

An Independent Study
Commissioned by



RESIDENTIAL AND
CIVIL
CONSTRUCTION
ALLIANCE OF
ONTARIO

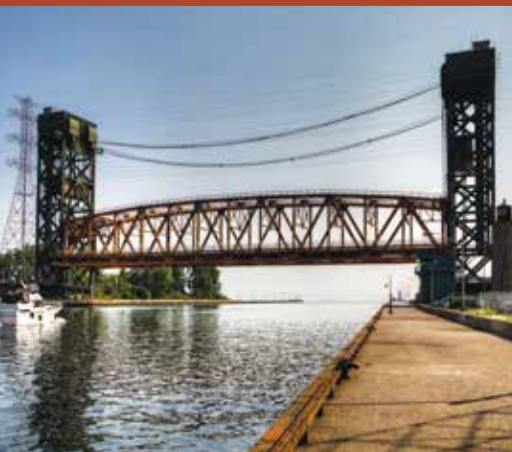
Constructing Ontario's Future



CASE STUDIES

That Support Reforming
Ontario's Municipal
Class Environmental
Assessment Process

JULY 2019



[illegible]

CASE STUDIES

That Support Reforming Ontario's Municipal Class Environmental Assessment Process

An investigative study commissioned by the
Residential and Civil Construction Alliance
of Ontario (RCCAO)

BY:

Frank J. E. Zechner,
B.A.Sc., LL.B., P.Eng.
Principal,
Frank J. E. Zechner Professional Corporation

JULY 2019



RCCAO

25 North Rivermede Road, Unit 13, Vaughan, Ontario L4K 5V4

Andy Manahan, Executive Director

e manahan@rccao.com p 905-760-7777 w rccao.com

The Residential and Civil Construction Alliance of Ontario (RCCAO) is composed of management and labour groups that represent a wide spectrum of the Ontario construction industry.

The RCCAO's goal is to work in cooperation with governments and related stakeholders to offer realistic solutions to a variety of challenges facing the construction industry and which also have wider societal benefits.

RCCAO has independently commissioned 51 reports on planning, procuring, financing and building infrastructure, and we have submitted position papers to politicians and staff to help influence government decisions.

For more information on the RCCAO or to view copies of other studies and submissions, please visit **rccao.com**

RCCAO members include:

- Carpenters' Union
- Greater Toronto Sewer and Watermain Contractors Association
- Heavy Construction Association of Toronto
- International Union of Operating Engineers, Local 793
- Joint Residential Construction Association
- LiUNA Local 183
- Ontario Formwork Association
- Toronto and Area Road Builders Association

ACKNOWLEDGEMENTS

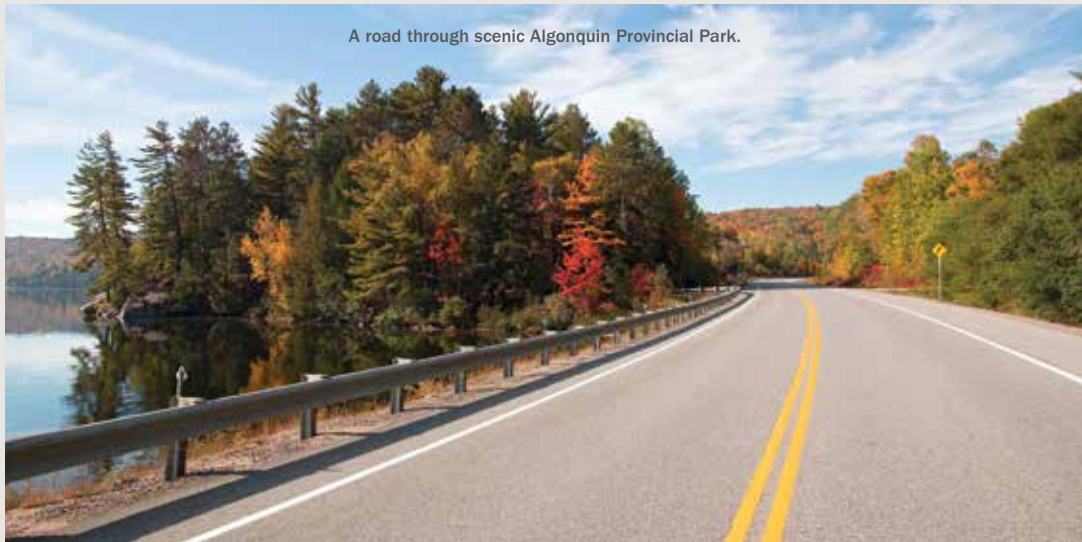
The author, **Frank Zechner**, wants to personally thank **Paul Knowles** of the Municipal Engineers Association, **Scott Butler** of the Ontario Good Roads Association and **Andy Manahan** of the Residential and Civil Construction Alliance of Ontario and acknowledge their valuable support and assistance in preparing this report.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	8
1.0 INTRODUCTION AND PURPOSE OF THIS INVESTIGATIVE REPORT	11
1.1 BACKGROUND	11
1.2 PURPOSE	11
1.3 PRIOR MCEA PROCESS STUDIES	12
1.4 SCOPE AND METHODOLOGY OF THIS INVESTIGATIVE REPORT	12
2.0 THE CURRENT PROCESS FOR MUNICIPAL CLASS ENVIRONMENTAL ASSESSMENTS IN ONTARIO	13
2.1 THE ENVIRONMENTAL ASSESSMENT ACT	13
2.2 MUNICIPAL CLASS EAs AND THE MUNICIPAL ENGINEERS ASSOCIATION	13
2.3 MCEA PROCESS	14
2.4 PART II ORDER REQUESTS (BUMP-UP REQUESTS)	15
3.0 REVIEW OF SELECTED MCEA PROJECTS	16
3.1 SELECTION OF LOCAL PROJECTS (NOT STATISTICAL SAMPLING)	16
3.2 SUMMARY OF CASE STUDIES	16
CASE STUDY 1: RIVER ROAD EXTENSION, WATERLOO REGION	16
CASE STUDY 2: COUNTY ROAD 17, PRESCOTT AND RUSSELL, OTTAWA	17
CASE STUDY 3: HILLSBURGH DAM AND BRIDGE, TOWN OF ERIN	18
CASE STUDY 4: COMBINED SEWAGE STORAGE, CITY OF OTTAWA	19
CASE STUDY 5: NORTHERN AVENUE, CITY OF SAULT STE. MARIE	20
CASE STUDY 6: CROSSING OF HWY. 404, YORK REGION	20
CASE STUDY 7: SECOND AVENUE WIDENING, CITY OF SUDBURY	21
CASE STUDY 8: REGIONAL ROAD 57, MUNICIPALITY OF CLARINGTON	22
CASE STUDY 9: 16TH AVENUE ROAD, YORK REGION	23
CASE STUDY 10: MOULINETTE ISLAND ROAD, TOWNSHIP OF SOUTH STORMONT	24
CASE STUDY 11: PARKWAY CORRIDOR, CITY OF PETERBOROUGH	24
CASE STUDY 12: NORTH RIVER BRIDGE, COUNTY OF PETERBOROUGH	25
3.3 WHAT HAPPENS WHEN MUNICIPAL INFRASTRUCTURE PROJECTS ARE NOT PART OF THE MCEA CLASS? – THE UPPER YORK SEWAGE SYSTEM PROJECT	26
4.0 SUGGESTED CHANGES TO IMPROVE THE MCEA PROCESS	27
4.1 ONTARIO AUDITOR GENERAL VALUE FOR MONEY REPORTS	27
4.2 JOINT MEA-RCCAO APPLICATION FOR REVIEW PURSUANT TO SECTION 61 OF THE ENVIRONMENTAL BILL OF RIGHTS ACT	28
4.3 MEA'S 2019 PROPOSED AMENDMENTS OF THE MCEA MANUAL	28
4.4 APRIL 25, 2019 MECF DISCUSSION PAPER AND RELATED ERO INSTRUMENTS	29
4.5 ONTARIO BILL 108 INTRODUCED MAY 2, 2019	29

5.0 ANALYSIS	31
5.1 WOULD ANY OF THE IMPROVEMENTS SUGGESTED IN SECTIONS 4.1, 4.3, 4.4 OR 4.5 HAVE MADE A POSITIVE IMPACT ON THE PROJECTS LISTED IN SECTION 3.2?	31
5.2 WOULD ANY OF THE IMPROVEMENTS SUGGESTED IN SECTIONS 4.1, 4.3, 4.4 OR 4.5 HAVE MADE A POSITIVE IMPACT ON THE PROJECT LISTED IN SECTION 3.3?	34
5.3 DELEGATING THE MINISTER'S AUTHORITY TO RESPOND TO PART II ORDER REQUESTS	34
5.4 MANDATING DEADLINES FOR THE MINISTRY'S RESPONSE TO PART II ORDER REQUESTS	35
5.5 THE SCOPE AND COMPLEXITY OF MCEA REPORTS	35
5.6 ENHANCE ACCESS AND TRANSPARENCY FOR THE MCEA PROCESS	36
6.0 CONCLUSIONS AND RECOMMENDATIONS	37
6.1 EXEMPT LOW-RISK PROJECTS FROM THE ACT	37
6.2 REDUCE THE SCOPE AND COMPLEXITY OF MCEA REPORTS	37
6.3 MANDATE THAT ANY PART II ORDER REQUEST DEMONSTRATE A DIRECT ADVERSE IMPACTS FROM THE PROPOSED PROJECT	38
6.4 DELEGATE THE MINISTER'S AUTHORITY TO RESPOND TO PART II ORDER REQUESTS	38
6.5 MANDATE REDUCED TIME FRAMES FOR RESPONDING TO PART II ORDER REQUESTS	38
6.6 ENHANCE ACCESS AND TRANSPARENCY FOR THE MCEA PROCESS	39
6.7 PROCEED WITH THE MEA'S PROPOSED AMENDMENT OF THE MCEA MANUAL	39
6.8 PROCEED WITH THE ENACTMENT OF SCHEDULE 6 TO BILL 108	39
6.9 RECOGNIZE DECISIONS THAT HAVE BEEN BASED ON PUBLIC CONSULTATION UNDER THE PLANNING ACT PROCESS	39
ENDNOTES	40
APPENDICES	
APPENDIX A: MINISTRY RESPONSE LETTER DECEMBER 2018	42
APPENDIX B: MINISTER'S RESPONSE TO PETERBOROUGH SEPT. 16, 2016	47
APPENDIX C: EXCERPTS FROM THE 2018 AUDITOR GENERAL'S REPORT	50
APPENDIX D: LIST OF SUPPORTERS FOR 2017 EBR REVIEW	63
APPENDIX E: MINISTRY'S RESPONSE TO UNDERTAKE REVIEW	64
APPENDIX F: RCCAO AND MEA SUMMARY OF STAKEHOLDER CONSULTATION OUTCOMES	66
APPENDIX G: MINISTRY LETTER OF JAN. 30 2019 AND MECP SUMMARY OF OUTCOME	70
APPENDIX H: COPY OF SCHEDULE 6 TO BILL 108	78
APPENDIX I: RCCAO AD IN ReNEW CANADA MAGAZINE'S MAY/JUNE 2019 EDITION	82

EXECUTIVE SUMMARY



The Municipal Class Environmental Assessment (MCEA) process is intended to be a streamlined alternative to the individual environmental assessments that would otherwise be required for almost all municipal infrastructure construction projects and operations as mandated by the *Environmental Assessment Act* (the Act). This investigative report is the sixth in a series of studies commissioned by the RCCAO on the MCEA process since 2009. Prior studies commissioned by RCCAO can be downloaded at rccao.com.

The MCEA process is firmly entrenched in Ontario for core municipal infrastructure such as roads, water, sewer and bridge projects. Unlike other Canadian municipalities, those in Ontario face additional hurdles and delays in implementing the one-size-fits-all process.

Previous RCCAO reports have concluded that the approval process is too time-consuming and expensive relative to the outcomes. The 2010 study examined 99 projects and found that, on average, it took about 19 months to go through the MCEA process with an estimated cost of \$113,300 per project paid by the municipalities. A follow-up study in 2014 showed that the time and costs to complete the MCEA process for similar municipal infrastructure projects continued to increase – at almost 27 months and at an average study cost of \$386,500. For both these reports, information was presented in an anonymous way by aggregating project data for the asset class (roads, bridges, sewer and water, other projects) or by Ontario region (Golden Horseshoe, Eastern and Central, Northern, Southern and Western).

By contrast, this report provides details of specific projects which have faced extraordinary delays and/or costs arising from the MCEA process. Additional delays can be attributed to slower responses in certain cases by the Ministry of the Environment, Conservation and Parks (MECP) to various requests for Part II Orders.

A total of 12 case studies are presented in this report to demonstrate how the cumbersome MCEA process contributes to lengthy and sometimes, unnecessary, processing delays. Nine projects experienced delays of between two and five years.

Another project took even longer: even after a multi-year consultation process, one road extension in Waterloo Region took five years and three months to go through the MCEA process, which included two years for the Minister to address the filing of three separate Part II Order requests.

In terms of costs, the fees paid by municipalities to retain external professionals to prepare various studies and reports and assist in public and stakeholder consultations are provided, where known. For the projects examined in Section 3.2 of this report, six out of 11 indicate that consultants and reports cost more than \$500,000 and four of those six projects had consultant and report expenses of more than \$2 million.

It is important to note that the costs listed exclude staff time and resources, which can be significant, to carry out the various consultations and other measures required by the MCEA process.

One road project in South Stormont was “pre-approved” under applicable procedures but was pushed back 12 months due to an appeal by one resident under the Part II Order process. While nine of the projects are road-oriented, two pertain to bridge structures and one is a water project intended to prevent sewage from entering the Ottawa River.

Out of the 12 case studies, a road improvement project in the City of Sault Ste. Marie, contains a good example of transparency. The Minister, in his Part II Order request response included a chart of: i) issues raised by the requests, ii) the corresponding responses of the city and iii) the Minister’s analysis.

It is important to highlight that broad public consultation is an important component of the approvals process where feedback can assist in improving project outcomes. A long-standing concern, however, expressed by the municipal sector in Ontario, is that the MCEA process can duplicate requirements under the *Planning Act* where public consultation is already a well-established practice. As such, these delays have impeded positive environmental and social outcomes such as sewage upgrades or the provision of bike lanes. Similarly, negative impacts on economic prosperity can occur when it takes too long to modernize our transportation systems by, for example, enhancing goods and people movement.

Suggested improvements for the MCEA process are derived from a variety of sources, including:

- The 2016 and 2018 Value for Money Audit Reports by Ontario’s Auditor General;
- The February 2017 Application for Review under section 61 of the *Environmental Bill of Rights Act* (EBR);
- The April 25, 2019 MECP discussion paper and associated Environmental Registry of Ontario (ERO) Instruments;
- The Municipal Engineers Association’s proposed changes to the MCEA manual;
- Ontario Bill 108, *More Homes, More Choice Act*, 2019, which received first reading in the Ontario Legislature on May 2, 2019, and was passed on June 6, 2019.

