building permit allowing construction of the building to approximately ground level) from the city. However, the city would not provide these items without confirmation from Metrolinx that Terrasan had satisfied certain pre-approval conditions contained in the notice of approval conditions issued by the city and dated April 1, 2015 (the “NOAC”).
2. As of June 29, 2016 Terrasan had complied with some but not all of the NOAC conditions pertaining to Metrolinx. The outstanding conditions of importance for the purposes of this letter are numbered 6 (the third paragraph numbered 6), 7 and 8 in the city letter (the “outstanding conditions”).
3. As stated in the city letter, Terrasan provided assurances to Metrolinx that it would address the outstanding conditions in a timely manner (the “assurances”).

4. Terrasan repeated the assurances in the agreement.
5. In reliance on the assurances Metrolinx advised the city that it agreed to “clear” all of the conditions pertaining to it, including the outstanding conditions.
6. As a result, the city granted site plan approval and a foundation building permit to Terrasan and Terrasan started construction of the development.
7. Terrasan has not acted in accordance with the assurances. To the contrary, Terrasan has not fulfilled any of the outstanding conditions.
8. Metrolinx understands that the receiver is in the process of marketing the development and expects that the purchaser will proceed to complete the development or something similar to it.
9. Metrolinx continues to require that the outstanding conditions be satisfied by whoever acquires and completes the development, or something similar to it. The agreement also makes referene to the signing of an “Adjacent Development Agreement” as an additional requirement. For your information, and that of potential purchasers, enclosed with this letter is a copy of Metrolinx’s “Adjacent Development Guidelines”, which provide general guidance as to some of the issues that would be addressed in an Adjacent Development Agreement.
10. Metrolinx expects that the purchaser will confirm to Metrolinx that it is aware of and accepts the obligations of Terrasan pursuant to the agreement and will agree to fulfill those obligations in a timely manner, as Terrasan previously agreed to do.
11. In furtherance of that objective, we would ask that the agreement, the city letter, the Adjacent Development Guidelines and this letter be included in the information provided by you to potential purchasers, subject, of course, to their having previously signed a non-disclosure agreement.

Yours truly,

**BORDEN LADNER GERVAIS LLP**



Sean L. Gosnell

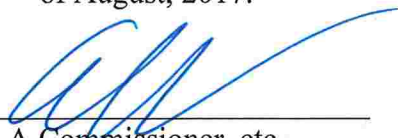
SG/ax

Cc Roger Jaipargas, Iris Tam





This is Exhibit "B" referred to in  
the Affidavit of Ann Xie  
sworn before me, this 24<sup>th</sup> day  
of August, 2017.

A handwritten signature in blue ink, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.

---

A Commissioner, etc.

**Xie, Ann**

---

**From:** Gosnell, Sean L.  
**Sent:** May-16-17 2:07 PM  
**To:** Kennedy, Robert  
**Cc:** Parisi, Josie; Cerrato, Gary (gcerrato@bdo.ca); Jaipargas, Roger  
**Subject:** RE: 315/327 Royal York Road - Terrasan  
**Attachments:** 327 Royal York Rd - Sign Back Letter Executed 2016-06-29.pdf; 327 Royal York GO Metrolinx NOAC Clearance Letter June 29 16.pdf

You are correct that the attached are the “Agreement” and the “City Letter”.

They were not attached to my email of May 8, 2017 because they had previously been forwarded to you.



**Sean L. Gosnell, LLM**

**Incorporated Partner**

T 416.367.6120 | F 416.367.6749 | [SGOSNELL@blg.com](mailto:SGOSNELL@blg.com)

Bay Adelaide Centre, East Tower, 22 Adelaide St W, Toronto, ON, Canada M5H 4E3

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**From:** Kennedy, Robert [<mailto:robert.kennedy@dentons.com>]  
**Sent:** May-16-17 11:39 AM  
**To:** Jaipargas, Roger  
**Cc:** Parisi, Josie; Cerrato, Gary (gcerrato@bdo.ca); Gosnell, Sean L.  
**Subject:** RE: 315/327 Royal York Road - Terrasan

The documents were not attached to the BLG correspondence.

