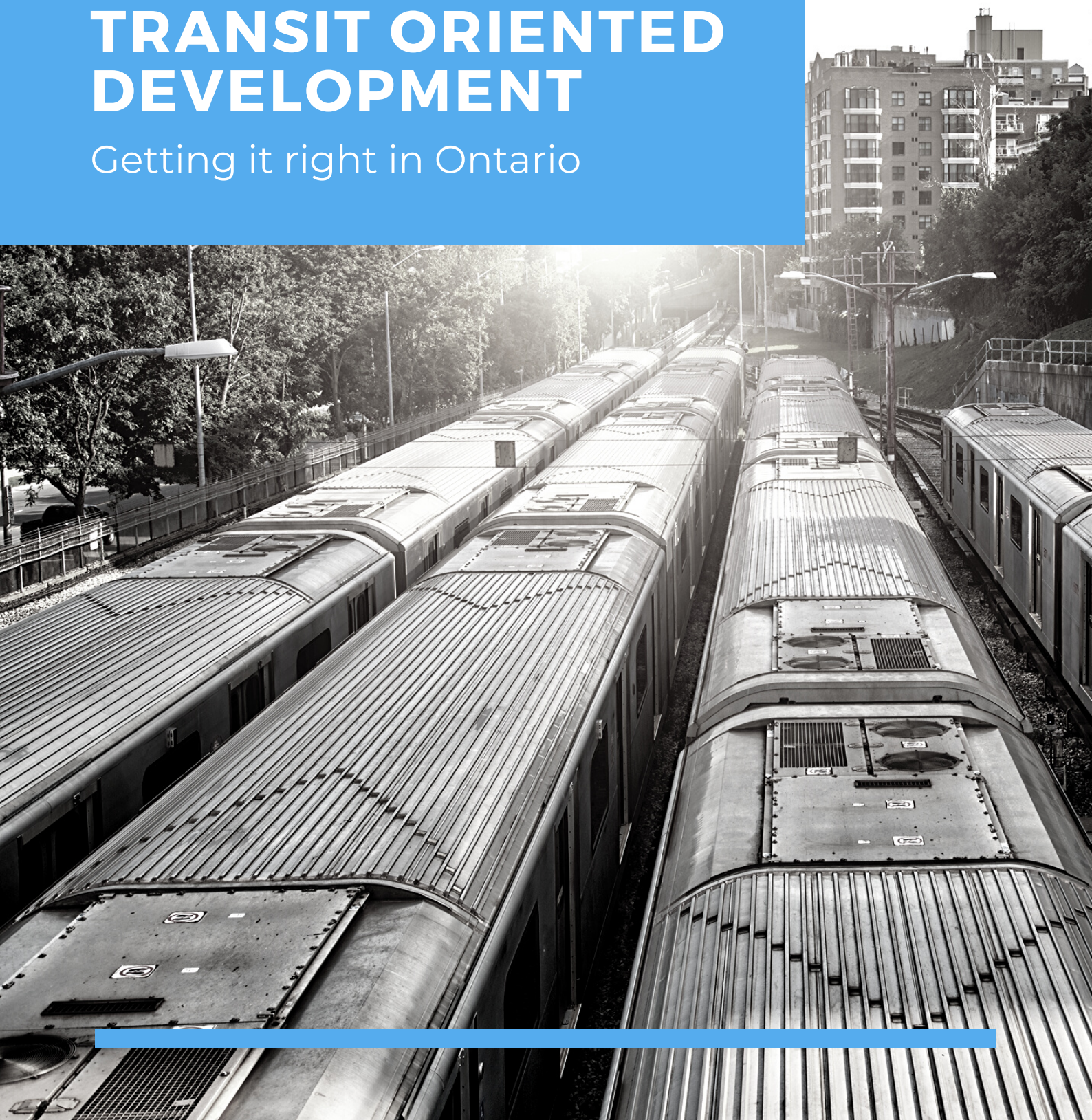


TRANSIT ORIENTED DEVELOPMENT

Getting it right in Ontario



ISSUE:

How can Ontario deliver true value for communities from Transit Oriented Development (TOD) and encourage investment in quality assets from the private sector?