The recommendations from this investigative report include:

- 1 Exempt Low-Risk Projects from the Act** – Concerns raised in low-risk cases such as the Moulinette Island Road project are best handled by local municipal officials, not the MECP.
- 2 Reduce the Scope and Complexity of Environmental Study Reports** – The recent dramatic increase in the size and complexity of EA studies, reports and the requirement for a multitude of costly background reports requires a course correction, especially when one considers that these requirements are duplicating reviews conducted under planning legislation. The Ministry should consult stakeholders to identify how to encourage proponents to focus on key issues.
- 3 Part II Order Requests Should Be Based on Demonstrated Direct Adverse Impacts** – Given that MCEA projects are primarily for local municipal infrastructure, any person who submits a Part II Order request for an MCEA should be required to identify a direct adverse impact from the proposed undertaking.
- 4 Delegate the Minister's Authority to Respond to Part II Order Requests** – The Minister should consider delegating some or all of the Part II Order requests associated with MCEA Schedule B projects to the Director of the EA Branch.
- 5 Mandate Reduced Time Frames for Responding to Part II Order Requests** – The Ministry should transform the proposed service standards into a regulatory deadline and make any related policy and procedure changes as may be necessary.
- 6 Enhance Access and Transparency for the MCEA Process** – A province-wide centralized internet-based system would be helpful to the public to benchmark implementation of the Class EA requirements.
- 7 Proceed with the MEA's Proposed Amendments of the MCEA Manual** – The MEA's proposed changes of the MCEA manual will help to avoid many delays and additional costs for planning and constructing municipal infrastructure.
- 8 Proclaim Balance of Schedule 6 to the *More Homes, More Choice Act*, 2019 in Force** – The Province should proclaim Section 6 of Schedule 6 in force, and should pass new regulations with reasonably tight deadlines for the Ministry to render a decision on any Part II Order requests.
- 9 Recognize Decisions that Have Been Based on Public Consultations under the *Planning Act* process** – Several of the projects listed in this report had already been subject to public consultations under the *Planning Act*. Acceptance of the decisions made under the *Planning Act* can often reduce the complexity, time and costs to complete the MCEA process.

1.0 INTRODUCTION AND PURPOSE OF THIS INVESTIGATIVE REPORT



1.1. Background

Over the past decade many stakeholders, including industry and municipal associations, have been calling for improvements to the Municipal Class Environmental Assessment (MCEA) process in Ontario as the current process requires an unacceptably long time to complete and at high cost to the proponent. A major impetus for reform came in late 2016 with the release of the Auditor General's report concerning Environmental Assessments. This was followed in early 2017 with a section 61 EBR Application for Review submitted by RCCAO and MEA. While the Ministry – then called the Ministry of the Environment and Climate Change (MOECC) – accepted the EBR-based application (see Appendix E), the Ministry did not start the consultation process until the spring of 2018 and was unable to complete the review before the provincial election in June 2018.

During the preparation of this report, the more recently named Ministry of the Environment, Conservation and Parks (MECP) released a discussion paper on “Modernizing Ontario’s Environmental Assessment Program.” In addition, Schedule 6 of the *More Homes, More Choice Act*, 2019 contains several amendments to the MCEA, including the exemption of low-risk projects.

1.2 Purpose

This study identifies recent MCEA infrastructure projects that have encountered, long delays and/or high costs.

A case study approach has been taken to illustrate shortcomings in the MCEA process by reviewing selected municipal infrastructure projects. A brief determination is included on whether any of the suggested improvements described in sections 4.1, 4.2, 4.3, 4.4 or 4.5 of this report would have resulted in a different outcome for that project.

1.3 Prior MCEA Process Studies

The RCCAO has over the years expressed concerns held by its members that the Environmental Assessment process for municipal infrastructure projects in Ontario is too time consuming and expensive relative to the outcomes. In a cover letter sent to all MPPs in February 2009 to accompany RCCAO's first report on the MCEA process, it was stressed that "the process of screening alternatives frequently generates more attention than the management of environmental effects."¹ To highlight those concerns, it commissioned a number of studies and reports, including those listed below, all of which can be downloaded from rccao.com:

- Environmental Assessment Reform – A Tool for Economic Recovery (February 2009)
- Are Ontario's Municipal Class Environmental Assessments Worth the Added Time and Costs? (March 2010)
- Municipal Class Environmental Assessments: Categorization Review Study (January 2012)
- Are Ontario's Municipal Class Environmental Assessments Worth the Added Time and Costs? The 2014 Edition (March 2014)
- Comparing Ontario's Municipal Class EA System to Other Jurisdictions: Public Intervention in Local Infrastructure Projects (February 2015)

1.4 Scope and Methodology of this Investigative Report

Whereas the prior studies of 2010 and 2014 examined a large and diverse number of Ontario Municipal Class EA Schedule B or C construction projects in distinct regions of Ontario, this study is intended to review a small number of MCEA projects that encountered long delays and/or high consultant and study costs. Municipal members of the Ontario Good Roads Association (OGRA) and the Municipal Engineers Association (MEA) were asked to provide particulars of recent projects that met the criteria. It was necessary to solicit the assistance of the MEA and OGRA because the Ministry does not maintain any central public registry despite municipal and construction sector advice that this would be a worthwhile public service (searchable data would include the notices of commencement or completion of MCEA studies or the issues or reports associated with those projects).

In addition to the projects submitted by MEA and OGRA members, this report's author also undertook an independent search for relevant MCEA projects.

Transit projects were expressly excluded from the prior MCEA studies and this report because these are subject to regulatory time constraints through Ontario Regulation 231/08.²

2.0 THE CURRENT PROCESS FOR MUNICIPAL CLASS ENVIRONMENTAL ASSESSMENTS IN ONTARIO



2.1 The Environmental Assessment Act

The purpose of the Act, which dates back to 1975, is to provide for the protection, conservation and wise management in Ontario of the environment, by requiring alternatives to be considered for specific projects and activities. For Ontario's Class EA system, a comprehensive definition of the environment is used in the impact assessment process, which includes social, economic, cultural, health and of course environmental issues. The mechanism used by the Act is to require municipal proponents of projects to consult with the public, and where required, prepare a study or report on the impacts of a proposed undertaking.

Part II.1 of the Act allows for class environmental assessments so that projects falling within a defined class would not be required to formulate and consult with the public on terms of reference.

The Municipal Class includes the construction and operation of municipal infrastructure such roads, bridges, sewers, drinking water distribution systems, wastewater management systems, as set out in the MCEA manual, as approved by the Lieutenant Governor in Council from time to time. The Municipal Class is one of 10 separate environmental assessments classes that have been approved by the Ministry of the Environment, Conservation and Parks (the "Ministry").

On April 25, 2019, the Ministry posted two instruments on the Environmental Registry for public comment by no later than May 25, 2019.³

2.2 Municipal Class EAs and the Municipal Engineers Association

The Municipal Engineers Association (MEA) was established to provide unity and focus for licensed engineers employed by Ontario's municipalities by addressing issues of common concern and by facilitating the sharing of knowledge and information.

The MCEA system is a collaborative effort between the Ministry and the MEA to allow municipal infrastructure projects to comply with the Act in an efficient and timely manner through a series of steps, documents and procedures as outlined in a document referred to as the MCEA manual. This manual was developed in the 1980s and it has been approved under Part II.1 of the Act for most municipal infrastructure projects and activities.

The Municipal Class of environmental assessments consists of four separate types (schedules) of municipal projects:

Schedule A projects are deemed to be pre-approved by the Ministry and consist of routine maintenance and replacement of municipal infrastructure elements, such as the repaving of roads, the replacement of cracked sidewalks, aging water pipes, with works of similar design and capacity.

Schedule A+ projects generally have a greater potential for some environmental impact, but are also pre-approved, subject to the public being advised (usually by a printed newspaper notice or Internet posting) prior to project implementation.

Schedule B projects generally include improvements and minor expansions to existing facilities. The estimated capital cost of the proposed expansion is often used as a means of distinguishing between minor and major expansions. Schedule B projects are concluded by the completion of a Project File Report outlining the consultation and environmental impacts.

Schedule C projects generally include the construction of new facilities and major expansions to existing facilities and infrastructure. Schedule C projects require a more comprehensive Environmental Study Report to describe the consultation efforts and issues.

Note that certain infrastructure projects undertaken by a municipality may not fit within any of the prescribed schedules of MCEA projects, and as a result would not qualify as an MCEA class, therefore requiring a full environmental assessment with terms of reference approved by the Minister. An example of a municipal infrastructure project falling outside of the MCEA class is the York Region Sewage System project, which is discussed in section 3.3 of this report.

2.3 MCEA Process

In most cases, Schedule B and Schedule C projects will proceed through the various steps requiring municipal council approval and planning, including any Official Plan changes under the *Planning Act* and budget approval for capital expenditures. A third-party environmental/engineering consultant is often retained to undertake an environmental study or prepare a report. Public consultation is initiated through the publication of a Notice of Commencement, which will describe the proposed undertaking as well as opportunities for public information and comments.

The project may require multiple public consultations as well as consultations with other government agencies such as local conservation authorities and other communities such as Indigenous people, where there may be a direct impact or this is a territorial claim for the lands upon which the improvement or activity is planned. The consultations will allow the

project proponent (municipality) and consultant to identify a preferred option or design for the improvement. The entire consultation process and various investigations are documented in an environmental study report, which is provided to the municipal council for approval. Upon council approval, a Notice of Completion is published, and subject to any requests for a Part II Order, the project proceeds through the normal course.

There do not appear to be any publications indicating the time frame that the Ministry expects for completion of the MCEA process for various schedules of projects, or the costs to prepare the required reports and investigations. The MCEA manual does not currently identify any timeframe to complete the MCEA process, it focuses on what steps are needed to complete the MCEA process for specific types and Schedules of infrastructure projects.

2.4 Part II Order Requests (Bump-Up Requests)

Upon the completion of the EA Study report, a Notice of Completion must be posted by the proponent municipality for a 30-day public comment period. There is no requirement for the municipality to actually post a copy of the report, but the report must be available for inspection during the comment period at a public place such as municipal offices. During that period, any interested person may, pursuant to Section 16 of the Act, make a request to the Minister for an order, under Part II of the Act, to require an individual environmental assessment with terms of reference (these are also known as “Bump-Up requests”).

The Auditor General’s 2016 report noted that the Bump-Up request for MCEA projects must be approved or denied by the Minister but that multiple levels of review were required within the Ministry’s hierarchy (Director, Assistant Deputy Minister, Deputy Minister, Minister). Originally, Bump-Up requests were targeted to be completed within 45 to 66 days, but the targets were rarely, if ever, met. Typically, between 10 and 20 MCEA projects per year are subject to one or more Bump-Up requests. In 2010, the MEA reported that the Ministry denied all 26 Bump-Up requests.

The time frame for responding to Bump-Up requests has been increasing since the early 2000s. Between April 2010 and January 2016, the average response time for Bump-Up requests was 213 days. The Auditor General’s 2018 report stated that between January 2016 and June 2018, the Minister received 73 separate Bump-Up requests, which took an average of 274 days to review and respond. While the Ministry has since early 2017 taken several steps to reduce the time taken to respond to Bump-Up requests, it is not yet possible to conclude whether or not there has been a significant improvement.

The significance of Bump-Up requests is that all work to process an infrastructure project comes to an immediate halt until the Minister or Ministry decides whether the Part II Order request has merit. Municipalities thus face additional uncertainty, as to whether the project will proceed. During the financial and economic crises of 2008-2010, senior governments offered stimulus funding, but many Ontario municipalities could not apply because the MCEA process, including the risk of a Bump-Up request, would have taken longer than the life of the incentive programs. Instead, municipalities applied for hastily organized projects such as resurfacing roads which were not required to proceed through the lengthy MCEA process.

3.0 REVIEW OF SELECTED MCEA PROJECTS



3.1 Selection of Local Projects (Not a Statistical Sampling)

The mandate for this investigative report was to find between 10 and 12 recently completed MCEA projects that required a relatively long time to complete and/or incurred extraordinary study costs which were related to process inefficiencies. Municipalities who are members of the OGRA were asked to share details of projects, as were members of the Municipal Engineers Association (Ontario). The report author also conducted an Internet-based search to source additional MCEA projects.

For comparison purposes, the report has incorporated one MCEA project in which the process was efficiently completed with minimal complications. Including this project, there are a total of 12 case studies.

3.2 Summary of Case Studies

CASE STUDY 1

River Road Extension

Region of Waterloo

MCEA Process Time: 63 Months

Consultant/EA Study Costs: \$2 million plus (author's estimate)

This was a Schedule C project for a four-lane, 3.6-kilometre extension of River Road from Manitou Drive to link up with King Street through a natural area known as Hidden Valley at an estimated capital cost of about \$72 million.

A Notice of Study Commencement was initially published in September 2006. Given impacts on wetlands and other natural habitats, the project was suspended in early 2007 and resumed in September 2011.

The Environmental Study Report was approved by Regional Council in March 2014 and a Notice of Completion was then posted. Consultation and study work spanned 34 months, plus the four-year study suspension, during which time was needed for negotiations and to meet with various interest groups. Study and consultant costs were unavailable but are estimated by this author to have exceeded \$2 million.

Notwithstanding eight years of in-depth consultations and studies, three separate Part II Order requests were filed objecting to the proposed project in June and July 2014. The Minister responded in June 2016 denying the requested individual environmental assessment but imposed additional conditions on the project to undertake further investigations to minimize adverse impacts from road salt on the extended roadway.

The Part II request added a delay of 24 months for the Minister to render a decision plus four months for additional investigations related to road salt impact. Preliminary relocation of utilities started in spring 2019 and the first phase of construction will bring the road from Manitou to Wabanaki and Hidden Valley Road. The second phase which involves a new bridge over Hwy. 8, will link to King Street by 2023.

CASE STUDY 2

County Road 17 Improvements

United Counties of Prescott and Russell, City of Ottawa

MCEA Process Time: 58 Months

Consultant/EA Study Costs: \$2.7 million

The United Counties of Prescott and Russell and the City of Ottawa were co-proponents of an MCEA Schedule C road widening (from two to four lanes) and improvement project for a continuous road of 36 kilometres which is known as Ottawa Road 174 in Ottawa and County Road 17 in the United Counties of Prescott and Russell. The capital cost of the project was estimated to be \$446 million.

A notice of study commencement was published in November 2012 showing various new cross sections for various parts of the road that would include a cycling lane, pedestrian walkways and green spaces. None of those features would be continuous over the full 36-kilometre distance. Consultant services, special investigations and preparation of the EA Study Report cost the municipalities about \$2.7 million.

In June 2016, about 43 months after commencing the consultation efforts, a Notice of Completion was posted. Eight separate Part II Order requests were submitted in June and July 2016 on the grounds that the proposed project would alter the character of local neighbourhoods and alleging that the study area did not cover a large enough geographical area. More than 15 months after the Part II Order requests were received, the Minister denied the request but imposed additional conditions, including that the proponents consider dedicated cycling lanes, undertake additional noise studies and hold at least one additional public meeting with updated design details. Perhaps because the study area included parts of the City that will soon be serviced by an LRT project that is nearing completion, the Minister

also required that the LRT extension must have been operational for at least 12 months before construction of a certain section of the roadway in Ottawa.

The Minister's conditions also required that the City of Ottawa undertake an additional review of widening from four to six lanes for a specified section of the road near Hwy. 417. Results of the additional review must be documented in a report and must be publicly posted at least 60 days prior to the start of construction. The Minister went further by specifying that the term "commencement of construction" will be deemed to be the earlier of tendering for the project and physical construction activities.

