
From: "MIN Feedback (MNR)" <minister.mnrf@ontario.ca>
Date: October 15, 2014 at 4:40:51 PM EDT
To: <e-mail address>
Cc: "Taylor, Steve (MNR)" <steve.taylor@ontario.ca>, "info@ombudsman.on.ca" <info@ombudsman.on.ca>
Subject: Message from The Ministry of Natural Resources and Forestry

October 15, 2014

<e-mail address>

Thank you for your most recent correspondence. I am responding to offer you additional information.

With regard to the use of your waterfront, the proponent, Swift River Energy Ltd. (SREL) submitted the required Environmental Screening *Statement of Completion* to the Ministry of the Environment and Climate Change (MOECC) on January 24, 2013, which indicates the proponent's successful completion of the Class Environmental Assessment (EA) for the project.

The EA requirements provide that the proponent must reasonably address public concerns, including those pertaining to water flows and velocities, to the satisfaction of the MOECC and other agencies, including the Ministry of Natural Resources and Forestry (MNRF). As indicated in my August 7, 2014 e-mail, we do not expect that the generating station would cause any significant impacts to your property [near the] site locally known as Margaret Burgess Park. Further, MNRF does not expect any significant impact to your ability to continue to safely use your waterfront for swimming and boating as a result of the generating station.

Impacts to riparian owners have been addressed through the EA and Transport Canada approvals. I understand that the proponent has obtained the required *Navigation Protection Act* approval from Transport Canada. Should you have any questions about the Transport Canada approval, we would suggest that you contact Transport Canada directly.

As you have referred to the *Lakes and Rivers Improvement Act Administrative Guide* (LRIA Guide) extensively, I have attached a copy for context.

From Section 1.1:

The purpose of this guide is to provide an overview of the Lakes and Rivers Improvement Act (LRIA), its application and the process for seeking Ministry of Natural Resources (MNR) approval to construct, alter, improve or repair water control infrastructure in Ontario.

In addition to this guide, the MNR also produces a companion series of technical bulletins and best management practices designed to provide detailed technical guidance on the design, operation and management of dams.

These documents are not intended to provide a list of mandatory requirements to be rigidly applied in all circumstances but serve to provide guidance to both MNR Regional Operations staff responsible for application review and approval and to applicants who are seeking approval under the LRIA. The guidance provided within these documents is not intended to replace the judgment of the design engineer. The primary responsibility for proper infrastructure design lies with the design engineer for the project.

The LRIA Guide is not intended to provide a list of mandatory requirements to be rigidly applied in all circumstances. In carrying out its legislative and regulatory responsibilities under the LRIA, this ministry is responsible for:

- processing applications submitted under Section 14 or 16 of the Act in a consistent manner;
- issuing approvals under Section 14, 16, 17.2 or 23.1 of the Act;
- undertaking educational initiatives to explain the purpose of the LRIA and its regulations; and
- conducting periodic compliance monitoring (inspections, selective reviews and investigations) and enforcement (including Minister's Orders) to ensure compliance with the requirements of the LRIA.

In addition, the LRIA Guide provides that the LRIA application, review and approval process should operate harmoniously and be integrated with other regulatory agency requirements.

The LRIA Guide identifies riparian rights on page 6 as follows:

1.4.2 Riparian Interests and Public Rights

A riparian owner is defined as an owner of land that fronts on to a waterbody, where the property boundary is the water's edge. Established in Common Law, riparian owners enjoy a bundle of rights associated with their property. These rights include:

- *right of access to the water;*
- *right of drainage;*
- *rights relating to the quantity (flow and level) of water;*
- *rights relating to the quality of water;*
- *rights relating to the use of water; and*
- *right of accretion.*

I understand that your property is located west of the Crown land locally known as Margaret Burgess Park and downstream from the Bala North Dam. In your e-mail, you expressed concern about your access to, and use of, your waterfront.

A riparian owner has certain rights with respect to access, quality and use of the water which are incidental to their property rights. The rights of nearby riparian owners are considered as part of the EA assessment and through the MNRF's review of applications under the LRIA.

The riparian owner's rights are personal property rights that are distinguishable from the public right of navigation. For example, the right of access does not include any right of safe

navigation to and from a riparian owner's dock. Once a riparian owner has accessed the water, they share the same right of navigation with the public generally. Impacts to navigation must be reviewed by Transport Canada and, as mentioned above, we understand that the proponent has received *Navigation Protection Act* approval from Transport Canada regarding the proposed waterpower facility.

Again, any questions about the Transport Canada approval or impacts to navigation should be addressed to Transport Canada directly.

Section 1.42 of the LRIA Guide advises that:

Applicants must make every effort to protect the interests of land owners who will be impacted by the proposed works. For instance, where temporary or permanent flooding of land will occur, or riparian rights will be negatively impacted, a formal land tenure document, consent or release from the affected owners must be obtained. Applicants are advised to seek legal advice in this regard.

As mentioned in my August 7, 2014 e-mail, MNRF regional engineering and district staff are currently reviewing the plans, specifications and supporting documentation that SREL submitted for LRIA approval. LRIA approval will not be granted until MNRF is satisfied that LRIA requirements are met.

With regard to your concern that there may be fencing on the Crown land locally known as Margaret Burgess Park as part of the public safety measures required by the proponent, it is our understanding that public access to the waters of Bala Reach and the Moon River will continue to exist. Public access will continue to be available by way of public lands fronting the Bala Reach and the publicly accessible municipal land identified as Portage Landing immediately south of the proposed waterpower development site and the Crown land north of the dam locally known as Margaret Burgess Park.

The ministry advises against recreating in waters directly adjacent to a water control structure. MNRF recently completed a public safety assessment of the North and South Bala dams that recommended a number of public safety measures, including warning signage and safety fencing. MNRF is finalizing implementation of these measures and safety fencing has been in place for two years. It is anticipated that — other than during the construction period — there will be no requirement for additional safety fencing on the Crown land locally known as Margaret Burgess Park.

As part of LRIA approvals, the proponent has submitted supporting information with respect to their planned public safety measures associated with the waterpower facility and operations. This information is currently being reviewed by MNRF regional engineering and district staff. In addition, the proponent would be responsible for ensuring public safety measures are maintained and in place for the two MNRF dams in accordance with the LRIA and reasonable practices.

The technical information provided as part of the EA and as part of the LRIA plans and specs application satisfies the ministry's requirements. If you have additional questions concerning the operating plan for flows and levels or other aspects of the waterpower project, I suggest that you direct your request to the proponent, SREL.

Thank you again for writing and I trust you will find this information helpful.

Sincerely,

Tracey Mill
A/Deputy Minister

Attachment

c: info@ombudsman.on.ca
Steve Taylor, IRM Technical Specialist, MNRF