Transit Oriented Development has become a key part of the Government of Ontario's transit and urban development strategy. It aims to help offset some of the costs of developing transit infrastructure, provides a better end-user experience, and helps to provide more housing and office space within walking distance from transit.

Transit Oriented Development is well-established around the world, although the idea is more common in locations with high density and high land value. The GTHA has a combination of high density/high value, and smaller density/lower value station sites.

There are also other factors that need to be considered including land ownership, site space constraints, site-specific factors, land-use designations, local stakeholder issues. This variety of factors presents unique challenges and opportunities at each site across the Metrolinx and TTC network.

Key Questions to Address:

1. How is the interface in both development time and physical space managed between both the development and infrastructure communities?
2. How will proponents resolve issues around municipal development with specific regard to scheduling?
3. What does the financing package look like for a TOD?
4. What is the most effective way to add competitive tension or get fair value?

"Transit Oriented Development (TOD) is higher density, mixed-use development that is connected, next to or within a short walk of transit stations & stops, and is designed to encourage transit use."

Metrolinx, Transit Oriented Development Implementation, April 2019

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The Future of Infrastructure Group (FIG) and the Urban Land Institute Toronto (ULI) brought together leading companies from the developer and infrastructure communities to develop recommendations as Ontario looks to shape a future market for Transit Oriented Development.

Thank you to the Urban Land Institute Toronto for jointly convening this session and Arup for kindly hosting and facilitating this session on November 6th, 2019.



ABOUT THE FUTURE OF INFRASTRUCTURE GROUP

The Future of Infrastructure Group brings together industry leaders in the sector to provide a positive, and coherent voice to help governments across Canada deliver the best value from infrastructure investments. To make the most out of Canada's planned investments, this group discusses and shares their expertise on best approaches to prioritizing, planning, purchasing, constructing, maintaining, and operating infrastructure.

Transit Oriented Development

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Report authors:

Rowan Mills
John Allen
Natalia Lasakova

Working Group Chair:

Rowan Mills, Arup

With thanks to report contributors:

Urban Land Institute Toronto, Arup, Colliers, EllisDon, Fluor, Concert Infrastructure, SNC Lavalin, WSP, PCL, Ledcor, Plenary Group, Aecon, Marsh, Global Public Affairs, WestonWilliamson+Partners, Evolve Infrastructure, Downsview Metro Devco, Tridel, DiamondCorp, CentreCourt, Dream, Brookfield Residential, Minto

KEY FINDINGS

1

Physical and Timing Interface

- **Clarity of vision:** For the infrastructure and real estate development to be successful there needs to be a clear sense of what the community and transit-users value and what the private sector developers need to make a development work. An overall vision that aligns everyone's interests and ensures the station area attracts people is essential.
- **Certainty on timelines:** Certainty around timelines for the new transit facility provides an opportunity to work collaboratively to solve physical interface issues more effectively and can create more value. Delays in process distract from the quality of the development and hamper the ability to work together on a schedule.
- **Understanding value:** Prioritizing density, zoning, land acquisition and certainty are critical to capturing value. Value can then be controlled through planning, reducing risk factors, defining the scope of project and value of land early on, and investing more upfront.

2

Real Estate v. Infrastructure Schedules

- **Alignment on risks:** Primary risks include long and unpredictable approval processes, availability of personnel and resources, decision-making ability, and understanding of project lifecycles. There needs to be alignment between different levels of government, with all levels working together with the private sector to build a strong community, with timelines that must be fixed and respected.
- **Designing to reduce risk:** For more complex projects where infrastructure constraints are very rigid in terms of schedule or there are explicit expectations on capital contributions from private sector development, the infrastructure risk can be disconnected from real estate development to make a site attractive. This could be done through technical approaches such as overbuilding and designing stations to allow future development or promoting development adjacent to stations designed to be forward-thinking and enable future connectivity and placemaking potential.