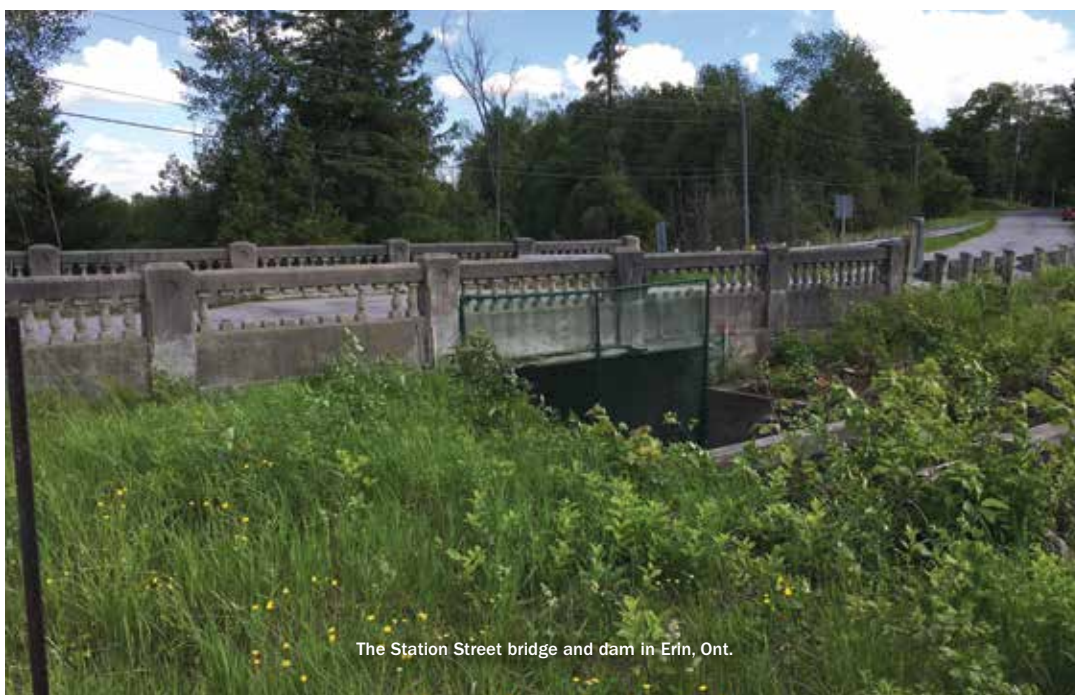


Photo: Frank Zechner

The Station Street bridge and dam in Erin, Ont.

CASE STUDY 3

Hillsburgh Dam and Bridge

Town of Erin

MCEA Process Time: 38 Months

Consultant/EA Study Costs: \$100,000 (author's estimate)

The Station Street Bridge in the Town of Erin dates back to 1915 and was identified in 1971 as failing and in need of replacement with a modern structure. Emergency repairs were undertaken in 2012 and engineering work on a new structure commenced shortly thereafter. A Notice of Study Commencement was initially published in September 2014 for the Schedule B bridge replacement project. The bridge is connected to and forms part of the Hillsburgh dam structure, which in turn impacts several water bodies and natural habitats.

By May 2016, it was clear to the Town that the preferred alternative was to rehabilitate the dam and reconstruct the bridge at a capital cost of approximately \$2.5 million. The Notice of Study Completion was posted in December 2016 – 27 months after study commencement. Consultant and engineering costs for the report are estimated by the author at about \$100,000.

A Part II Order request for an individual environmental assessment was submitted in February 2017 by an environmental interest group that is based far away from the study site near the Town of Whitefish in northern Ontario, objecting to the proposed project. Almost one year later, the Minister's office denied the request (in January 2018), but imposed conditions on the project to undertake further consultations with the Ministry of Natural Resources and the Credit Valley Conservation Authority regarding contingency plans for extreme storms and other weather events. Another condition was to undertake a further study on potential impacts to the quality of the water table aquifer during construction. The Town was also required to post detailed documentation on mitigation measures with the County of Wellington on a publicly accessible website and to notify the Ministry prior to project implementation.

The Part II request added a delay of 12 months for the Minister to render a decision plus six months for additional investigations and consultations.

CASE STUDY 4

Combined Sewage Storage

City of Ottawa

MCEA Process Time: 39 Months

Consultant/EA Study Costs: amount unavailable

The Combined Sewage Storage Project was one of 17 separate projects forming the Ottawa River Action Plan to improve the overall health of the Ottawa River. Due to the fact that heavy rains and/or snow melt might direct more wastewater into the local sewer system than the system can process, untreated excess sewage had been discharged directly into the Ottawa River. The storage project, which consists of a series of new tunnels and underground storage tanks, would divert that excess sewage from the river and store it until inflow rates had subsided and the wastewater treatment plant could take on additional volumes. In short, the completion of this \$120-million project would make a material improvement to the water quality of the Ottawa River.

A Notice of Commencement of the study for this Schedule C project was published in November 2009. Following about a half-dozen open houses and other consultations over a 39-month period, the Notice of Completion was published in January 2013. Although the project would improve the health of the Ottawa River, residents were concerned about the noise, dust, vibrations and traffic to build the tunnels and excavate cavities for the tanks. There were also a number of permanent disruptions to local residents as new control buildings would be required. Altogether, 11 separate alternative designs were presented to stakeholders and considerable time and effort were needed to reach a consensus on preferred design. There were no Part II Order requests for this project.

CASE STUDY 5

Northern Avenue Corridor Improvements

City of Sault Ste. Marie

MCEA Process Time: 33 Months

Consultant/EA Study Costs: amount unavailable

This was a Schedule C project for realignment, a cycling path and other road improvements to Northern Avenue in the City of Sault Ste. Marie, with an estimated capital cost of \$2.5 million. A Notice of Study Commencement was published in March 2016. A Notice of Completion was approved 28 months later in July 2018.

Two separate Part II Order requests were made by local residents. One request, which was withdrawn before the Minister's decision, concerned traffic congestion near a high school.

The other request was based on the view that the proposed project would not do enough to improve traffic. Within five months, the Minister denied the request for an individual environmental assessment and did not impose any additional conditions.

This was a good example of transparency as the Minister included a chart of issues raised by the requests, the corresponding responses of the city and the Minister's analysis. A copy of the Minister's response is reproduced in Appendix A.

CASE STUDY 6

Crossing of Hwy. 404

York Region

MCEA Process Time: 29 Months

Consultant/EA Study Costs: \$500,000 plus

This was a Schedule C project for a new local road and overpass connecting two residential areas that had been separated by Hwy. 404. A Notice of Commencement was issued in June 2016 and the report was completed 18 months later in December 2017 with the publication of a Notice of Completion. The capital cost of the project is estimated at \$32 million and more than \$500,000 had been spent on consultants' investigations and reports.

Three requests for Part II Orders were received by the Ministry, citing various grounds for a full environmental assessment, including: traffic impacts to residential areas, air pollution, noise, the Region not considering an appropriate range of alternatives, the Region not sufficiently considering alternative modes to automobiles, impacts to the vision, look and feel of a carefully planned and designed community in the study area, and not providing sufficient consultation.

The Minister responded 11 months later in November 2018 by denying all three requests and refusing to impose any additional obligations on the proponent as the consultation was very thorough and addressed all relevant issues.

CASE STUDY 7

Second Avenue Widening

City of Sudbury

MCEA Process Time: 27 Months Plus

Consultant/EA Study Costs: \$200,000 (author's estimate)

This was a Schedule C project for a road widening and other improvements to a 3.4-kilometre section of Second Avenue (a.k.a. Municipal Road 72) in the City of Sudbury. Prior to the Study, it was a two-lane arterial secondary road running in a north-south direction between Bancroft Drive and the Kingsway. The need for improvements was identified in the Transportation Master Plan that had been updated in 2011 and 2012. Estimated costs for the preferred solution, a widening to four lanes, were less than \$2.3 million for this Schedule B project.

A Notice of Commencement was published in January 2012.

After extensive consultation with local residents and other stakeholders, the study was completed 27 months later in April 2014.

In May 2014, two separate Part II Order requests were made. The Minister advised the City in February 2015 that the initial report and consultation was not in compliance with the MCEA procedures. The City attempted to address the notice and consultation deficiencies cited by the Minister.

On April 1, 2015, the City issued its second Notice of Completion for the project and submitted a project file for public and agency review. The Minister received six separate Part II Order requests between April 23 and 30, 2015.

Based on the Ministry's second review in 2015, the project file identifies the problem as traffic congestion as determined by the City's Transportation Master Plan – even though the Master Plan was still in draft form at that time and not available to the public. This Ministerial review sent the City of Sudbury back to the drawing board. The cost of the project had now increased to an estimate of more than \$6 million.

Additional consultations and public disclosures ensued and the City issued a third notice of EA completion in April 2016. There is no public record of any further Part II Order requests and most of the construction project was completed in the summer of 2018 at a cost of about \$8 million. It is not known what the consultant and report costs were, but they are estimated to be approximately \$200,000.



Photo: Frank Zechner

Regional Road 57 in Bowmanville, Ont.

CASE STUDY 8

Regional Road 57 Improvements

Municipality of Clarington (Durham Region)

MCEA Process Time: 31 Months

Consultant/EA Study Costs: \$500,000

This was a Schedule C project for a road widening and other improvements to a 3.4-kilometre section of Bowmanville Avenue (a.k.a. Regional Road 57) between Baseline Road West and Nash Road, a project with an estimated construction cost of \$28 million.

A Notice of Study Commencement was published in December 2014. A Notice of Study Completion was issued in July 2017, 31 months after the project started. Consultant and study costs were approximately \$500,000. The municipality's project manager indicated there were significant concerns about potential added noise levels due to both increased traffic volumes as well as a widening of the road which resulted in active traffic lanes being much closer to the backyard fences of local residents. Additional time was also required to address traffic lights and crosswalks.

The project had wide public support as it was a heavily travelled arterial road and the widening and other improvements were required to relieve traffic congestion and increase safety for all road users. There were no Part II Order requests associated with this project.



Traffic passes through 16th Ave. in York Region.

CASE STUDY 9

16th Avenue Road Improvements

York Region

MCEA Process Time: 30 Months Plus

Consultant/EA Study Costs: \$2 million

This was a Schedule C project for improvements to an arterial road, 16th Avenue between Yonge Street and York-Durham line. Capital cost of the construction project is estimated at \$120 million. Given the distance covered by the project at just over 20 kilometres, it was split into two separate Schedule C studies: one part, Study Area A, from Yonge Street to Woodbine Avenue, and the other part, Study Area B, from Woodbine to York-Durham line.

Notices of Commencement for both projects were published in June 2016 and a Notice of Completion for Study Area A was issued in December 2018, a total of 30 months, and study and consultant cost of about \$2 million. A Notice of Completion has not yet been issued for Study Area B, but is expected to be published by December 2019, a full 42 months after study commencement.

A developer/landowner objected to the Area A Study report claiming that it did not consider the future (unapproved) development proposals in traffic forecasting and in the proposed improvements through a Part II Order request. Based on previous experience, York Region is not anticipating a decision on the Part II Order request from MECP until the first quarter in 2020. If there are conditions from MECP, then York Region's construction timelines will be further delayed.

CASE STUDY 10

Moulinette Island Road

Township of South Stormont

MCEA Process Time: 12 Months

Consultant/EA Study Costs: amount unavailable

This was a project to pave an existing gravel road on an island. The capital cost of the project was about \$600,000 and was characterized as a Schedule A+ project, which the vast majority of local residents supported. A small group of residents opposed the project on the grounds that paving the gravel road might spur more residential development on the island.

Because it was a Schedule A+ project, a Notice of Study Commencement was not required; however, engineering and community consultation started in May 2016 and the local municipal council announced that the project was proceeding in March 2017. A single resident initiated a Part II Order request through a letter received by the Minister on April 10, 2017. Although the municipality was planning to complete the project during the 2017 summer construction season, the Minister did not issue a letter until December 13, 2017, requiring the municipality to “consider dedicated hard shoulders for pedestrian and cyclist accessibility.” The Minister further ordered the municipality to hold an additional open house consultation on the final roadway cross section even though the municipality had already considered hard shoulders. In this case, more than a month was needed to schedule, prepare for and host an additional open house.

In total, almost a full year was added to the project time frame as a result of the Part II Order request by a single resident for reasons that had to do with municipal zoning and official plans and nothing to do with environmental impacts.

CASE STUDY 11

Parkway Corridor Improvements

City of Peterborough

MCEA Process Time: 49 Months

Consultant/EA Study Costs: \$8.5 million

Since the late 1940s, the City of Peterborough has been debating whether to extend the current parkway as a north/south route across the City. In fact, the parkway corridor has been a part of the City’s Official Plan in various forms since 1947. The City’s Official Plan, which included the Parkway Corridor, and all plan amendments subsequent to 1947, have been subject to public consultation requirements under the *Planning Act* for more than 60 years.

The Parkway Corridor Improvements Project is a large MCEA Schedule C project for transportation improvements through a region known as the Parkway Corridor (Lansdowne Street to Water Street at Carnegie Avenue). The City’s Transportation Plan Review, which was approved by Council and published in 2011, called for a series of road network improvements to increase capacity deficiencies in the north end of the City. A Notice of Study Commencement was issued in July 2012.

Even before the EA report was finished, City Council approved a \$79-million plan to complete the Parkway over a 20-year period. A Notice of Completion of the EA report was issued in February 2014.

By March 24, 2014, the Ministry had received 88 separate requests for a Part II Order for an individual environmental assessment of the project. The proponent engaged staff at the Ministry to address concerns raised by the Part II Order requests, and received informal responses from staff that the EA process for this project was satisfactory and that staff would not recommend an order for an individual environmental assessment. Two and a half years after the Part II Order requests were made and approximately nine months after Ministry staff had made their recommendations on the Part II Order, the Minister responded to the requests by requiring an individual environmental assessment for the project. The Minister's decision on the Part II Order request removed the project from the MCEA process and required the preparation and submission of terms of reference, which would necessitate approval by the Minister before studies and hearings could proceed. Another five to seven years would be added to the project timeline and result in a further \$6 million or more in project administrative costs to the \$2.5 million that had already been paid to consultants for services and reports to date. A copy of the Minister's response to the Part II Order requests is attached as Appendix B to this report.

As a result of several Freedom of Information (FOI) requests made by the proponent, it appears that Ministry staff proposed approval of the completed study while requiring the City to comply with certain other conditions. It also appears that the Ministry of Natural Resources and Forestry were satisfied with the proponent's EA process and report. The reasons cited by the Minister for his order in the September 16, 2016 letter did not appear in any of the documents that the proponent received through its FOI requests.

In early May 2019, Peterborough City Council concluded that it cannot remove the Parkway Corridor from either the city's transportation plan or the new Official Plan. Eliminating the Parkway Corridor from the Official Plan with no assessment of the impacts of removing it and no alternatives would be subject to appeal under the *Planning Act*. The 2016 EA Order requires that the City undertake new and additional EA studies if it wants to proceed with a series of alternative road improvements, which the City estimates could take several more years to study and up to eight years before such measures could be constructed.

CASE STUDY 12

North River Bridge

County of Peterborough

MCEA Process Time: 5 Months

Consultant/EA Study Costs: \$46,000

The North River Bridge on County Road 46 passes over the North River. It is believed to have been constructed in 1966 and was in poor condition. A 2012 safety inspection identified a high corrosion potential as well as various structural deficiencies such as large concrete cracks, spalling and active corrosion.

In February 2015, Notices of Commencement of the Study for this MCEA Schedule B project were published and mailed to local residents, a number of Indigenous Nations, local school boards, provincial government ministries and the local police forces.

An information open house was held on March 12, 2015 and various written comments were received. A project file report for the proposed replacement bridge was issued in July 2015, barely five months after the study commencement. Capital costs for the project were estimated to be about \$970,000 and study costs based on municipal budget data totaled about \$46,000 for consultant services.

