



Residential Construction & Civil Alliance of Ontario

Constructing Ontario's Future

February 23, 2011

Mr. Jeffrey Dea
Project Officer
Ministry of the Environment
Operations Division
Environmental Assessment and Approvals Branch
2 St. Clair Avenue West, Floor 12A
Toronto, ON M4V 1L5

Dear Mr. Dea:

**Re: EBR Registry - Instrument # 011-1391
MEA Proposed Changes to Municipal Class Environmental Assessment Document**

Further to the posting on the Ontario Environment Bill of Rights Registry of Instrument #011-1391 on January 11, 2011, being changes proposed by the Municipal Engineers Association to the MEA Municipal Class Environmental Assessment process, the Residential and Civil Construction Alliance of Ontario wishes to submit its comments.

Overall the MEA's proposed changes outlined in EBR Instrument #011-1391 are a significant improvement to reduce the administrative burden associated with many routine municipal construction projects. While this is certainly positive, a number of the key recommendations contained in the RCCAO's report entitled "Are Ontario's Municipal Class Environmental Assessments Worth the Added Time and Costs?" (the '**2010 RCCAO Report**') have not yet been addressed.

1. INTEGRATION PROVISIONS

The foremost improvement is the clarification of the integration provision to ensure that project proponents are aware that a combined land use planning and Municipal Class EA process can be done. Application of this change will result not only in a reduced administrative burden but also minimize public confusion that can result during two separate consultation processes for the same infrastructure improvement. A process where consultation under the Municipal Class EA requirements is done after a legitimate planning process (such as Official Plan or Transportation Master Plans) is unnecessarily duplicative.

RCCAO recommends that there be wording specifying that if various requirements are met under the Planning Act that the Class EA obligations are fulfilled.

The RCCAO is in agreement with the MEA that the integration of Planning Act and Environmental Assessment Act consultations are optional. For example, where it is anticipated that there may be a lengthy and complex appeal to the Ontario Municipal Board on a purely Planning Act issue, such an appeal could delay any associated infrastructure that might otherwise be permitted to proceed under a separate Municipal Class Environmental Assessment.

One area that has not been addressed by the proposed amendments is the Ontario Municipal Board's jurisdiction in the event of an appeal. RCCAO recommends that there be clarification that the OMB has jurisdiction and that reference be made to matters that could be the subject of an appeal. It should also be made clear that the OMB has the authority to dismiss frivolous appeals.

RCCAO recommends that the integration provisions be widely communicated by MOE, MEA and other organizations.

2. POSITIVE CHANGES PROPOSED BY THE MEA

Other positive changes included in the MEA's proposal are as follows:

- a) **Replacement and Reconstruction of Bridges** – Reclassifying certain replacements or reconstructions of bridges which are more than 40 years old to Schedule A if the structures are not historically significant;
- b) **Streetscaping Structures** – reclassifying certain streetscaping structures and improvements as Schedule A+ instead of Schedule B projects;
- c) **Intersection Improvements** – Reclassifying intersection improvements, such as left turn lanes from a Schedule B project to a Schedule A+ project;
- d) **Roadside Parks** – Reclassifying roadside parks and picnic areas as Schedule A+ instead of Schedule B projects;
- e) **Culverts** – Reclassifying the construction of certain new culverts as a Schedule A+ project instead of a Schedule B project;
- f) **Maintenance Facilities and Storage Yards** – Reclassifying expansions or modifications to maintenance facilities and storage yards from Schedule C or Schedule B to a Schedule A project and reclassifying new facilities as Schedule A if they conform to Planning Act requirements;
- g) **Retired Water or Wastewater Facilities** – Reclassifying the retirement of Schedule B or Schedule C water or wastewater facilities as a Schedule A+ instead of a Schedule B project; and

h) **Threshold Values** – the two key threshold values of \$2.2 million and \$8.7 million that are used to distinguish certain Schedule B projects from Schedule A+ or Schedule A projects, or distinguish certain Schedule C projects from Schedule B projects are to be increased by 23% effective March 2011. It is our understanding that MEA's Monitoring Committee will be calculating new cost thresholds on an annual basis and will be notifying interested parties of the new thresholds. This threshold will be used to determine the applicable process to be followed throughout completion of the Class EA process.

3. CONCERNS ABOUT SEVERAL OF MEA'S PROPOSED CHANGES

Positive changes are being proposed by the MEA but several of the proposed changes do not fully address the concerns and recommendations found in the 2010 RCCAO Report. Examples include the following:

a) **Cultural Heritage Value** – Moving away from an automatic Schedule B project characterization for the replacement of a 40-year old bridge is a positive move to reduce unnecessary environmental assessment study costs. The new question, however, will be whether the original bridge to be replaced has 'cultural heritage value'. Such a determination has the potential to be highly subjective and the costs and delays associated with determining whether or not a bridge has a 'cultural heritage value' could require as much time and administrative effort as an environmental assessment study.

b) **Intersection Improvements** – The MEA is recommending that intersection improvements, such as new left hand turn lanes, be characterized as a Schedule A+ project instead of a Schedule B project. If the intersection improvements also include an element of traffic calming (e.g. speed bumps) then the entire project consisting of a left hand turn lane and speed bumps or other traffic calming measures may yet make such improvements a Schedule B or Schedule C project.

c) **Stormwater Management Structures** – The MEA is recommending that new stormwater retention ponds, where no additional property is required, be characterized as a Schedule A project instead of a Schedule B project. The construction of berms along a watercourse for purposes of flood control is still characterized as a Schedule B project. Given the similarities of such projects, it is suggested that both structures be considered Schedule A projects.