3

Physical and Timing Interface

- **Providing flexibility:** Flexibility is important in allowing developers to reasonably change plans to different uses to adapt to market conditions to make sites successful by enabling shifts between residential or commercial uses, and around schedule to allow building at the periphery first.
- **Delivering certainty:** Financing relies on certainty. Infrastructure and real estate financing work in very different ways. Given this disparity the consensus was that the government should invest upfront and look to recover costs to deliver greatest value. It makes most sense for the transit infrastructure to be financed by the relevant government agency and then for ongoing value to be captured through development charges and taxes etc.

4

Competitive Tension and Fair Value

- **Defining value:** Value needs to be defined in a way that encompasses a broader definition over the long-term based around a clear overall vision and what is important for a particular site. It should take into account project costs, potential revenues, and what is important to the community.
 - **Site-specific approaches:** In clearly setting out the value desired within a station location and an overall vision it is easier for developers to come to the table with strong proposals and know what they will be measured against. It is important that the private sector has the credentials and experience to successfully deliver the projects proposed. Then competitive tension will come through development consortia bidding on land assemblies, design competitions, or straight bids for the site based on density and bonus incentives.
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DIFFERENT STATION SCENARIOS

With 60+ sites across the Toronto Transit Commission (TTC) and Metrolinx network, opportunities around TOD need to be looked at on a site-by-site basis with different plans for every site. The different scenarios include:

Scenarios:

Site Ownership

- Privately/developer-owned
- Government owned
- Mixed

Transit Type

- Subway
- Mixed
- Surface

Location

- Urban
- Rural

Infrastructure Status

- Existing line
- Under-construction
- New line

Each site or TOD opportunity is likely to be unique given the variables and objectives at play. It is important to identify and communicate the specific TOD project opportunities and the objectives for each one. This approach is no different than the Infrastructure Ontario approach to proactively publishing its project pipeline.

A TOD program brings together the delivery and operating agencies (Infrastructure Ontario and Metrolinx), the Provincial Government and various municipalities. Clear and agreed alignment of interests and objectives of these governmental entities will be fundamental to the successful delivery of any TOD program or opportunity. Alignment on the strategy, approach and timelines for municipal approvals is critical.



GOVERNANCE AND RESOURCES

Transit-Oriented Development is a relatively new concept in the Greater Toronto Hamilton Area (GTHA) and with different levels of government involved in the process there are two primary concerns relating to governance and resources:

- **Clear decision-making:** there are many competing goals for the same area, and there is no one single entity overseeing these goals to establish priorities in an economically feasible way for developers to be able to deliver the project. There needs to be a leadership approach that drives the TOD approvals and effectively manages project risks. Provincial and municipal governments will need to work hand in hand to ensure the success of a program.
- **Adequate resources:** Municipalities often face difficulties with acquiring a sufficient number of qualified staff to drive timely and efficient approval processes on traditional development projects. The scope of the TOD program and requirements contemplated for Ontario Line will present increasing capacity issues as some staff involved in the approval process tend to be too specialized in a single area, missing the broader view for the development and its impacts to the neighbourhood/the city.

To foster greater collaboration between the province and municipalities, Metrolinx, Infrastructure Ontario, and real estate developers must work with the municipalities as partners. Tri-lateral collaboration, drawing on external expertise, is as essential for driving and expediting the decision-making process. The more goals that can be aligned from the start with the municipalities, the greater chance of the overall approach being delivered successfully. The dynamic between different levels of government at any point in time is a source of concern. The municipalities will play an important role in avoiding or resolving issues and must be engaged, it will also deliver more successful outcomes.

The suggestion was to create a body similar to Waterfront Toronto with a specific mandate around TOD. This group would evaluate projects in a more holistic way; not only in relation to metrics such as setbacks, heights; but also in terms of long-term gains and value, accessibility and infrastructure needs. They could also evaluate priorities, goals to achieve and set a clear vision. The group must be empowered to make decisions to drive things forward and have a multi-disciplinary approach for TOD (not only transportation and zoning).