Due to the large number of similarly aged bridges in Peterborough County requiring repairs or replacement, the new bridge construction is scheduled for the 2020 construction season.

3.3 What Happens When Municipal Infrastructure Projects Are Not Part of the MCEA Class? – The Upper York Sewage System Project

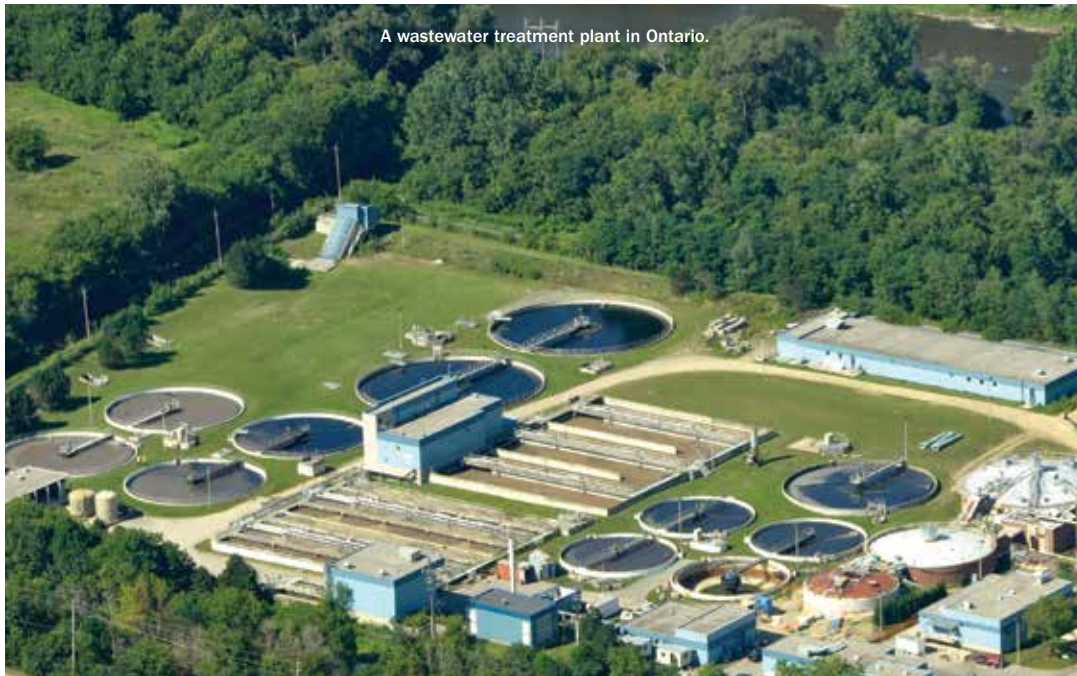
At times, larger municipalities may need to undertake infrastructure projects that are excluded from the defined schedules within the MCEA system. Examples might include joint ventures with upper levels of governments, or projects that start as an MCEA schedule project and become subject to an order to proceed with an individual environmental assessment under Part of the Act.

The Upper York Sewage System project was intended to develop a sustainable sewage servicing solution to accommodate future growth in the region, including the movement of wastewater originating within the Lake Simcoe watershed to the Lake Ontario watershed and the use of microfiltration and reverse-osmosis wastewater treatment technology. For a variety of reasons that are beyond the scope of this investigative report, the proponent and the Ministry determined that the project was not eligible to proceed as a MCEA Schedule C wastewater project.

The individual environmental assessment process was initiated by a Notice in June 2009. Terms of Reference for the project were approved by the Minister in March 2010. After more than four years of consultations and studies, the Region submitted its final environmental report to the Minister for approval in July 2014. Based on the timelines required by the Act, the Minister's decision on the Upper York Sewage Solutions project was expected by February 2015.

If a positive decision from the Minister had been received in early 2015, York Region believes that the Water Reclamation Centre would already have been built and in operation at an estimated capital cost of \$640 million. To date, more than \$26 million has been spent on consulting services, investigations and reports. As of the end of May 2019, about 10 years since the formal notice of commencement, there is still no decision from the Minister for this project. If approved, the capital cost of the project is likely to increase significantly from the 2014 estimates.

4.0 SUGGESTED CHANGES TO IMPROVE THE MCEA PROCESS



4.1 Ontario Auditor General Value for Money Reports

In 2016 and 2018, the Ontario Auditor General undertook a Value For Money audit of the *Environmental Assessment Act* processes in Ontario and developed 12 separate recommendations. Not all of the recommendations are relevant to the MCEA process but the following are (see Appendix C for more detail):

Recommendation 3 – The Ministry should review and revise its criteria for determining whether a comprehensive or streamlined environmental assessment is required;

Recommendation 7 – The Ministry should improve the timeliness of its process for reviewing Bump-Up requests to ensure that its review does not cause unnecessary delays to projects;

Recommendation 9 – To ensure that decisions are appropriate and transparent, the Minister should clarify the criteria for ministerial decision-making regarding Bump-Up requests by the public;

Recommendation 10 – To ensure that the public fully participates in the environmental assessment process, the Ministry should update its website so that the public has access to all relevant information, including the status, for all environmental assessments; and

Recommendation 12 – To assess the effectiveness of environmental assessments, the Ministry should develop measureable performance indicators against which it can evaluate its delivery of the environmental assessment program.

4.2 Joint MEA-RCCAO Application for Review Pursuant to S.61 of the *Environmental Bill of Rights Act*

In February 2017, RCCAO and MEA submitted a joint Application for Review (EBR Review) to the Environmental Commissioner of Ontario for a review of the Act, its regulations and policies associated with the MCEA process. The EBR Review outlined various deficiencies with the MCEA process and asked the Ministry to make improvements. Endorsement for submission of the application was received from a variety of construction industry associations and municipal organizations, which are listed in Appendix D.

A request for improvements was contained in the EBR Review, but not limited to the following:

- ❶ Expediting the response process for Part II Orders or Bump-Up requests by confirming that Schedule A and Schedule A+ projects are exempt and by delegating to senior staff such as Ministry directors, the Minister's obligation to personally respond;
- ❷ Making changes to better integrate and harmonize the MCEA process with processes under the *Planning Act*;
- ❸ Reducing the scope of MCEA reports and studies to reduce duplication with existing public processes and decisions such as Official Plans and provincial legislation such as the Provincial Growth Plan, Places to Grow; and
- ❹ Ensuring more timely Ministry responses to proposed MCEA process changes by the MEA.

By letter dated April 13, 2017, the Ministry committed to undertake the EBR Review and complete it by the end of December 2018. A copy of that letter is attached as Appendix E. During the spring of 2018, the Ministry hosted a number of day long stakeholder workshops with various groups of stakeholders. A summary of the issues raised and positions taken by RCCAO and MEA at those stakeholder meetings are included in Appendix F.

The Ministry ended the EBR Review by letter dated January 30, 2019 and provided a six-page summary of the outcome, copies of which are both provided in Appendix G.

It is worth noting that the Ministry has partially addressed item 1 above, through passage of Bill 108 on June 6, 2019. Schedule 6 of that Bill formally exempts both Schedule A and Schedule A+ projects from the Part II Order process.

4.3 MEA's 2019 Proposed Amendments of the MCEA Manual

The most recent proposal by the MEA to amend the MCEA Manual has not yet been published, but it includes the following changes:

- ❶ Where construction of one or more roads is a mandatory condition of an existing approval under the *Planning Act*, such as a site plan or plan of subdivision, etc., such roads are to be excluded from the MCEA process;
- ❷ Facilities for active transportation (cycling, running, etc.), such as underpasses or overpasses, should not be characterized as Schedule B or C projects, but should instead be characterized as a Schedule A+;

-
- 3 Road rehabilitation and related infrastructure will be characterized as a Schedule B project instead of a Schedule C project, provided that no new road allowances are required for the project and certain other conditions are met; and
 - 4 Language associated with Schedule C new water treatment or sewage treatment plants or expanded plants or new or expanded sewage systems will have more general and comprehensive language to cover a wider scope of activities instead of attempting to list all possible activities or scenarios.

4.4 April 25, 2019 MECP Discussion Paper and Related ERO Instruments

ERO Instrument #013-5101 (ERO 5101) is a 30-page discussion paper associated with the Act which “... outlines some key features of the environmental assessment process, identifies the initial actions to provide immediate relief.” Examples of such actions are exempting certain types of low-risk projects and activities from the Act. The discussion paper was posted on the ERO registry on April 25, 2019 and invites stakeholders and the public to provide comments and ideas on how to improve the environmental assessment process for all types of projects, not merely municipal infrastructure projects. Comments on the discussion paper were required to be submitted by no later than May 25, 2019.

ERO Instrument #013-5102 (ERO 5102), which was also posted by MECP on the ERO registry on April 25, 2019, is in fact a proposal to amend the Act. Seven days after ERO 5102 was posted, the proposed amendment appeared in Bill 108, which is discussed in more detail in section 4.5 of this report. If the proposed statutory amendments are passed, they “... would help the ministry to modernize by focusing on projects that pose actual, real risks to our environment and communities, streamlining approval timelines and eliminating duplication.” Comments on ERO 5102 were also due by May 25, 2019.

ERO 5102 provides a list of the projects within the categories/groups/schedules proposed to be exempted from environmental assessment requirements. These categories/groups/schedules contain the lowest-risk projects in their respective Class Environmental Assessment. The list includes Schedules A and A+ of the Municipal Class of Environmental Assessments. The specific language to be used to bring about the exemptions has not been publicly disclosed; however, the statutory amendments will do more than exempt specific classes of projects from the Act. The amendments described in ERO 5102 will also ensure timeliness and certainty for requests for Part II Orders (Bump-Up requests) and modifies the conditions under which Bump-Up requests can be made by Ontario residents.

4.5 Ontario Bill 108 – *More Homes, More Choice Act*, 2019

Although Bill 108 was introduced on May 2, 2019 by the Minister of Municipal Affairs and Housing, it includes several amendments to the Act, which can be found in Schedule 6 of the Bill, a copy of which is attached as Appendix H. The *More Homes, More Choice Act*, 2019 (MHMCA) received Royal Assent on June 6, 2019. While a significant portion of the MHMCA

has yet to be proclaimed in force, most of Schedule 6 to that act, came into force on the date that it received Royal Assent. The new changes to the Act contained in the MHMCA which have a direct impact on the MCEA process include, but are not limited to, the following:

Schedule 6, Section 4 – Amendment of subsection 14(2) of the Act: The amendment allows the description of projects within the class document, such as the MCEA manual, to exempt certain types of projects from the Act; for instance, certain Schedule B bridge replacement projects might be exempted in certain cases.

Schedule 6, Section 5 – Addition of section 15.3 to the Act: The new subsection 15.3(1) allows the documentation of the class assessment, such as the MCEA manual, to exempt certain types of projects from the Act.

Schedule 6, Section 5 – Addition of section 15.3 to the Act: The new subsection 15.3(4) expressly exempts prescribed low-risk projects from the Act, including what is now referred to as Schedule A and A+ projects.

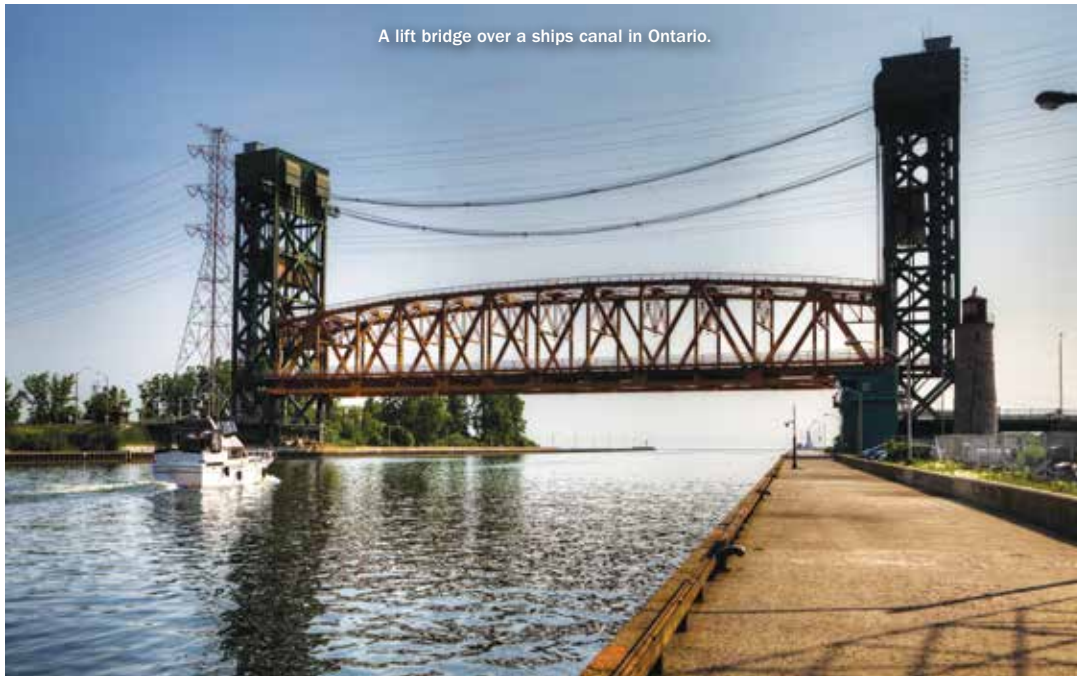
Schedule 6, Section 5 – Addition of section 15.4 to the Act: This new section provides a new process governing amendments to the approved class assessments, such as the MCEA manual. It also provides rules for making the amendments to the class assessments, including requirements for public consultation.

Schedule 6, Section 6 – Amendment of section 16 of the Act (not yet proclaimed in force): The amendments to subsection 16(5) requires that a person requesting a Part II Order must be a resident of the Province of Ontario.

Schedule 6, Section 6 – Amendment of section 16 of the Act (not yet proclaimed in force): The new subsection 16(7.2) requires a Director to essentially screen Part II Order requests and refuse a request for an Order if the request does not comply with the applicable criteria.

Schedule 6, Section 6 – Amendment of section 16 of the Act (not yet proclaimed in force): The amendments to subsection 16(7) and the new subsection 16(7.1) requires that if the Minister fails to make an order within any prescribed deadline, the Minister must provide written reasons for the delay.

5.0 ANALYSIS



5.1 Would Any of the Improvements Suggested in Sections 4.1, 4.3, 4.4 or 4.5 Have Made a Positive Impact on the Projects Listed in Section 3.2?

① River Road Extension, Region of Waterloo

Implementation of the Auditor General's recommendation number 12 and/or the EBR Review improvements in sections 4.2.2 and 4.2.3 of this report, may have indirectly reduced the length of time to complete the consultation and report for this Schedule C project from the actual 34 months.

The enactment of the MHMCA and implementation of the Auditor General's recommendation numbers 7 and 9, and/or the EBR Review improvements in sections 4.2.1 and 4.2.4 of this report, would likely have reduced the processing time for the Part II Order requests for this Schedule C project from the actual 24 months.

② County Road 17 Improvements, United Counties of Prescott and Russell

Implementation of the Auditor General's recommendation number 12 and/or the EBR Review improvements in sections 4.2.2 and 4.2.3 of this report, may have reduced the length of time to complete the consultation and report for this Schedule C project from the actual 43 months.

The enactment of the MHMCA and implementation of the Auditor General's recommendations 7 and 9 and/or the EBR Review improvements in sections 4.2.1 and 4.2.4 of this report, would likely have reduced the processing time for the Part II Order requests for this Schedule B project from the actual 15 months.