Can you confirm these are the reference “Agreement” and “City Letter”.

**Robert J. Kennedy**

Partner

D +1 416 367 6756 / +1 403 268 7161

[robert.kennedy@dentons.com](mailto:robert.kennedy@dentons.com)

[Bio](#) | [Website](#)

Dentons Canada LLP

77 King Street West, Suite 400, Toronto-Dominion Centre Toronto, ON M5K 0A1 Canada

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**From:** Jaipargas, Roger [<mailto:RJaipargas@blg.com>]  
**Sent:** 16-May-17 11:37 AM  
**To:** Kennedy, Robert  
**Cc:** Parisi, Josie; Cerrato, Gary ([gcerrato@bdo.ca](mailto:gcerrato@bdo.ca)); Gosnell, Sean L.  
**Subject:** RE: 315/327 Royal York Road - Terrasan

Thank you Rob. We look forward to hearing from you on the other matters. Many thanks.

Roger

 **Roger Jaipargas**  
 T 416.367.6266 | F 416.367.6749 | [RJaipargas@blg.com](mailto:RJaipargas@blg.com)  
 Borden Ladner Gervais Bay Adelaide Centre, East Tower, 22 Adelaide St W, Toronto, ON, Canada M5H 4E3

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**From:** Kennedy, Robert [<mailto:robert.kennedy@dentons.com>]  
**Sent:** May-16-17 10:56 AM  
**To:** Jaipargas, Roger  
**Cc:** Parisi, Josie; Cerrato, Gary ([gcerrato@bdo.ca](mailto:gcerrato@bdo.ca)); Gosnell, Sean L.  
**Subject:** RE: 315/327 Royal York Road - Terrasan

The “Agreement” and the “City Letter” will be included in the data room today.

As for the balance of your correspondence, we will get back to you shortly.

Regards,

 **Robert J. Kennedy**  
 Partner

D +1 416 367 6756 / +1 403 268 7161  
[robert.kennedy@dentons.com](mailto:robert.kennedy@dentons.com)  
 Bio | Website

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 77 King Street West, Suite 400, Toronto-Dominion Centre Toronto, ON M5K 0A1 Canada

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**From:** Jaipargas, Roger [<mailto:RJaipargas@blg.com>]  
**Sent:** 16-May-17 10:01 AM  
**To:** Kennedy, Robert  
**Cc:** Parisi, Josie; Cerrato, Gary ([gcerrato@bdo.ca](mailto:gcerrato@bdo.ca)); Gosnell, Sean L.  
**Subject:** 315/327 Royal York Road - Terrasan

Hi Rob,

I write to you in connection with our exchange of emails below and our call of May 15<sup>th</sup> with you, Josie Parisi and Gary Cerrato at BDO (the "Receiver"). To begin with, I confirm our understanding that the Receiver has already included the Guidelines we previously sent to you in the data room in respect of the Terrasan sale process. I further understand that you are inclined to also put that the "Agreement" and the "City Letter" (both as defined in the BLG letter dated May 8, 2017) in the data room, but that you are seeking instructions on same from the Receiver. Can you please confirm that you in fact have those instructions and advise me when the Agreement and the City Letter have been added to the data room.