A key driver of real estate development value in a project is the zoning and building envelope approval and development charges, and associated charges which are controlled by municipalities. The TOD program being driven by the Province is competing for value with municipalities. There is a need for governments to understand and appreciate this situation and to align objectives and processes.

Success Stories:

- **Manchester:** became a big active partner, focusing internal resources to become more efficient (dedicated task force) for developments that are compliant, for example Spinningfields.
- **San José:** future casting what is the vision for areas, which is helpful for consolidating priorities and goals, and expediting approval processes.
- **Waterfront Toronto:** more simplified approach, by identifying issues with stakeholders, then working with the right solutions in a timely manner (people with authority and knowledge).
- **Pan Am Athletes Village:** dedicated staff for the whole process (from procurement to delivery).
- **West Donlands for affordable housing:** closed in about four months, this is a potential model for government-owned lands.

CLARITY OF VISION

Although each station's situation is somewhat unique, there must be an overall vision developed through a transparent, collaborative process. This overall vision should focus on city-building and ensure neighbouring stations serve complementary functions by looking at the portfolio of stations and defining the overall value rather than having siloed development. This ensures there is better integration between the transit and the surrounding development.

This vision will help set clear goals that shape the density, and density planning needs around infrastructure such as utilities to service the area. The Province should then provide an official plan amendment to reflect this vision, as well as setting development charges at the right level to enable land value capture. This provides clearer guidance on what the approach is trying to achieve in terms of providing affordable housing, transit infrastructure, availability of local public services, or economic development.

A developer needs to understand the vision to be able to invest in a site and to make it attractive to the market. Ultimately for a TOD to be a success, people must want to go to the location of the station.

On a recent project in Southwest Ontario the Region had a vision on an iconic station design actually attracting more ridership, whereas the developers felt that the market actually wanted the station to be more subtle and not impact the privacy and circulation of the residential development. These were fundamental disconnects that created very serious challenges for the business case for the development.

DETERMINING VALUE

To determine value there needs to be a clear definition of what constitutes value for the government both at the provincial and municipal level. For transit agencies it may be access to capital, the infrastructure to be built in a timely manner, driving innovation. For the government the definition of value should also extend to areas such as increasing ridership or cutting congestion, improving access to housing, and reducing environmental impact. TOD provides an opportunity to locate communities closest to high-speed transit, which represents an opportunity to deliver on many different policy goals and co-locate different public infrastructure.

A good TOD can also make a positive financial contribution over the lifetime of the asset in driving greater ridership and revenues for transit agencies to offset operating costs. This should be reflected in the business case and not just the immediate costs that may be offset for station development. There needs to be a balance with what the public wants, being transparent on development needs, and making a realistic contribution to delivering the station itself.

There is also a minimum requirement in terms of density for developers to make a project viable, along with a compelling overall vision for the site area. Density translates into numbers of stories, people living at the location, and the mixture of developments. This may create local challenges with shadowing impacts onto local schools or placing a strain on the existing infrastructure like water and sewage. Given the proximity to transit, density be a priority, but there is a gap between the demand for housing at these key sites and what the city will allow.

REDUCING RISK

Municipal charges, levies and process inefficiency and delay all adversely impact or reduce overall value from a given project.

Provincial and municipal objectives and pursuit of value are almost certainly in competition with one another in a discrete project. If expectations and aggregate value being derived by governments is too high, the development pro-forma will break and the given project will no longer be feasible.

A degree of flexibility is also helpful to allow mixed-use properties address the challenge around rigid zoning that erodes the value of sites. East Harbour for example was set as a commercial site preventing the development of mixed-use communities where people can live and work. Limitations to development innovation by making developers stick too closely to indicative designs from the government have caused some challenges in previous TOD discussions.

Reducing risk factors and providing certainty will lead to more value. For developers timing is critical, and the faster the delivery is, the faster the value can be realized. Although it is the long-term certainty of the investment occurring which is most important. Implementation of the program must be as seamless as possible. Alignment of government agencies, including championing and enforcing the overall project vision and objectives will increase value.