③ Hillsburgh Dam and Bridge, Town of Erin

Implementation of the Auditor General's recommendation number 12 and/or the EBR Review improvements in sections 4.2.2 and 4.2.3 of this report, may have reduced the length of time to complete the consultation and report for this Schedule B project from the actual 27 months.

The enactment of the MHMCA and implementation of the Auditor General's recommendations 7 and 9 and/or the EBR Review improvements in sections 4.2.1 and 4.2.4 of this report, would likely have reduced the processing time for the Part II Order requests for this Schedule B project from the actual 12 months.

The requirement for Part II Order requests to be made by residents of Ontario in the MHMCA would not have reduced any of the 12-month delay arising from a Part II Order request by an organization located hundreds of kilometres away from the project. However, a modification to have local residents identify a potential direct impact might have eliminated the sole Part II Order request.

④ Combined Sewage Storage, City of Ottawa

The approvals and consultations under the *Planning Act* will generally exclude details and alternative designs for a component or sub-system of a waste-water management system to reduce discharges into a local river.

Given the number and diversity of stakeholders, the potential impacts of underground tunnelling and the variety of alternative designs, none of the improvements in sections 4.1 to 4.5 of this report would likely have significantly reduced the time to complete the consultation process.

⑤ Northern Avenue Corridor Improvements, Sault Ste. Marie

If the MEA's proposed amendments to the MCEA manual were already in place, this Schedule C project might have been characterized as a Schedule B project if no additional right of way was required, which in turn may have reduced the complexity of the environmental reports and reduced the time for the report and consultation from the actual 28 months.

Implementation of the Auditor General's recommendations 7 and 9 and/or the EBR Review improvements in sections 4.2.1 and 4.2.4 of this report, might have reduced the processing time for the Part II Order requests for this Schedule C project from the actual five months, but not significantly.

⑥ Crossing of Hwy. 404, York Region

Implementation of the Auditor General's recommendation number 12 and/or the EBR Review improvements in sections 4.2.2 and 4.2.3 of this report, would likely have reduced the length of time to complete the consultation and report for this Schedule C project from the actual 18 months.

The enactment of the MHMCA and implementation of the Auditor General's recommendations 7 and 9 and/or the EBR Review improvements in sections 4.2.1 and 4.2.4 of this report, would likely have reduced the processing time for the Part II Order requests for this Schedule B project from the actual 11 months.

7 Second Avenue Widening, City of Sudbury

If the MEA's proposed amendments to the MCEA manual were already in place, this Schedule C project might have been characterized as a Schedule B project if no additional right of way was required, which in turn may have reduced the complexity of the environmental reports and shortened the time for the report and consultation from the actual 27 months.

Implementation of the Attorney General's recommendation 10 might have alerted the proponent to the deficiencies with the Study Report that made reference to a draft, non-public document instead of an approved Master Transportation Plan, which in turn may have decreased the time needed to present a compliant environmental assessment report.

Implementation of EBR Review improvements in sections 4.2.2 may also have helped the proponent to avoid deficiencies in its consultation plan and report.

8 Regional Road 57 Improvements, Municipality of Clarington

If the MEA's proposed amendments to the MCEA manual were already in place, this Schedule C project might have been characterized as a Schedule B project if no additional right of way was required, which in turn may have reduced the complexity of the environmental reports and reduced the time for the report and consultation from the actual 31 months.

Implementation of the Auditor General's recommendation number 12 and/or the EBR Review improvements in sections 4.2.2 and 4.2.3 of this report, would likely have reduced the length of time to complete the consultation and report for this Schedule C project from the actual 31 months.

9 16th Avenue Road Improvements, York Region

If the MEA's proposed amendments to the MCEA manual were already in place, this Schedule C project might have been characterized as a Schedule B project if no additional right of way was required, which in turn may have reduced the complexity of the environmental reports that had cost the region about \$2 million.

The Enactment of Bill 108 and implementation of the Auditor General's recommendation numbers 7 and 9 would likely have reduced the processing time for the Part II Order request for this Schedule C project from the estimated 12 to 14 months.

The timeframe for consultation and the costs of the environmental report would likely have been reduced if the EBR Review improvement in section 4.2.3 of this report was implemented.

10 Moulinette Island Road, Township of South Stormont

If the *More Homes, More Choice Act*, 2019 (MHMCA) was in force for this Schedule A+ project, there would have been no right of a single local resident to stop or suspend the project because the project would have been exempt from the Act.

Even if the MHMCA was not law, there would have been no Part II Order request for this project if the EBR Review improvement in section 4.2.1 of this report was implemented.

Implementation of the Auditor General's recommendation numbers 7 and 9 would likely have reduced the processing time for the Part II Order request.

11 Parkway Corridor Improvements, City of Peterborough

Given the broad impact of the proposed Schedule C project, it is unlikely that implementation of the Auditor General's recommendations 10 and 12 would have significantly reduced the necessary time for the report and consultation from the actual 19 months.

If the MHMCA was in force, the Minister would have been required to give reasons for its delayed decision on the Part II Order request at a much earlier stage.

Implementation of the Auditor General's recommendations 7 and 9 and/or the EBR Review improvements in sections 4.2.1 and 4.2.4 of this report, would likely have reduced the processing time for the Part II Order requests for this Schedule C project from the actual 30 months.

12 North River Bridge, County of Peterborough

This Schedule B bridge replacement project was completed relatively quickly, in just over four months. None of the recommendations considered in this investigative report would likely have reduced that already short time frame.

As there were no Part II Order requests, recommended improvements to the Part II Order request processing would have had an impact on this project.

5.2 Would Any of the Improvements Suggested in Sections 4.1, 4.3, 4.4 or 4.5 Have Made a Positive Impact on the Project Described in Section 3.3 (Upper York Sewage System)?

It is possible, but not certain, that the MEA's proposed amendments to the MCEA manual would have provided the proponent, York Region, the option of following the MCEA process for Schedule C wastewater plants and wastewater systems. If that were the case, study and consultant costs would likely be significantly less than the \$26 million spent by the Region to date. It is also very likely that the consultation and report process would have been completed much more quickly than the 10 years which have elapsed so far for this project.

Even if the project had to proceed through an individual environmental assessment, the Auditor General's recommendation number 12 may have resulted in a faster decision by the Minister.

If MHMCA were in force, successive Ministers would have been required to provide reasons for continued delays in the decision process, which in turn may have brought more political pressure to make a decision on the project.

5.3 Delegating the Minister's Authority to Respond to Part II Order Requests

In April 2017, the Ministry delegated the Minister's decision power on Part II Order requests to the Director for MCEA Schedule A and A+ projects. During the period 2012 to 2017, however, of the 117 MCEA undertakings with Part II Order requests, only two were for Schedule A and A+ projects, 47 of the projects were Schedule B and the balance were Schedule C projects.

The provisions in MHMCA to exempt MCEA Schedule A and A+ projects from the Act are now in force; however, that new law has very little impact on the Minister's workload

for dealing with Part II Order requests for MCEA projects. While the Director's screening powers under the MHMCA might eliminate incomplete or invalid Part II Order requests, delegation of the Minister's decision-making authority for Schedule B projects should be seriously considered.

5.4 Mandating Deadlines for the Ministry's Responses to Part II Order Requests

Although the Upper York Sewage Solutions project described in Section 3.3 of this report was not an MCEA Schedule C project, the Minister had a deadline to render a decision of the individual environmental assessment under subsection 7(2) of the Act and Ontario Regulation 616/98, which in the circumstances of this project are believed to have been late 2015. The Minister has still not yet rendered a decision on this project as of early May 2019.

In early 2018, the Ministry had, during consultation meetings with stakeholders, stated that it would implement internal service standards for responding to Part II Order requests. The proposed deadlines were 90 days for Schedule B projects and 180 days for Schedule C projects, and that the time would start once the Ministry determined that it had all necessary information to proceed with a decision, and not the date on which the Part II Order request was received.

The time needed for municipalities to gather and submit "all of the necessary information" could range from several days to a few months. The Ministry also noted that the deadline would not be a hard deadline; it would "aim to meet this standard 85 percent of the time".

There is little confidence among MCEA stakeholders that implementation of internal service standards would result in any significant reduction in response times for Part II Order requests, particularly where the Minister has failed to make a decision that was mandated by a regulation in the case of the Upper York Sewage Solutions project. A more effective solution to achieving a faster response time for Part II Order requests might be one in which a failure by the Ministry to respond within 30 days of the proposed deadline would be deemed to be an automatic refusal of the Part II Order request for that project, thereby allowing the municipality to proceed with the the proposed MCEA project.

5.5 The Scope and Complexity of MCEA Reports

Over the past decade, the studies and reports by RCCAO and other MCEA stakeholders identifies a significant increase in the size and complexity of EA Study reports. EA Reports accessed online are in many cases several hundreds of pages in length and the costs paid by municipalities to prepare these reports have also increased significantly from an estimated \$113,300 for the projects examined in RCCAO's 2010 report, to \$386,500 for the projects reviewed in RCCAO's 2014 report.

For the projects examined in Section 3.2 of this report, six of the 11 projects indicate consultants and reports cost more than \$500,000 and four of those six projects had consultant and report expenses of more than \$2 million.

A number of municipalities have observed that when a Part II Order request is submitted, the Ministry does not simply examine the issues or concerns by the person making the request, the Ministry has in many instances performed a form of audit of the environmental report and consultation and identified deficiencies in matters that were not raised in the Part II Order request. A number of municipalities have consequently increased the scope and number of studies within the report to either prevent Part II Order requests or expedite Ministry decisions on any such requests.

Increased complexities and scope of environmental assessment reports also contribute to significant delays in completing the consultation process.

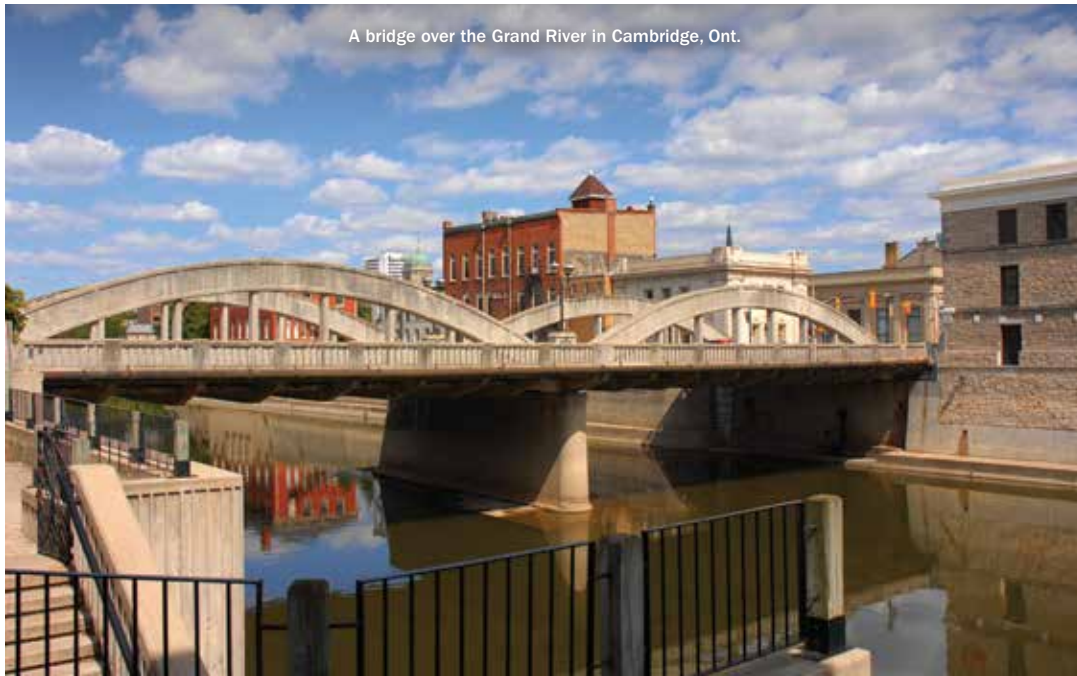
5.6 Enhance Access and Transparency for the MCEA Process

The Ministry has mandated that municipalities provide timely copies of Notice of Commencement and Notices of Completion for its MCEA Schedule B and C projects. Many, but not all, municipalities post such notices on their municipal websites, and many will include download links to project reports. Those municipalities that do post such documents often remove them from the websites once the EA process is complete, even though construction of the infrastructure is not scheduled to start for several more years. There is no comprehensive database of notices and reports that can be accessed by the public.

The Ministry is trying to solve problems of delays and costs of MCEA projects without knowledge of the length and costs of prior projects. It is, of course, difficult to implement improvements without any measuring tools.

It is strongly recommended as a measure of transparency and comparability that there should be public viewing access through the Ministry websites to all notices of completion both current and historical as well as to the actual EA Study reports and any conditions imposed by the Ministry as a result of an application for a Part II Order. This will allow the public to access and review project information once the shovels hit the ground, and allows municipalities to learn from any mistakes that they or other municipalities may have made in the past.

6.0 CONCLUSIONS AND RECOMMENDATIONS



6.1 Exempt Low-Risk Projects from the Act

The Moulinette Island Road project described in Section 3.2 of this report is an example of an MCEA Schedule A+ project that was negatively impacted by a Part II Order request. It was a project that had very low risk of adverse environmental impact. Concerns raised in cases such as the Moulinette Island Road project are best handled by local municipal officials. There is no need for the Minister or other senior Ministry staff to intervene in these types of low-risk projects. The Province of Ontario, through the passage of the *More Housing More Choices Act*, has now created that exemption.

6.2 Reduce the Scope and Complexity of EA Reports

There has been, over the past decade, a dramatic increase in the size and complexity of EA Study reports and their underlying studies. The size and complexity are reflected in increasing costs for municipalities, from an estimated \$113,300 for the projects examined in RCCAO's 2010 report to more than \$500,000 in many recent MCEA Schedule B and C projects. The increased complexity in the scope and number of studies within the report also contribute to significant delays in completing the Schedule B and C consultation processes.

The Ministry should consult stakeholders to identify which types of studies and reviews are already addressed by other public bodies or investigations and encourage proponents to focus on key issues.

6.3 Mandate that Any Part II Order Request Demonstrate a Direct Adverse Impact from the Proposed Project

The *More Housing More Choices Act*, once fully proclaimed in force, will amend the Act to require that any person making a Part II Order request must be an Ontario resident. Most, if not all of the Part II Order requests for MCEA projects already come from Ontario residents, so the proposed measure in Section 6(4) of Schedule 6 to the MHMCA is unlikely to have any measurable impact on the number or quality of Part II Order requests for MCEA projects.

The Hillsburgh Dam and Bridge project in the Town of Erin, described in Section 3.2 of this report, was delayed by 12 months because of a Part II Order request from an organization located hundreds of kilometres away. There were no Part II Order requests from local residents. Given that MCEA projects are primarily for local municipal infrastructure, it may be appropriate to require any person who submits a Part II Order request for an MCEA project to identify a direct adverse impact from the proposed undertaking and that such person has made reasonable efforts to address his or her concerns to the proponent(s) through the public consultation process. A local project such as the rehabilitation or replacement of a local bridge used almost exclusively by local residents should not be subject to a Part II Order request from a person or organization that is not from the local area and has not demonstrated a direct adverse impact from the proposed project.