During our call of May 15<sup>th</sup>, you advised that you are not agreeable to adding to the data room the BLG letter dated May 8, 2017 (the "BLG Letter"), which has as its goal, informing prospective purchasers of the Metrolinx requirements/agreements. You/BDO advised that offers have come in from prospective purchasers and that you are not sure what the intentions are of each of the prospective purchasers in terms of the future development of the Terrasan site that is adjacent to the Mimico GO Train station. I believe Josie suggested on the call that the Receiver would put purchasers who expressed an interest in meeting with Metrolinx in touch with Metrolinx. Respectfully, we do not agree with that approach. A purchaser's initial thoughts on their intentions for the site may evolve. Therefore, it is Metrolinx's position that all Phase 2 Qualified Bidder's (as defined in the Sale Process Order of Justice Conway dated April 3, 2017) should have access to the BLG Letter in the data room. Further, the Receiver should provide a list of the Phase 2 Qualified Bidder's to Metrolinx and facilitate a meeting between Metrolinx and each of the Phase 2 Qualified Bidder's so that these parties are aware of the Metrolinx requirements/agreements. Many of the matters of concern to Metrolinx involve public safety and I am puzzled by the Receiver's position on what should be a straightforward request, which also ensures that a fair and transparent process is achieved for all Phase 2 Qualified Bidder's, who should have an opportunity to engage with Metrolinx, as opposed to only those that the Receiver selects.

I remain hopeful that we can resolve these issues. In the event that we cannot do so, we will be left with little choice but to get instructions to seek the appropriate relief from the Court on these matters. May I please have a response to the matters I have raised by the close of business on May 17<sup>th</sup>. I look forward to hearing from you. Many thanks.

Regards,

Roger



**Roger Jaipargas**

T 416.367.6266 | F 416.367.6749 | [RJaipargas@blg.com](mailto:RJaipargas@blg.com)

Bay Adelaide Centre, East Tower, 22 Adelaide St W, Toronto, ON, Canada M5H 4E3

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**From:** Jaipargas, Roger  
**Sent:** May-12-17 11:39 AM  
**To:** Kennedy, Robert  
**Cc:** Gosnell, Sean L.; Parisi, Josie  
**Subject:** RE: 315/327 Royal York Road - Terrasan

Hi Rob,

I write to you further to your email below and our exchange of emails of May 11<sup>th</sup> wherein, I was hoping to set up a call with you and Josie Parisi at BDO to discuss your email below and the concerns of our client, Metrolinx, in connection with same. I understand that you were travelling yesterday and that Josie is not be available until Monday, May 15<sup>th</sup> for a call at any rate. In connection therewith, please advise if you and Josie would be available for a call with my partner, Sean Gosnell and I on May 15<sup>th</sup> at 11:30AM. If that date/time works, I will circulate a dial in number.

Rob, Metrolinx is very concerned that the Receiver has advised that it will not be including in the data room that is being maintained as part of the sale process the City Letter, the Agreement (both as defined below) and the BLG letter dated May 8, 2017 (the "BLG Letter"). We see no basis for the Receiver to take this position. In a meeting that was held at our office between representatives of Metrolinx and the Receiver a few weeks ago, we specially discussed a letter along the lines of the BLG Letter being sent to the Receiver for inclusion in the data room, so that prospective purchasers are made aware of the Metrolinx requirements/agreements. We have been advised by our client that they have been contacted by a prospective purchaser who was seeking information on the Metrolinx requirements/agreement renewals. It would be of assistance to prospective purchasers and to Metrolinx to ensure that all prospective purchasers are given the same information and are placed on an equal footing. In fact Schedule "A" (the "Sale Process") to the Sale Process Order of Justice Conway dated April 3, 2017 (the "Sale Process Order") provides that: "The Sale Process is intended to solicit interest in an acquisition of the Assets, under a fair and competitive sale process pursuant to which all qualified interested parties will be provided with a fair and equal opportunity to participate in the Sale Process." The position taken by the Receiver in your email below with regard to the requests made by Metrolinx is at odds with the Sale Process and I would urge the Receiver to revisit their position on the request made by Metrolinx. Further, in your email below, you advise that "the Correspondence is not relevant to the Sale Process and seems to impose a seller's condition on the sale of the assets, outside the Court approved Sale Process". I am puzzled by that comment and I am seeking clarification with regard to same.