- **Reducing length of approval process:** time adds costs for the project due to increasing interest rates, mobilization of professionals involved in the project, and changes in schedule. It creates more stressful relation with investors and clients, reducing the potential economics. This reduces the level of interest in developing a site that becomes too complicated. This also affects public-owned lands. In particular the City of Toronto development approval timelines are consistently problematic and erode value on simple stand-alone development projects.
- **Better understanding of project lifecycle:** the financial aspect in a TOD development can see many charges imposed during the construction period, which is not where the project makes the profit in the project's lifecycle. By charging too much up front it may drive away interest from the private sector to make investments.

FINANCING

Real estate developers and infrastructure developers work on different timelines and processes. A major difference is around financing:

- **Real estate developments** can be self-financing (where institutional investors are involved) or can rely on meeting 70% presales before moving ahead with development, although this number may be smaller for developers with a record of successful project development and delivery. Developers will look at all market risks before making a decision to move ahead and often work in partnership with landowners – who take the rezoning risk.
- **Infrastructure developers** involved in public-private partnerships typically have relationships structured over 30 years with payments on substantial completion and over lifetime of the asset, with steep penalties for any defects such as broken doors or escalators. They also do not retain title on the land and have to bid for projects including financing and a fixed price for construction. Usually ten percent will be equity, the rest being financed through debt. For transit though some other procurement models are being examined which may impact TOD.

In a situation where a station development relies on hitting a presales threshold it presents a major risk, and the government would likely require step-in rights or allow more flexibility around end-use, for example switching to rental properties or allowing some floors to be dedicated to commercial use such as a hotel. There appears to be little appetite for many pure real estate developers to maintain the operational part of a transit station, or to be exposed to the types of penalties common in the infrastructure world. There are some developers with experience in both real estate and infrastructure who have experience and capacity to deliver and maintain all aspects of a TOD.

For real estate there is a situation where fees can also add up around development charges, benefits charges, additional commuter parking, parks fees, which all diminish returns. Real estate developers are open to partnering with infrastructure developers, but do not want to dilute their equity too much further unless there was a risk transfer for any infrastructure driven delays with incentives for faster delivery.

There can be tremendous benefits to having infrastructure coordinate with developers directly. Reasonable expectations and flexibility around capital contributions may make it easier to strike that balance. In some cases, such as on some Regional Express Rail station sites, where developers are given more flexibility on schedule and reasonable capital contributions for the development, infrastructure and development rolled into one deal is workable because the project value is contributed in its natural course and schedule.

APPROVAL PROCESSES

To get approval for a real estate development it can take ten years or more. Recent provincial moves to help reform the approval process through Bill 108 (More Homes, More Choice Act) are seen as a significant improvement to the system but has been limited in terms of implementation so far at the city level.

As it stands the planning process can become bogged down as local communities look to reduce the number of stories and there is a time-consuming process of negotiation. There are examples in the city close to transit on the Yonge and Bloor subway lines where a development could support 30-40 stories, but the city wants 8-9 stories.

A guarantee around timelines would be very valuable, at present it is not just the process is long, it is also unpredictable and can drag on. With permitting, planning, presales, and construction the process for real estate development can drag to over ten years, which can be fraught with uncertainty.

The current process of negotiation around delivering local benefits can also be time consuming as the city looks to extract additional benefits from developments. This can develop tension between the city and the developer.

One way to address this would be around developing zones in transit corridors or around stations where a fast-track approval process applies. This approach has been successfully used in the UK, Ireland, Australia, and parts of Asia. This would aim to keep pace with the housing needs and economic development needs of the area and meets a vision for the development area.