6.4 Delegate the Minister's Authority to Respond to Part II Order Requests

Prior to the passage of the *More Housing More Choices Act*, the Minister's authority to respond to Part II Order requests for Schedule A and A+ projects had been delegated to the Director. However, less than 3% of the recent Part II Order requests have been for Schedule A or Schedule A+ projects. With the passage of the MHMCA, there will no longer be any Part II Order requests for Schedule A and A+ projects.

Part II Order requests are not being processed any faster than before, based on recent data from the MEA. Consequently, the Minister should seriously consider delegating some or all of the Part II Order requests associated with MCEA Schedule B projects.

6.5 Mandate Reduced Time Frames for Responding to Part II Order Requests

Although the Ministry has proposed internal service standards for response times to Part II Order requests, there is little likelihood of any significant improvement unless those timelines are reflected in a regulation for all projects, not just a percentage. The proposed amendments of Section 16 of the Act, which are set out in Schedule 6 of the *More Housing More Choices Act*, will upon proclamation in force, likely result in improved response times to Part II Order requests for MCEA projects.

The Ministry should transform the proposed service standards into a regulatory deadline and make any related policy and procedure changes as may be necessary.

6.6 Enhance Access and Transparency for the MCEA Process

The Ministry is trying to solve problems of delays and costs of MCEA projects without a data base of the length and costs of prior projects. It is recommended that the Ministry establish public websites that would allow the search and download of all notices of completion both current and historical as well as to the actual EA Study reports and any conditions imposed by the MECP as a result of an application for a Part II Order. A province-wide centralized internet based system would be helpful but this would require significant provincial resources over an extended period of time to implement.

6.7 Proceed with the MEA's Proposed Amendments of the MCEA Manual

The MEA has proposed to amend the MCEA manual by making use of broader more inclusive language for various Schedule B and C projects, changing some road projects from Schedule C to Schedule B, and reducing duplication by exempting roads which are required by existing approvals under the *Planning Act*.

Had such changes been in place for many of the projects reviewed in this report, many delays and additional costs would have been avoided.

6.8 Proclaim Remainder of Schedule 6 of the More Homes, More Choice Act, 2019 not yet in force, and Pass New Deadlines Regulation

In the one MCEA Schedule A+ project examined in this investigative report, the MHMCA's exemption of such Schedule A+ projects from the Act would have reduced the project timeline by at least 12 months.

The provisions in the MHMCA – which would require the Ministry to comply with prescribed timelines for responding to Part II Order requests (which is not yet in force) – would likely have made a positive and significant difference in the timeline and costs of several other projects reviewed in this report, provided that the timelines are well defined and firm. The Province needs to proclaim the remaining sections of Schedule 6 of the MHMCA in force and pass a new regulation with reasonably tight deadlines for the Ministry to render a decision on any Part II Order requests.

6.9 Recognize Decisions that have been Based on Public Consultations under the Planning Act Process

Several of the projects listed in this report, including the 16th Avenue Improvements in York Region and the Regional Road 57 widening in Durham Region had already been subject to public consultations under the *Planning Act*. Where no additional right of way is required to implement arterial road improvements which have already been incorporated into an Official Plan, greater recognition of the *Planning Act* consultation process will help to avoid duplication and expedite the completion of the MCEA process.

With respect to the Peterborough Parkway Corridor project, the corridor improvement and roadway has been in the Official Plan for decades. As a result of the Ministry's 2016 Order for a full EA, the time and costs have risen dramatically for the City to proceed with infrastructure that had already been approved under the *Planning Act*.

ENDNOTES

- 1 See page 6 of “Environmental Assessment Reform – A Tool for Economic Recovery” at <http://www.rccao.com/news/files/RCCAO-EA-Reform-Report-02-2009.pdf>
- 2 In June 2008, the Transit Projects and Greater Toronto Transportation Authority Undertakings Regulation (O. Reg. 231/08) was made which applies to public transit projects
- 3 ERO Instrument #013-5101, a 30-page discussion paper, which can be viewed at <https://ero.ontario.ca/notice/013-5101> and ERO Instrument #013-5102, a proposal to amend the Act to exempt specific types of projects from the Act, which can be viewed at <https://ero.ontario.ca/notice/013-5102>

APPENDICES

APPENDIX A

Ministry of the Environment,
Conservation and Parks

Office of the Minister

77 Wellesley Street West
11th Floor, Ferguson Block
Toronto ON M7A 2T5
Tel.: 416.314.6790
Fax: 416.314.6748

Ministère de l'Environnement,
de la Protection de la nature et des
Parcs

Bureau du ministre

77, rue Wellesley Ouest
11^e étage, édifice Ferguson
Toronto ON M7A 2T5
Tél. : 416 314-6790
Télec.: 416 314-6748



DEC 10 2018

357-2018-1073

Mr. Don Elliott
Director of Engineering, Public Works and Engineering Services
City of Sault Ste. Marie
99 Foster Drive
Sault Ste. Marie ON P6A 5X6

Dear Mr. Elliott:

On August 5, 2018, I received one Part II order request asking that the City of Sault Ste. Marie be required to prepare an individual environmental assessment for the proposed improvements to Northern Avenue.

I am taking this opportunity to inform you that I have decided that an individual environmental assessment is not required. This decision was made after giving careful consideration to the issues raised in the request, the project documentation, the provisions of the Municipal Class Environmental Assessment, and other relevant matters required to be considered under subsection 16(4) of the Environmental Assessment Act.

The reasons for my decision may be found in the attached table. In the interest of transparency, I encourage you to make this letter available to the greater public on the City's website.

With this decision having been made, the City can now proceed with the Northern Avenue Improvements project. The City must ensure the project is implemented in the manner it was developed and designed, as set out in the project documentation, and inclusive of all mitigating measures, commitments and environmental and other provisions therein.

Lastly, I would like to ensure that the City understands that failure to comply with the act, the provisions of the Municipal Class Environmental Assessment, and failure to implement the project in the manner described in the planning documents, are contraventions of the act and may result in prosecution under section 38 of the act.

Mr. Don Elliott
Page 2.

I am confident that the City recognizes the importance and value of the act and will ensure that its requirements and those of the Municipal Class Environmental Assessment are satisfied.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rod Phillips', with a stylized flourish at the end.

Rod Phillips
Minister

Attachment

c: Requesters
EA File No. 18070 – Northern Avenue Corridor Improvements

Northern Avenue Improvements – City of Sault Ste. Marie

Municipal Class Environmental Assessment

Minister's Review of Issues Raised by Requesters

Issue	Response and Analysis
Vehicular access into to P-Patch subdivision is not justified and will negatively impact the neighbourhood.	<p>The City looked at traffic improvements in the P-Patch subdivision in response to complaints about traffic congestion at Pine Street and Pleasant Drive.</p> <p>Four alternatives were considered, which included a "do nothing" scenario, two different road accesses and installing traffic lights at the Pine Street and Pleasant Drive intersection. The City's evaluation found that traffic heading north or west from the P-Patch subdivision will likely be diverted from that intersection onto Northern Avenue and reduce congestion. It also determined that:</p> <ul style="list-style-type: none"> • Pedestrian and cyclist traffic would not change; • Natural environmental impacts would be minimal as it is being built within an existing right-of-way; and, • That it would reduce vehicular idling. <p>The City's evaluation noted that neighbouring properties may be negatively impacted, as traffic from within the P-Patch subdivision would be redirected from the Pine Street and Pleasant Drive intersection to the new access road. Overall, the City's preferred alternative ranked above the others when all criteria (e.g. technical, natural environment, economic) were considered.</p> <p>I am satisfied that the City has evaluated the project alternatives against environmental criteria and selected the alternative that achieves its objectives.</p>
The three-lane configuration proposed for Northern Avenue will encourage aggressive driving, creating safety risks to all road users.	<p>The City anticipates that the changes on Northern Avenue will have a calming effect on traffic by reducing travel speeds. As part of its traffic study for the project, the City cited results of similar road conversions in other North American cities, where road space was reduced from four lanes to two with a centre turn lane, and bike lanes were installed. These changes have consistently resulted in reduced collisions without increases in traffic delays.</p> <p>Some Ontario examples include a 44% reduction in</p>

Page 1.

Issue	Response and Analysis
	<p>collisions on Frederick Street in Kitchener, and a 40% reduction in collisions on St. George Street in Toronto. Based on these results, the City anticipates that the changes on Northern Avenue will create similar reductions in rear-end and side swipe collisions between vehicles. The City also stated that it conducted similar changes on Queen Street with successful results.</p> <p>I am satisfied that the project's purpose is to increase safety for all road users.</p>
<p>The City did not consult with students, faculty, staff or Indigenous community members at Sault College.</p>	<p>The City shared project notices with Sault College and Indigenous communities surrounding Sault Ste. Marie throughout the Municipal Class Environmental Assessment process:</p> <ul style="list-style-type: none"> • Notice of Commencement: March 18, 2016 • Notice of Public Information Centre 1: June 17, 2016 • Notice of Public Information Centre 2: September 18, 2017 • Notice of Completion: July 4, 2018 <p>The City had a direct meeting with a representative from Sault College on July 13, 2016 to discuss any concerns on the college's behalf. Sault College emailed the City on September 4, 2018 to express its support for the changes on Northern Avenue and new access to the P-Patch subdivision. The City has committed to working with Sault College during detailed design on future access changes to the site and creating pedestrian crossovers.</p> <p>I am satisfied that the City consulted with Sault College and Indigenous communities.</p>
<p>Climate change was not considered in the proposed project.</p>	<p>The City considered climate change as part of the project. The changes on Northern Avenue will reduce Northern Avenue from four through lanes to two, and redistribute this road space to dedicated cycling lanes.</p> <p>The proposed access road into the P-Patch subdivision is expected to accommodate nearby residents by providing the option to walk, cycle, or drive while providing connections between sites, neighbourhoods, and modes of transportation.</p> <p>The City cited a review by Transport Canada that found that</p>

Page 2.

Issue	Response and Analysis
	<p>similar installations of bike lanes in Toronto increased cycling traffic. The City is expecting a similar increase in this active transportation option instead of using other modes of transportation that emit greenhouse gases.</p> <p>I am satisfied that the project's design has climate change considerations.</p>
<p>The City did not consider the impacts of spending money on the project instead of allocating it elsewhere. The project will benefit wealthy residents that use automobiles, and discourage active transportation and transit usage, including by vulnerable populations.</p>	<p>The City considered the cost of the project in its evaluation. The changes to Northern Avenue involve line painting and some modifications to existing curbs and sidewalks. These changes can be implemented in conjunction with required resurfacing, which reduces the cost of the project.</p> <p>The project will make changes to Northern Avenue that will reduce traffic lanes, create dedicated cycling lanes and fill in sidewalk gaps. This is expected to encourage more active transportation usage. The new road into the P-Patch subdivision will connect to Northern Avenue, and provide access both vehicular and active transportation users.</p> <p>I am satisfied that the city considered the project's costs and access for active transportation users.</p>

APPENDIX B

USDIR17-009 Attachment 1

Ministry of the Environment
and Climate Change

Office of the Minister

77 Wellesley Street West
11th Floor, Ferguson Block
Toronto ON M7A 2T5
Tel.: 416-314-6790
Fax: 416-314-6748

Ministère de l'Environnement
et de l'Action en matière de
changement climatique

Bureau du ministre

77, rue Wellesley Ouest
11^e étage, édifice Ferguson
Toronto ON M7A 2T5
Tél.: 416-314-6790
Télé.: 416-314-6748



ENV1283MC-2016-2192

SEP 16 2016

Mr. Robert J. Dunford
Project Manager
City of Peterborough
500 George Street North
Peterborough ON K9H 3R9

Dear Mr. Dunford:

Between February 28, 2014, and March 24, 2014, I received 88 requests asking that the City of Peterborough (City) be required to prepare an individual environmental assessment for the proposed Parkway Corridor (Project).

I am taking this opportunity to inform you that, based on a review of the project documentation, the provisions of the Municipal Engineers Association's Municipal Class Environmental Assessment (Class EA), the issues raised in the requests, the City's response to the Minister's Order, and other relevant matters required to be considered under subsection 16(4) of the Environmental Assessment Act, I have decided that an individual environmental assessment (EA) is required for the Project.

Of particular note in my consideration of this matter was the alternative to cross Jackson Park. Despite receiving additional information I have outstanding concerns, some of which appear to overlap with many of the concerns raised in the Part II Order requests.

The reasons for this decision are as follows.

1. The proposed Parkway Corridor may cause significant effects to the natural environment and impacts to noise, specifically with respect to the bridge proposed to cross Jackson Park. The potential effects were not adequately considered. The documentation provided to date by the City has not provided sufficient detail to ensure that potential impacts will be mitigated and the environment protected.

Mr. Robert J. Dunford
Page 2.

2. Further studies are required to address any impacts to the identified species at risk, as well as the significant natural features including the Provincially Significant Wetland and the significant woodlands and valleyland sites. A new noise assessment should be undertaken for the part that addresses noise issues for the living areas of the properties along the corridor.
3. There continues to be significant public concern with the proposed Project, alternatives evaluation and the potential for environmental impacts. There is a need for additional consultation due to significant public interest and the potential for significant adverse impacts to the public. Further consultation on the Project is required before a decision is made on the Project.
4. For the reasons stated above, the proposed Parkway Corridor differs from projects to which the Class EA applies.
5. In light of the above points, it is my opinion that the purpose of the Environmental Assessment Act cannot be fulfilled through the application of the Class EA, including the position of additional conditions for this Project.

Therefore, I am ordering, pursuant to subsection 16(1) of the Environmental Assessment Act, the City to comply with Part II of the Environmental Assessment Act for the proposed undertaking.

Based on my decision to require an individual EA for the Project, the City cannot proceed with the Project without obtaining my approval pursuant to section 5(1) of the Environmental Assessment Act. In order to obtain approval, you must prepare and submit an individual EA in accordance with Part II of the Environmental Assessment Act. An application for approval under Part II of the Environmental Assessment Act consists of Terms of Reference, to be approved by myself as Minister of the Environment and Climate Change, and the environmental assessment. The environmental assessment will be subject to a government review, following which myself and Cabinet must decide whether or not to approve the proposed undertaking.

Pursuant to subsection 16(2)1 of the Environmental Assessment Act, I am also setting out the following directions with respect to the Terms of Reference that must be prepared.

1. The Terms of Reference shall be prepared in accordance with subsection 6(2)(a) of the Environmental Assessment Act.
2. The Terms of Reference shall ensure that the proponent studies design alternatives that minimize impacts to Jackson Park.

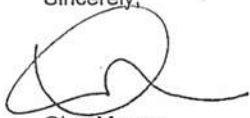
Mr. Robert J. Dunford
Page 3.

3. Ensure that all technical studies prepared as part of the Environmental Assessment are peer reviewed by appropriate experts and document the review in the Environmental Assessment.
4. The Terms of Reference shall include a consultation plan that outlines, but not limited to, consultation methods with the public on the alternatives and assessment methodology for the alternatives.

As part of that process, I highly recommend that you address the issues outlined above. It is a requirement of the Environmental Assessment Act that the City consult with the public on the Terms of Reference and the environmental assessment.

This Environmental Approvals Branch is responsible for coordinating the submission and review of individual EAs. I encourage you to contact Kathleen Hedley, Director, Environmental Approvals Branch, about the preparation of an individual EA. She can be reached directly at 416-314-7288, or at kathleen.hedley@ontario.ca.