We are hoping that we can work through these issues with the Receiver. In the event that we cannot do so, we intend to seek instructions to bring a motion in the receivership proceedings for such relief from the Court as is necessary and appropriate in the circumstances. Please advise if you and your client are available for a call on May 15<sup>th</sup> at 11:30AM. Also, please ensure that my partner Sean Gosnell and I are added to the service list in these proceedings as counsel for Metrolinx. I look forward to hearing from you.

Regards,

Roger

---

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**From:** Kennedy, Robert [<mailto:robert.kennedy@dentons.com>]

**Sent:** May-11-17 10:53 AM

**To:** Jaipargas, Roger; Gosnell, Sean L.; Parisi, Josie

**Subject:** RE: 315/327 Royal York Road - Terrasan

Roger:

Josie has been addressing the Metrolinx matters. Can you tell us what the immediate concern is? I'm happy to make myself available.

Robert

 **Robert J. Kennedy**

Partner

D +1 416 367 6756 / +1 403 268 7161

[robert.kennedy@dentons.com](mailto:robert.kennedy@dentons.com)
[Bio](#) | [Website](#)

Dentons Canada LLP

77 King Street West, Suite 400, Toronto-Dominion Centre Toronto, ON M5K 0A1 Canada

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**From:** Jaipargas, Roger [<mailto:RJaipargas@blg.com>]

**Sent:** 11-May-17 10:35 AM

**To:** Kennedy, Robert; Gosnell, Sean L.; Parisi, Josie

**Subject:** RE: 315/327 Royal York Road - Terrasan

Thanks Rob. We are concerned about waiting until next week. Can Gary take the call at 4:30 today then? He was also at the meeting between the receiver and Metrolinx at our office, so he is alive to the issues discussed. Thanks.

Roger

---

**From:** Kennedy, Robert [<mailto:robert.kennedy@dentons.com>]  
**Sent:** Thursday, May 11, 2017 10:26 AM  
**To:** Jaipargas, Roger; Gosnell, Sean L.; Parisi, Josie  
**Subject:** RE: 315/327 Royal York Road - Terrasan

I just finished speaking with Josie. Unfortunately, Josie is unavailable until Monday. I do think it would be helpful to have Josie on the call.

Let me know your thoughts.

Robert

 **Robert J. Kennedy**  
Partner

D +1 416 367 6756 / +1 403 268 7161  
[robert.kennedy@dentons.com](mailto:robert.kennedy@dentons.com)  
[Bio](#) | [Website](#)

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**From:** Jaipargas, Roger [<mailto:RJaipargas@blg.com>]  
**Sent:** 11-May-17 10:11 AM  
**To:** Kennedy, Robert; Gosnell, Sean L.; Parisi, Josie  
**Subject:** RE: 315/327 Royal York Road - Terrasan

Sorry Rob. I have a call then. I can do 4:30 if that works for Sean?

Roger

---

**From:** Kennedy, Robert [<mailto:robert.kennedy@dentons.com>]  
**Sent:** Thursday, May 11, 2017 10:00 AM  
**To:** Jaipargas, Roger; Gosnell, Sean L.; Parisi, Josie  
**Subject:** RE: 315/327 Royal York Road - Terrasan

Roger:

I am travelling this morning and afternoon. But can be available for 3pm if that works?

Robert

 **Robert J. Kennedy**  
Partner

D +1 416 367 6756 / +1 403 268 7161  
[robert.kennedy@dentons.com](mailto:robert.kennedy@dentons.com)  
 Bio | Website

Dentons Canada LLP  
 77 King Street West, Suite 400, Toronto-Dominion Centre Toronto, ON M5K 0A1 Canada

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**From:** Jaipargas, Roger [<mailto:RJaipargas@blg.com>]  
**Sent:** 11-May-17 9:52 AM  
**To:** Kennedy, Robert; Gosnell, Sean L.; Parisi, Josie  
**Subject:** RE: 315/327 Royal York Road - Terrasan

Rob,

Thank you for your email below. Needless to say we are very concerned with the response from the receiver on this. I do not know what you mean when you say that “the Correspondence is not relevant to the Sale Process and seems to impose a seller’s condition on the sale of the assets, outside the Court approved Sale Process”. Are you available for a call with Sean and I today at 2PM? I would be delighted if Josie joined that call. If that works, we can use the following dial in number:

Toll-free Dial-in: 1-800-387-6216  
 Local Dial-in: 416-443-4559  
 Conference ID: 1339651

Many thanks.