4. OTHER CHANGES THAT SHOULD BE CONSIDERED

In addition to the changes to the Municipal Class EA process proposed by the MEA, there are other changes, many of which were referenced in the 2010 RCCAO Report that have not been implemented, including the following:

a) **Reduced Scope for Certain Municipal Class EAs** – The 2010 RCCAO Report recommended that the review of alternatives to road widening and bridge replacement projects should not need to include alternatives to the road widening, if such alternatives have already been publicly vetted through other processes such as Official Plans. There are many municipal roads that are expected to be widened to either 4 or 6 lanes in dense commercial and retail areas across the Province. A full Schedule C environmental study may not be warranted in cases where a municipality follows the existing Official Plan and carries out such road widenings.

b) **Fast Track Certain Municipal Class EAs** – The 2010 RCCAO Report recommended that consideration be given to establishing time frames for certain municipal class road widening and other projects in a manner similar to the time frames established for certain transit projects in Ontario Regulation 231/08. While the MEA’s proposed changes move a number of projects to less stringent environmental assessment schedules, there is nothing in the MEA’s proposed changes that would make any particular Schedule B or Schedule C study faster or less expensive.

c) **Bicycle Lanes** – Road widenings and new routes to construct paved bicycle lanes are still treated in the same manner as ordinary motor vehicle lane widenings. There may be valid arguments that the addition of a paved bike lane on an existing municipal right of way should not be exempted from the requirement of an environmental assessment study, there are also arguments that a Schedule B or Schedule A+ characterization may be more appropriate than a Schedule C study given the positive greenhouse gas, noise and fitness benefits associated with bicycle and recreation paths.

d) **Transparency** – The 2010 RCCAO Report recommended some form of publicly accessible data base related to completed EA reports. The Province has already recognized a public interest in viewing prior decisions of tribunals such as the Ontario Municipal Board on certain matters (e.g., variances from local zoning bylaws), by providing free public access to prior OMB decisions. A similar argument could be made for the establishment of some form of public data base for prior Municipal Class EA reports.

e) **Delegate Review of Part II Order Requests** – RCCAO had previously recommended that the Minister have the opportunity to delegate the review of any Part II Order requests to the Director. Awaiting the decision by the Minister might in some circumstances add a significant delay to completion of a municipal class environmental assessment, for instance at times close to or following an election and in any other circumstances where requests may not be addressed on a timely basis.

5. OVERALL IMPACT OF MEA’S PROPOSED CHANGES

The MEA’s proposed changes to the Municipal Class EA process are a positive step to reducing excess costs and lengthy delays that might be associated with Municipal Class EAs. It is interesting to observe what the impact would be on the 99 municipal class construction projects that were included in the 2010 RCCAO report if the MEA’s proposed changes were implemented much earlier. If the MEA’s proposed changes had been implemented before the start of any of the 99 municipal class construction projects underlying the 2010 RCCAO report, then 13 of the 99 projects would have been characterized as either a Schedule A or a Schedule A+ project including 3 road extension projects, 3 intersection improvements, 5 bridge projects, one culvert and one storm water retention pond project. Reducing the timeframes and costs for 13 out of 99 projects is a noteworthy improvement over the existing regulatory framework.

6. CONCLUSIONS

Municipal Class Environmental Assessment studies are unique to Ontario. No other Canadian province has yet established a public review process comparable to it for projects such as arterial road widenings, bridge replacements, water and sewer service extensions or traffic calming devices. While the MEA's proposed changes to the municipal class environmental review process are likely to reduce some costs and lengthy delays, there are still opportunities to stretch our limited infrastructure dollars by implementing more of RCCAO's recommendations on municipal class environmental assessments.

Yours truly,

Andy Manahan
Executive Director

RCCAO reports and submissions relevant to this issue can be accessed at www.rccao.com under Research & Reports. These include:

- (1) Submission by the **Residential and Civil Construction Alliance of Ontario** on Proposed Revisions to Municipal Class Environmental Assessment Schedule Criteria (September 10, 2010)
- (2) "Are Ontario's Municipal Class Environmental Assessments Worth the Added Time and Costs?", prepared by Frank J.E. Zechner Professional Corporation (March 2010)
- (3) "Environmental Assessment Reform – A Tool for Economic Recovery", MMM Group Limited (February 2009)