Sincerely,



Glen Murray
Minister of the Environment and Climate Change

Attachment (s)

c: Requesters
Mr. Kevin Jones, Project Manager, AECOM
EA File No. 14019 Parkway Corridor

APPENDIX C

Chapter 1

Section 1.06

Ministry of the Environment, Conservation and Parks

Environmental Assessments

Follow-Up on VFM Section 3.06, 2016 Annual Report

Chapter 1 • Follow-Up Section 1.06

RECOMMENDATION STATUS OVERVIEW						
	# of Actions Recommended	Status of Actions Recommended				
		Fully Implemented	In Process of Being Implemented	Little or No Progress	Will Not Be Implemented	No Longer Applicable
Recommendation 1	1			1		
Recommendation 2	1			1		
Recommendation 3	1			1		
Recommendation 4	2	1	1			
Recommendation 5	2	1		1		
Recommendation 6	2	2				
Recommendation 7	1			1		
Recommendation 8	3		1	2		
Recommendation 9	2		1	1		
Recommendation 10	1			1		
Recommendation 11	2			2		
Recommendation 12	1			1		
Total	19	4	3	12	0	0
%	100	21	16	63	0	0

Overall Conclusion

The Ministry of the Environment, Conservation and Parks, previously known as the Ministry of the Environment and Climate Change (Ministry), as of September 4, 2018, has implemented 21% of the actions we recommended in our 2016 Annual Report, all of which relate to practices at

the Ministry's regional offices. For example, the Ministry consulted with stakeholders to determine which areas of the streamlined assessment process require more guidance. The Ministry has also developed a risk analysis tool that regional staff can use to determine which streamlined assessments they should review. The Ministry also surveyed regional staff and incorporated their suggestions into updated internal procedures for reviewing

streamlined assessments and communicating with project owners.

The Ministry is in the process of implementing 16% of the actions we recommended in our audit. For example, it has begun analyzing and reviewing many of its guidance documents. In December 2017, it released guidance on incorporating climate change into environmental assessments, and it plans to release guidance on how to incorporate cumulative effects into comprehensive environmental assessments by March 2019. The Ministry has also improved its processes at its regional offices to better track the number of streamlined assessments. The Ministry is reviewing its compliance framework, including the appropriateness of penalties for project owners who do not submit the appropriate documentation, and is also reviewing the use of independent bodies in other jurisdictions, which will both be completed by December 2018.

Little or no progress has been made regarding 63% of the actions we recommended in our report. For example, we found that the time to complete the Ministry's reviews of bump-ups has increased from 213 days at the time of our 2016 audit to 273 days when we did our follow-up, and the Ministry is unable to determine when timelines will start to decrease. Also, the Ministry has not clarified the legislative criteria with which the Minister makes decisions on bump-up requests or whether to refer a project for a public hearing. The Ministry has not begun reviewing the *Environmental Assessment Act* to ensure that projects with the potential for significant negative impacts are assessed regardless of whether they are public- or private-sector projects, or to clarify what kinds of government plans and programs must undergo an environmental assessment. The Ministry plans to continue to work with Class EA project owners regarding updating the criteria of their Class EA documents used to determine the thoroughness of assessment each project receives; however, the Ministry is unable to determine when such changes will be made. The Ministry also has not provided any guidance to streamlined assessment project owners regarding

conducting cumulative effects assessments, and has not published a database of all environmental assessments for the public to access. The Ministry indicated that it expects to complete various reviews by the end of 2018. However, the Ministry was not able to provide dates when the results of any of these reviews would actually be implemented. These will include:

- reviewing the criteria that determine the thoroughness of assessment required for regulated Environmental Assessments (EAs), as well as the criteria for determining the categorization for Class EA projects;
- developing various internal mechanisms and processes, including service standards for reviewing bump-up requests;
- completing a review of its compliance framework; and
- conducting a feasibility study for performance measures for the program.

During the course of our follow-up work, the Ministry also indicated that it plans to perform an analysis of staffing needs at its regional offices in May 2019. The status of actions taken on each of our recommendations is described in this report.

Background

An environmental assessment is a planning and decision-making process that evaluates the potential environmental impacts of a proposed project or plan. This process is required under the *Environmental Assessment Act* (Act), primarily for public-sector projects and plans.

The intent of the Act is to establish a process that identifies and resolves potential environmental problems before actual environmental damage occurs. The Ministry of the Environment, Conservation and Parks (Ministry) is responsible for administering the Act.

The scope of environmental impacts under the Act is broad: in addition to the impact on

the natural environment, it includes human life, social, economic and cultural factors that influence a community.

The Act also allows for most environmental assessments to be streamlined—that is, subject to pre-set and less rigorous processes for projects considered to be routine and to have predictable and manageable environmental impacts. Three types of streamlined environmental assessment (EA) processes are outlined in regulations: transit, electricity projects and waste-management projects (these are known as regulated EAs). Eleven types of streamlined assessment processes (known as Class EAs) for groups or classes of projects such as municipal infrastructure projects, waterpower projects and public works projects, are outlined in documents prepared by government ministries, municipalities and not-for-profits representing groups that conduct certain projects on a regular basis. These Class EA documents are approved by the Ministry.

Overall, our 2016 audit found that Ontario's environmental assessment process needed to be modernized and aligned with best practices in Canada and internationally. Because the Act is 40 years old—and is, in fact, the oldest environmental assessment legislation in Canada—it fell short of achieving its intended purpose. For example:

- Ontario is the only Canadian jurisdiction in which environmental assessments are generally not required for private-sector projects. These projects—such as mining operations or chemical manufacturing facilities—proceed without an up-front evaluation of the environmental impacts of the project unless they either are required to undergo a federal environmental assessment or voluntarily agree to undergo a provincial environmental assessment.
- Environmental assessments were not completed for many significant government plans and programs. Although the Act applies to government proposals, plans and programs, only streamlined assessments had been

conducted, and only for forest-management plans. No other environmental assessments had been completed for any provincial government plan or program in the last two decades. This is because:

- The Act is not specific about the types of plans and programs that must be assessed. This means that determining whether a government plan—for example, the Province's Long-Term Energy Plan—requires an environmental assessment is open to interpretation by the provincial ministries and agencies that propose the plan.
- Other legislation undermines the role of environmental assessments by exempting certain plans and programs from requiring them. For example, the Climate Change Action Plan, transportation plans and the government's renewable energy program are exempt from requiring an environmental assessment.

Prior to passing the Act in 1976, the government emphasized the important role the public can play in identifying potential impacts, assessing their significance, and evaluating the advantages and disadvantages of a project or plan. However, the benefits of public input have not been realized. For example:

- Decisions regarding whether to grant public requests for more extensive consultation are at the Minister's discretion, with no clear criteria or an independent body to ensure objectivity. In the five-and-a-half years prior to our 2016 audit, the Minister denied all but one of the public requests to have 177 streamlined assessments bumped up to comprehensive assessments.
- The public was not informed about most projects. The majority of projects underwent the less rigorous streamlined environmental assessment process that included about 30 days of public consultation. The Ministry's website had only information about projects undergoing comprehensive environmental

assessments. Neither the project owners, referred to in the Act as proponents, nor the Ministry provided the public with information about streamlined assessments beyond this brief consultation period.

Neither the comprehensive nor the streamlined process was effectively or efficiently overseen by the Ministry. As a result, the public obtained minimal assurance that these processes were effective in preventing and/or mitigating the negative environmental impacts of projects.

Other significant observations included the following:

- The type of assessment required for a particular project was often not based on the project's potential environmental impact. For example, the basis for determining whether a comprehensive or a streamlined assessment was required for a particular project often depended on its size, scale and cost rather than its potential impact.
- The Ministry had no assurance that streamlined assessments were conducted properly because of its limited involvement. Many streamlined assessments were completed without the Ministry's knowledge—including, for example, 80% of those conducted by the Ministry of Transportation in the five years prior to our audit.
- Lengthy Ministry reviews of public requests to bump up streamlined assessments to comprehensive assessments caused unnecessary project delays. Multiple layers of reviews resulted in an average of seven months of delays, but did not substantively change the outcome of the review. Projects were delayed until all reviews were completed, which often resulted in financial and non-financial costs to project owners.
- Project owners were not required to consider the cumulative effects of other relevant activities, such as known future projects and those that were already occurring in the project area. This could result in projects going ahead

in areas that were already subject to significant environmental stresses.

We made 12 recommendations, consisting of 19 actions, to address our audit findings.

We received commitment from the Ministry that it would take action to address our recommendations.

Status of Actions Taken on Recommendations

We conducted assurance work between March 29, 2018, and September 4, 2018. We obtained written representation from the Ministry of the Environment, Conservation and Parks that effective October 31, 2018, it has provided us with a complete update of the status of the recommendations we made in the original audit two years ago.

Environmental Assessment Not Conducted for Many Private-Sector Projects in Ontario

Recommendation 1

The Ministry of the Environment and Climate Change should review and update the requirements in the Environmental Assessment Act to ensure that projects with the potential for significant negative impact are assessed, regardless of whether the project is initiated by the public or private sector.

Status: Little or no progress.

Details

We noted in our 2016 audit that Ontario's *Environmental Assessment Act* (Act) applies to all public-sector projects, but only to a small portion of private-sector projects. In Ontario, the only private-sector projects that require an environmental assessment are electricity, waste management, and large municipal infrastructure projects by private developers. Ontario is the only jurisdiction in Canada in which private-sector projects, such

as mining and chemical manufacturing, generally do not require a comprehensive environmental assessment. The Minister may designate a project to require an environmental assessment. However, since the Act came into force, of the 42 requests the Ministry had received to require an environmental assessment for private-sector projects not captured under the electricity or waste-management regulations, only seven had been granted.

Since our audit, the Ministry has not taken any steps to reform the Act. The Ministry informed us that it is waiting to review changes made by the federal government to a regulation under the *Canadian Environmental Assessment Act* that determines which projects must undergo a federal environmental assessment. The federal government began the review of the federal environmental assessment process in June 2016, and began the public consultation on regulations that determine what types of projects would require federal environmental assessments in February 2018. The federal government's new regulations are expected to be finalized in fall 2018, and the Ministry plans to report on lessons learned from the federal review by December 2018.

Environmental Assessment Not Completed for Many Government Plans and Programs with Long-Term and Wide-Ranging Impacts

Recommendation 2

The Ministry of the Environment and Climate Change should review and clarify the intent of the Environmental Assessment Act (Act) regarding the types of government plans and programs that must undergo an environmental assessment.

Status: Little or no progress.

Details

The Act applies not only to projects but also to plans and proposals related to public-sector activities. However, the Act is not specific on what types of plans or proposals must undergo an environmental

assessment. We noted in our 2016 audit that the only provincial plans to undergo assessments since the early 1990s were forest-management plans, which undergo streamlined assessments only. The International Association for Impact Assessment, the leading organization on best practices for environmental assessments, highlights the importance of assessments of plans with the potential to impact many people, such as transportation plans, expansion plans and energy plans.

At the time of our follow-up, the Ministry had not clarified which types of provincial government plans and programs must undergo an environmental assessment. The Ministry was waiting until the federal government completed its review of its environmental assessment process before considering long-term amendments to the provincial Act. The federal government proposed new legislation in February 2018. At the time of this follow-up, the Ministry had not determined when it would begin a review or reform of the provincial Act, although it noted that the Act was being considered for long-term improvements.

Thoroughness of Environmental Assessment Not Based on Project's Environmental Risk

Recommendation 3

The Ministry of the Environment and Climate Change should review and revise its criteria for determining whether a comprehensive or streamlined environmental assessment is required to ensure that the thoroughness of assessment is commensurate with the project's risk and potential impact.

Status: Little or no progress.

Details

During our 2016 audit, we noted that some of the criteria for determining whether a project would undergo a comprehensive or a streamlined assessment were based primarily on the size, scale and cost of the project. Other factors, such as level of public interest or concern, or the location of

a potential project, were not always considered. For example, a large landfill located in a remote and sparsely populated area that would therefore have little effect on human health would undergo a comprehensive assessment, but a small landfill in a heavily populated urban area would receive a streamlined assessment regardless of its potential for impact on the environment and human health.

In April 2018, the Ministry began reviewing the criteria for determining the thoroughness of assessment for the three regulated EAs that apply to electricity generation, waste management and public transit projects. The Ministry expects to complete its review by December 2018. At the time of our follow-up, the Ministry could not provide a time frame by which it expected to propose any potential changes.

Only minor changes have been made to Class EA criteria. Since our audit, the Ministry met four times between February 2017 and February 2018 with the Class EA document owners—including government ministries, municipalities and one not-for-profit organization—responsible for creating the Ministry-approved Class EA documents that outline the process for conducting streamlined assessments for projects ranging from municipal infrastructure to transportation to forest management. The Ministry requested that these Class EA document owners review their respective Class EA documents and identify potential project types that should require a more thorough or less thorough assessment based on their potential for negative environmental impacts. One Class EA was amended in October 2017 to include a new category for lower-risk projects, and two further Class EA document owners have submitted similar changes and are awaiting Ministry approval. However, the other project owners indicated that they did not believe changes to the criteria in their Class EA documents were necessary. The Ministry explained that it will work with project owners to amend their Class EA documents during their five year review process, but that the ability to make final changes resides with the document owners. These five year reviews

will occur at different dates for each Class EA, with the earliest being December 2018 and the latest being January 2022.

Ministry Has Little Information on the Volume or Quality of Streamlined Assessments

Recommendation 4

To ensure that the Ministry of the Environment and Climate Change (Ministry) has an opportunity to provide input on projects undergoing streamlined assessments, it should:

- clearly communicate publicly the requirement to notify the Ministry of the start and completion of environmental assessments;

Status: Fully Implemented.

Details

In our 2016 audit, we found that more than 95% of projects assessed in Ontario undergo streamlined environmental assessments. The project owners are generally required to inform the Ministry when starting and when completing their streamlined assessments, but we found that the Ministry was not aware of all projects. For example, the Ministry was aware of only 20% of the streamlined environmental assessments the Ministry of Transportation had completed from 2010 to 2015, and only 6% of the streamlined assessments Infrastructure Ontario had completed in that time frame.

In March 2017, the Ministry reminded Class EA document owners of their responsibility to inform regional offices of streamlined assessments. Then, by comparing the number of projects reported in an EA document owner's annual report to the assessment notices it received from the project owner during the year, the Ministry determined in June 2017 that one of the Class EA document owners had not reported all streamlined assessments it conducted in 2016. The Ministry informed us that it has conducted this exercise for five Class EA document holders so far, and plans to do so on all future annual reports received.

In May 2018, the Ministry updated its internal practices to begin tracking streamlined assessment notices, and plans to begin comparing this data to that in the annual reports submitted to the Ministry by the other Class EA project owners. By conducting this analysis, the Ministry will be able to identify projects that the owner had omitted from its annual report, as well as projects about which the project owner had not notified the appropriate regional office, and follow up on them, as they did with the one project owner in June 2017. The Ministry anticipates using the new internal tracking system to compare with Class EA document owners' annual reports in May 2019.

Also in May 2018, the Ministry implemented a new notification system with additional requirements for project owners to submit a standardized project information form through the Ministry's website. The Ministry also created regional email addresses for project owners to send their project information forms.

- *assess the appropriateness of penalties for project owners, particularly for municipalities or private-sector project owners, that do not adequately inform the Ministry at all required stages of an environmental assessment.*

Status: In the process of being implemented by December 2018.

Details

Our 2016 audit noted that if the Ministry did not know when streamlined assessments were occurring, it could not ensure that they were being completed correctly. We noted an example where the Ministry became aware of a road-widening project only after a Conservation Authority submitted a bump-up request. After becoming involved, the Ministry required the project owner to conduct a wildlife road-crossing safety plan, monitor for species-at-risk, and minimize impacts to sensitive areas by consulting with the Ministry of Natural Resources. Without the bump-up request, the Ministry would not have known about the project or been able to provide input for further studies.