Roger



**Roger Jaipargas**

T 416.367.6266 | F 416.367.6749 | [RJaipargas@blg.com](mailto:RJaipargas@blg.com)  
 Bay Adelaide Centre, East Tower, 22 Adelaide St W, Toronto, ON, Canada M5H 4E3

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**From:** Kennedy, Robert [<mailto:robert.kennedy@dentons.com>]  
**Sent:** Wednesday, May 10, 2017 6:44 PM



**To:** Gosnell, Sean L.; Parisi, Josie  
**Cc:** Jaipargas, Roger; Xie, Ann  
**Subject:** RE: 315/327 Royal York Road - Terrasan

Thank you for the attached and the discussion.

The Receiver has reviewed your correspondence dated May 8, 2017 (the “**Correspondence**”). Your client has asked that the Correspondence, the “Agreement” and “City Letter” be included in the data room. The Receiver is of the view that the Correspondence is not relevant to the Sale Process and seems to impose a seller’s condition on the sale of the assets, outside the Court approved Sale Process. The Receiver will not be including the Correspondence in the data room (including, until further discussion, the “Agreement” and “City Letter”). As for the Guidelines, we anticipate that the Guidelines are a public document readily available at Metrolinx for the public. The Guidelines are helpful for the Sale Process and the Receiver has included the Guidelines in the data room.

Regards,



**Robert J. Kennedy**

Partner

D +1 416 367 6756 / +1 403 268 7161

[robert.kennedy@dentons.com](mailto:robert.kennedy@dentons.com)

[Bio](#) | [Website](#)

Dentons Canada LLP

77 King Street West, Suite 400, Toronto-Dominion Centre Toronto, ON M5K 0A1 Canada

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**From:** Gosnell, Sean L. [<mailto:SGOSNELL@blg.com>]  
**Sent:** 8-May-17 10:57 AM  
**To:** Parisi, Josie; Kennedy, Robert  
**Cc:** Jaipargas, Roger; Iris Tam ([Iris.Tam@metrolinx.com](mailto:Iris.Tam@metrolinx.com)); Xie, Ann  
**Subject:** 315/327 Royal York Road - Terrasan

Ms. Parisi and Mr. Kennedy,

Please see letter attached.



**Sean L. Gosnell, LLM**

Incorporated Partner

T 416.367.6120 | F 416.367.6749 | [SGOSNELL@blg.com](mailto:SGOSNELL@blg.com)

Bay Adelaide Centre, East Tower, 22 Adelaide St W, Toronto, ON, Canada M5H 4E3

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June 29, 2016

Derek Brunelle  
Assistant Planner, Community Planning  
City Planning Division  
City of Toronto  
2 Civic Centre Court, 3<sup>rd</sup> Floor  
Toronto, Ontario  
M9C 5A1

**Subject: 327 Royal York Road Residential Condominium Development  
Notice of Approval Conditions - Pre-Approval Conditions  
GO Transit (Metrolinx) Clearance**

Dear Derek,

The purpose of this letter is to provide clearance of the GO Transit (Metrolinx) Pre-Approval Conditions, as set out in the Notice of Approval Conditions (dated April 1, 2015), for the residential condominium development at 327 Royal York Road. The GO Transit conditions are covered in section 6; three different issues are covered under that heading. I note that there are also CN Rail conditions set out in sections 7 and 8; as Metrolinx purchased the adjacent rail corridor from CN, I will provide clearance for those items as well.