Success Stories:

- **Ireland:** Has designated Strategic Development Zones where land is specified as being of economic or social importance, mostly based on their proximity to major public transit corridors. Once designated it allows planning authorities to fast-track the process.
- **Hamilton, ON:** Hamilton updated its zoning by-law to include a transit-oriented corridor designation to streamline approvals through a quick, straightforward and predictable process. This set minimum heights of buildings, maximum parking limits, and provisions around future stations. The city planner is also responsible for economic development, tourism and culture, transportation, business licencing, and parking which helps to ensure development is integrated and delivers value.
- **London, UK:** Opportunity Area Planning Frameworks aim to resolve issues around land use, planning strategies, public realm guidelines, land assembly, height, and phasing. They are used around designated sites that can typically provide 5,000 jobs or 2,500 new homes or a combination of the two linked to public transport.

LAND ASSEMBLIES

Another way to streamline approvals and make projects more feasible is for the government to purchase land assemblies around key locations. With segmented smaller parcels of land, it can take a lot of work getting everyone to the table and could take two years or more to get parcels together. By purchasing and assembling land the government can provide an opportunity to zone a larger area for development around a more ambitious plan that can be subject to a fast-track approval process. It also helps to capture more value and reduce timing risk and reduces uncertainty.

Land assemblies help create a competitive bid and a good station and location. People care if station attached to their building and through using land assemblies that station can be attached to four different buildings. It is also possible to get better value through developers working together rather than going head-to-head.

MITIGATING RISKS

Given the track record of transit projects getting built in Toronto, this can encourage developers to look at less risky developments that do not rely on the on-time delivery of a transit line to be a success. They may wait until shovels are in the ground before seriously considering a project. If a transit project is delayed and it has a knock-on effect that can quickly erode value and profits.

Where the station development relies heavily on the infrastructure being complete, there is an opportunity to disconnect infrastructure risk from developers through a smarter approach to design and scheduling.

- **Build adjacent to stations:** rather than building directly on top of stations, they can be built adjacent with a public square or park over the station and still integrate with surrounding developments. Schedules can also be developed to build adjacent properties first that are less reliant on the transit station opening on time and can also ensure a project is financially viable, for example at Battersea Power Station in London.
- **Overbuild stations:** stations can be developed to allow flexibility for future development through the sale of air rights. This can come through building stronger foundations /decking that can support additional stories for future private development, once demand has been met. Stations can also be designed with future development in mind with additional exits and knock out panels, providing designs in advance to cooperate with surrounding developments.

The view is that it is best for the government to invest first, provide certainty to the market, then recover, creating better competition and more long-term value. Once the province delivers the infrastructure, there is a much bigger upside in value. There is also value for the city and the province to see projects delivered more quickly as they will start generating revenue from transit ridership and taxes.

COMPETITIVE TENSION

The province and the city can unlock the value of the land and control it through planning and defining the project early and what is most valued. There are two general approaches to capturing real value:

- **Bidders can bid what the land is worth; or**
- **Government sets value based on density and developers can add other elements as sweeteners.**

Bids put forward must be realistic and credible to avoid any risk of unqualified bidders causing delays on the core infrastructure project. There should be a prequalification process based on stringent parameters such as track record, reputation, financial capability, and the ability to deliver on the vision. Where there is a complex project with a high level of integration between the real estate and infrastructure, prior experience and a track record of success will be critical. This process must give municipalities confidence that they will get a quality outcome that contributes to the fabric of the city.

There are a wide range of projects on the table that can cater to different sized bidders. The scale and complexity will guide the approach to procurement and adding competitive tension. There could also be an option to work through pilot projects at the start to refine the approach. Competitive tension can come through consortia bidding on land assemblies, design competitions, or straight bids based on density and bonus incentives.

There remains a strong view that the government should invest and claw back revenues at a later date. Ontario should also look at getting in place a strong system of tax-increment financing, looking at the examples of Washington, Los Angeles, and London.

With over 70 station sites that are candidates for Transit Oriented Development a consortium approach based on a portfolio of assets could help alignment of schedule and recovering value. This would see expropriation of parcels of land so that a consortium approach can succeed. Packages can be awarded to a consortium to reduce siloes, work from a coordinated budget, and enable contractors to raise issues from the beginning. It creates an ongoing development model and constant competitive tension with community development.