I note that some of the matters addressed herein remain in progress as of the date of this letter; we have assurances from the developer that same will be addressed in a timely manner and we therefore have no concerns in this regard.

6. Building Setback: The building setback is comprised by a combination of horizontal and vertical distances and measures a total of 26.3 metres, which suitably reflects GO Transit requirements with a crash wall in place (as is the case here).

6. Drainage: I am in receipt of a letter prepared by Eaglebrook Engineering Ltd. and dated July 14, 2014 which notes that stormwater drainage will be contained on-site and will not impact Metrolinx property. I have no further concerns in this regard.

6. Development Agreement/Environmental Easement: A draft Development Agreement has been prepared and will be finalized once the acoustical documentation is complete. The Environmental Easement is currently in the process of being registered on title for all residential units in the building.

7. (CN) Noise and Vibration Study: Metrolinx staff are currently working with the development team to refine the acoustical analysis for this building. Questions regarding certain future operational parameters have presented challenges. We will work towards timely resolution while ensuring that the analysis is completed to the satisfaction of Metrolinx.

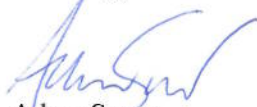
97 Front Street West  
Toronto, Ontario M5J 1E6

97, rue Front Ouest  
Toronto (Ontario) M5J 1E6

8. (CN) Environmental Easement: As noted above, the Environmental Easement (in favour of Metrolinx) is currently in the process of being registered on title for all residential units in the building.

I trust that this letter suitably addresses GO Transit/Metrolinx-related Pre-Approval Conditions. Please feel free to contact me should you have any additional questions.

Sincerely,

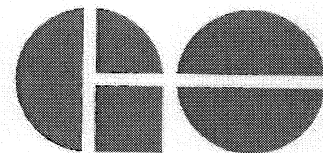


Adam Snow

Third Party Projects Officer - Railway Corridor Management Office

cc: Jeff Bateman, Michael Kitagawa - Metrolinx





June 29, 2016

Luis Correia  
 Director of Development and Planning  
 Stanton Renaissance  
 93 Skyway Ave., Unit 210  
 Toronto, Ontario  
 M9W 6N6

**Subject: 327 Royal York Road Residential Condominium Development  
 Metrolinx Notice of Approval Conditions (NOAC) Clearance  
 Outstanding Items**

Dear Luis,

Further to our on-going discussions regarding Metrolinx conditions of approval for your residential condominium project at 327 Royal York Road, we acknowledge that the majority of our concerns have been addressed. As you are aware, however, we are still working together to come to a resolution regarding the content of the subject acoustical analysis, and references to that documentation are required for finalization of the Adjacent Development Agreement.

We recognize that there is some urgency to get started with your construction program, and that Metrolinx clearance is required to initiate same. We will therefore agree to provide said clearance on the basis that you, representing Terrasan 327 Royal York Road Limited, agree to the following conditions, to be resolved in a timely manner following issuance of the subject building permit by the City:

- Work with Metrolinx staff to resolve the content of the acoustical analysis to the satisfaction of Metrolinx; and
- Finalize and execute the Adjacent Development Agreement.

If these terms are acceptable, please sign the letter below and return to me at your earliest convenience.

Sincerely,

Adam Snow  
 Third Party Projects Officer  
 Railway Corridor Management Office

Signed on behalf of  
 Terrasan 327 Royal York Road Limited

Luis Correia  
 Director of Development and Planning  
 Stanton Renaissance

cc: Jeff Bateman, Michael Kitagawa - Metrolinx

97 Front Street West  
 Toronto, Ontario M5J 1E6

97, rue Front Ouest  
 Toronto (Ontario) M5J 1E6

This is Exhibit "C" referred to in  
the Affidavit of Ann Xie  
sworn before me, this 24<sup>th</sup> day  
of August, 2017.



---

A Commissioner, etc.



**Xie, Ann**

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**From:** Kennedy, Robert <robert.kennedy@dentons.com>  
**Sent:** August-22-17 12:52 PM  
**To:** Jaipargas, Roger; Gosnell, Sean L.  
**Cc:** Campbell, Amanda  
**Subject:** FW: Terrasan 327 Royal York Rd. Limited - Motion August 25, 2017  
**Attachments:** Motion Record (AVO) returnable August 25 2017 - Part 1 of 2.pdf

The below bounced back as the file was too big to be accepted by your email.

Attached is Part 1 of 2.

Robert



**Robert J. Kennedy**  
 Partner

D +1 416 367 6756 / +1 403 268 7161  
[robert.kennedy@dentons.com](mailto:robert.kennedy@dentons.com)  
[Bio](#) | [Website](#)

Dentons Canada LLP  
 77 King Street West, Suite 400, Toronto-Dominion Centre Toronto, ON M5K 0A1 Canada

大成 [Salans FMC SNR Denton McKenna Long](#)

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**From:** Kennedy, Robert  
**Sent:** 22-Aug-17 11:52 AM  
**To:** RJaipargas@blg.com  
**Cc:** Gosnell, Sean L. (SGOSNELL@blg.com); Campbell, Amanda  
**Subject:** Terrasan 327 Royal York Rd. Limited - Motion August 25, 2017

Roger:

As discussed, attached is the Motion Record of BDO Canada Limited in its capacity as receiver and manager of Terrasan.

If you have any questions or concerns, please do not hesitate to contact me.

Regards,



**Robert J. Kennedy**  
 Partner

D +1 416 367 6756 / +1 403 268 7161  
[robert.kennedy@dentons.com](mailto:robert.kennedy@dentons.com)  
[Bio](#) | [Website](#)

Dentons Canada LLP  
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**Xie, Ann**

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**From:** Kennedy, Robert <robert.kennedy@dentons.com>  
**Sent:** August-22-17 1:19 PM  
**To:** Jaipargas, Roger; Gosnell, Sean L.  
**Cc:** Campbell, Amanda  
**Subject:** RE: Terrasan 327 Royal York Rd. Limited - Motion August 25, 2017  
**Attachments:** Motion Record (AVO) returnable August 25 2017 - Part 2 of 2.pdf

Attached is Part 2.



**Robert J. Kennedy**  
 Partner

D +1 416 367 6756 / +1 403 268 7161  
[robert.kennedy@dentons.com](mailto:robert.kennedy@dentons.com)  
[Bio](#) | [Website](#)

Dentons Canada LLP  
 77 King Street West, Suite 400, Toronto-Dominion Centre Toronto, ON M5K 0A1 Canada

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**From:** Kennedy, Robert  
**Sent:** 22-Aug-17 12:51 PM  
**To:** 'rjaipargas@blg.com'; 'sgosnell@blg.com'  
**Cc:** Campbell, Amanda  
**Subject:** FW: Terrasan 327 Royal York Rd. Limited - Motion August 25, 2017

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Robert



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D +1 416 367 6756 / +1 403 268 7161  
[robert.kennedy@dentons.com](mailto:robert.kennedy@dentons.com)  
[Bio](#) | [Website](#)

Dentons Canada LLP  
 77 King Street West, Suite 400, Toronto-Dominion Centre Toronto, ON M5K 0A1 Canada

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**CENTURION MORTGAGE CAPITAL  
CORPORATION**

Applicant

-and- **TERRASAN 327 ROYAL YORK RD. LIMITED**

Respondent

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**AFFIDAVIT OF ANN XIE**

**BORDEN LADNER GERVAIS LLP**

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, Ontario M5H 4E3

**Sean Gosnell**  
**(LSUC No. 24059P)**  
Tel: 416.367.6120  
Fax: 416.367.6749

Lawyers for Metrolinx