The Ministry plans to conduct an analysis on the appropriateness of penalties for project owners that do not inform it at required stages of an environmental assessment through its overall review of the framework for environmental assessments, which it expects to complete in December 2018. Until then, the Ministry plans to continue to use existing tools for outreach, education and compliance.

Oversight of Streamlined Assessments Hampered by Lack of Resources and Direction

Recommendation 5

To ensure that the Ministry of the Environment and Climate Change provides useful feedback on streamlined environmental assessments for higher-risk projects, it should:

- *develop risk-based criteria to be used to determine which streamlined environmental assessments should be reviewed;*

Status: Fully implemented.

Details

We found in our 2016 audit that, of the 1,200 streamlined assessments received in the preceding five years, the Ministry was unable to determine how many had been reviewed by staff in the five regional offices. We studied a sample of these streamlined assessments and noted that regional staff had reviewed about half of them. We also found that the Ministry head office had not provided any guidelines to regional staff to ensure that the projects being reviewed had the highest risks. Instead, staff indicated that they used their judgment to determine which projects should be reviewed. We noted inconsistencies across the types of projects reviewed at the regions. For example, one region noted that it had received internal direction not to review assessments for transportation projects, whereas another noted that it generally did not review any assessments regarding the right to use Crown land. Other regions did not specify

any particular types of projects to be excluded from reviews.

In October 2017, the Ministry updated its internal guidelines to include a requirement for staff to screen assessments based on the risks posed by the project. In March 2018, the Ministry provided staff with a screening tool and procedures to follow when screening the assessments. The tool is a scoring matrix that provides a consistent method for rating a project's potential risk. Staff began using these risk-screening tools in May 2018.

- assess its current staffing levels at all regional offices and determine the amount of resources necessary to conduct required reviews.

Status: Little or no progress.

Details

We found in our 2016 audit that staffing levels varied at the Ministry's five regional offices. Between one and three staff were responsible for reviewing environmental assessments, and their caseload of active projects ranged from three to 20 projects per person. The Ministry had not assessed the resources needed at its various regional offices.

The Ministry has not made any changes to staffing allocations since our audit. While the Ministry regularly conducts strategic and operational planning, in which it identifies key goals and outcomes for a given year, we noted that it had not yet assessed its regional resource needs based on the number of streamlined assessment notices received. At the time of our follow-up, regional offices continued to have between one and three staff each to review streamlined assessments, with a caseload of five to 35 active projects per person. During the course of our follow-up, the Ministry indicated that it would assess the staffing resources in May 2019.

Streamlined Assessments Not Always Done Properly

Recommendation 6

To ensure that streamlined assessments are conducted properly, the Ministry of the Environment and Climate Change should:

- consult with stakeholders to determine which areas of the streamlined assessment process require further guidance to be provided;

Status: Fully implemented.

Details

Our review of streamlined assessment files during our 2016 audit indicated that project owners did not always complete them properly. In three-quarters of the files we reviewed, regional staff identified deficiencies, such as inadequate consultation with the public and Indigenous communities, lack of details to support the project owner's assessment of the environmental impact, and additional measures needed to mitigate the impact on the environment. Our survey of municipalities found that half of the municipalities that responded did not have the internal expertise to conduct environmental assessments, and many noted that Ministry guidance would be helpful.

In March 2017, the Ministry began consultations and asked the various Class EA project owners for feedback regarding areas where they needed further guidance. Project owners requested further guidance regarding climate change, cumulative effects, Indigenous consultations, and the bump-up request process. Project owners also requested that the Ministry update its Code of Practice for completing Class EAs.

In July 2017, the Ministry updated the information it provides to project owners to indicate what they are required to provide to the Ministry following a bump-up request. In December 2017, the Ministry also published new guidance on its website on how to incorporate the impacts of climate change in streamlined assessments. It expected to finish reviewing all of its current guidance documents

by December 2018. However, the Ministry was not able to provide an estimated time for updating these documents after the review.

- *provide clear direction to staff at the regional offices regarding their responsibilities to provide advice to stakeholders.*

Status: Fully implemented.

Details

In our 2016 audit we found that regional staff often lacked direction from the Ministry's head office in Toronto on how to complete reviews and communicate with project owners.

In our follow-up, we found that the Ministry surveyed regional staff in March 2017 about what challenges regional staff faced, gaps in their internal manual that should be addressed, how to improve communication between the regional and headquarter offices, and what types of tools would be helpful. The Ministry incorporated recommendations from this survey into the October 2017 update of its internal manual. Some changes included creating a shared file for regional staff to use, a list of commonly asked questions to help ensure consistent responses, and guidance on the various reporting requirements of the different types of streamlined assessments.

Lengthy Ministry Reviews of Bump-Up Requests Cause Unnecessary Project Delays

Recommendation 7

The Ministry of the Environment and Climate Change should improve the timeliness of its process for reviewing bump-up requests to ensure that its review does not cause unnecessary delays to projects.

Status: Little or no progress.

Details

Members of the public can request the Minister bump up the level of assessment for a project from streamlined to comprehensive. We noted in our 2016 audit that these bump-up requests must be

approved or denied by the Minister and required multiple levels of review. Bump-up reviews were targeted to be completed within 45 to 66 days. However, we noted that the average time to complete a bump-up request review between April 2010 and January 2016 was 213 days, with only eight of 177 reviews completed within the target time frame. We found that the delays caused by the levels of review resulted in increased costs and inefficiencies for project owners.

Since our audit, the average time for the Ministry to review bump-up requests has increased. Between January 2016 and June 2018, the Ministry received 73 bump-up requests. It took an average of 274 days to review each request.

The Ministry however, has taken steps to improve the bump-up process. In June 2017, the Ministry began to host formal meetings between bump-up requesters and project owners to help the two parties communicate throughout the process. At the time of this follow-up, the Ministry had hosted seven such meetings. In April 2018, the Minister delegated the responsibility for approving or denying bump-up requests to a Director, but only for projects categorized as having the lowest likelihood of having negative effects; for example, installing traffic control signs or constructing bicycle lanes on an existing road.

In February 2018, the Ministry published draft guidance on the bump-up process for public consultation on the Environmental Registry to ensure that bump-up requesters provide adequate information in their initial requests. However, due to the complexity of responses received, the Ministry does not have an expected date to finalize this guidance. In July 2018, the Ministry amended the regulation regarding bump-up requests to require that requesters use standardized forms.

The Ministry planned to update its timeline targets for reviewing bump-up requests related to municipal Class EA projects in October 2018, and to identify further recommendations for improvement based on feedback from stakeholders in December 2018. The updated timeline targets will

be longer than the current targets. The Ministry is not yet able to determine when it will be able to achieve improved timelines for reviewing bump-up requests.

Impacts of Projects Are Assessed in Isolation

Recommendation 8

To ensure that the cumulative effects of projects are assessed to prevent or minimize environmental damage, the Ministry of the Environment and Climate Change should finalize its guideline for assessing the cumulative effects of projects as soon as possible. The guideline should:

- apply to both comprehensive and streamlined environmental assessments;
- identify specific factors that must be considered when assessing cumulative effects;

Status: In the process of being implemented by March 2019 for comprehensive assessments. Little or no progress for streamlined assessments.

Details

Cumulative effects are the combined impact of past, present and planned future activities in an area, including both human-initiated activities and natural processes. We noted in our 2016 audit that while the Ministry encouraged project owners to consider cumulative effects, which may result in the identification of further mitigation measures, it was not a requirement in comprehensive assessments. Streamlined assessments are also not required to assess cumulative effects, other than projects related to provincial parks and activities on Crown land. Cumulative effects assessments are required in Alberta, British Columbia, Saskatchewan, and the Northwest and Yukon territories, as well as by the federal government. At the time of our audit, the Ministry indicated that it was committed to incorporating cumulative effects assessments into the environmental assessment process, and noted that it expected to complete draft guidance

in 2017 and post it to the Environmental Registry for comments.

We found in our follow-up that, in November 2017, the Ministry developed draft guidance for assessing cumulative effects in comprehensive assessments. The Ministry expected to post the guidance document, which indicates that specific factors should be considered, to the Environmental Registry by March 2019.

The Ministry has not taken any action to develop guidance for streamlined environmental assessments. As noted under the first action item of **Recommendation 6**, Class EA project owners requested that the Ministry provide further guidance on considering cumulative effects when they were consulted in spring 2017.

- include direction for Ministry staff to ensure they weigh the cumulative impact of projects in their decision-making process.

Status: Little or no progress.

Details

We found in 2016 that Ministry staff did not always consider cumulative effects in their review of projects because they were not required to. For the 20 individual environmental assessments approved in the year prior to our audit, only six of the project owners assessed cumulative effects. We also reviewed a sample of Class EAs and did not find any evidence that cumulative effects were included in the regional staff's reviews of projects.

At the time of our follow-up, the Ministry had not yet established timelines for staff training regarding cumulative effects because the guidance was still in draft form. The Ministry informed us that it will develop a plan for staff training after it finalizes its cumulative effects draft guidelines in March 2019.

No Clear Criteria or Independent Body to Ensure Decisions about Public Requests Are Made Objectively

Recommendation 9

To ensure that decisions regarding environmental assessments are appropriate and transparent, the Ministry of the Environment and Climate Change should:

- clarify the criteria for ministerial decision-making regarding public requests for a comprehensive assessment or a public hearing;
Status: Little or no progress.

Details

In Ontario, public requests to either bump up a streamlined assessment to a comprehensive assessment or to refer an environmental assessment to a public hearing are all decided by the Minister. In our 2016 audit, we noted that the Minister denied all but one bump-up request in a five-and-a-half year period prior to our audit, and all 190 hearing requests related to four projects. We noted that the Minister's decision-making process was not based on any objective criteria, but rather on subjective measures such as whether the request had "merit and substance," if it was "being pursued to delay the implementation of the project," or whether the hearing would "be a wise use of resources."

Since our audit, the Ministry has not developed any objective criteria to ensure that the Minister's decisions to deny or approve bump-up requests or refer a project to a public hearing are transparent. The Ministry has created guidance for citizens who wish to issue a bump-up request, and has updated the table given to project owners stating the type of information they need to provide that will be used in the Minister's decision-making process. We noted, however, the criteria used to make the decision has not changed since our 2016 audit. The Ministry has indicated that this would require legislative changes to the Act, and that only after completing a review of its environmental assess-

ment Codes of Practice in December 2018 will it be able to determine what changes are required.

- assess whether to appoint an independent body to provide objective advice on project-specific and systemic issues as needed, especially for projects considered to significantly impact the environment.

Status: In the process of being implemented by December 2018.

Details

In our 2016 audit, we found that the Environmental Assessment Advisory Panel noted in its 2005 review of the environmental assessment program that it had concerns about the lack of an independent advisory body. From 1983 to 1995, an arms-length advisory body called the Environmental Assessment Advisory Committee provided independent advice to the Minister on contentious projects and, in general, on environmental assessment areas in need of reform. In 1996, this committee was disbanded, and the Environmental Assessment Board was created. In 2000, the board was renamed the Environment Review Tribunal and gained jurisdiction over other environmental acts. Its independent board chair was replaced with a provincial public servant. The Minister has only referred two projects since 1998 to the Environmental Review Tribunal, which mostly reviews other types of environmental approvals.

Since our audit, the Ministry has received over 630 requests for two environmental assessments to be referred to the Environmental Review Tribunal. However, neither project was referred to it.

In August 2018, the Ministry informed us that it planned, by December 2018, to analyze situations in other jurisdictions where independent bodies provided objective advice.

Public Not Fully Informed about Projects

Recommendation 10

To enable the public to fully participate in the environmental assessment process, the Ministry of the Environment and Climate Change should update its website so that the public has access to all relevant information, including the status, for all environmental assessments.

Status: Little or no progress.

Details

At the time of our 2016 audit, we noted that the lack of a centralized online database of streamlined assessments made it difficult for the public to remain fully informed. Instead of an online system, the public was notified through direct mail and notices in local newspapers. Comprehensive assessment information on the Ministry website was also limited. If the public wished to see detailed information, they had to make a formal request for it at the Ministry's head office in Toronto. The Ministry's website did not have information on how to complete such requests.

After our audit, the Ministry consulted with the Class EA project owners in March 2017 on how best to inform the public about streamlined assessments. One project owner, the Ministry of Natural Resources and Forestry, committed to posting all notices of streamlined assessments on its public website by 2019. Since our audit, no other project owners have begun publishing streamlined assessment information on their websites.

The Ministry is still determining internally how best to show this information to the public. Through consultation, the Ministry identified that the Environmental Registry would be the best platform for an online database. The Environmental Registry is currently undergoing updates, which will "go live" in March 2019. The Ministry informed us that after these are initiated, it would then require more time to finalize its plan on how to include a database of environmental assessments onto the updated Environmental Registry.

No Way of Knowing if Assessments Were Effective

Recommendation 11

To assess the effectiveness of environmental assessments, the Ministry of the Environment and Climate Change should ensure that it:

- receives and analyzes information about the actual impact of all assessed projects in the project stages that follow the environmental assessment;
- compares project impact information with the impacts described in the environmental assessment and follows up on any significant discrepancies.

Status: Little or no progress.

Details

When we did our audit in 2016, the Ministry did not have measures in place to assess whether or not environmental assessments had been successful in preventing or mitigating negative environmental impacts of projects. While the Ministry's environmental field inspectors were responsible for enforcing the Act, they did not regularly inspect project sites to determine that commitments made by project owners in environmental assessments were completed. In the five years leading up to our audit, the Ministry only inspected one project that had undergone a comprehensive assessment and none that had undergone a streamlined assessment.

We also found that comprehensive assessment project owners, who are all required to submit information on the impact of their projects on the environment, were not doing so consistently. For example, we found that the project owner of a landfill expansion approved in 2010 did not submit any annual reports for four years. When the reports were submitted, they showed that the project owner had only taken one-third of the required water samples.

Our follow-up found that, in fall 2017, the Ministry created a work plan to review in order to determine whether there is a gap in the Ministry's

compliance strategy. The Ministry plans to review the linkages between environmental assessments and environmental approvals (those required under the *Environmental Protection Act* if anyone wishes to discharge contaminants into the natural environment) to identify gaps between the processes and propose steps to address them. The Ministry plans to also examine its current compliance monitoring program and environmental assessment audit program to determine areas where improvements can be made. The Ministry anticipates that these reviews and the gap analysis, which it had not begun at the time of our follow-up, will be completed in December 2018. At the time of our follow-up, the Ministry could not provide a time frame by which it expects to implement changes to its processes to ensure that it receives appropriate information to determine project impacts.

Assessments Are Costly and Time-Consuming but Ministry Lacks Performance Measures against Which to Evaluate Their Results

Recommendation 12

To assess the effectiveness of environmental assessments, the Ministry of the Environment and Climate Change should develop measurable performance indicators against which it can evaluate its delivery of the environmental assessment program.

Status: Little or no progress.

Details

To be completed, environmental assessments require significant resources in terms of time, money and effort. Despite this, our 2016 audit

found that the Ministry did not track and report on performance measures to ensure the process was efficient and resulted in improved environmental planning. In contrast, we found that British Columbia's Environmental Assessment Office tracked and reported on how many projects were completed within their legislated timeline, how many compliance inspections were completed, and the percentage of compliance reports that staff reviewed within six weeks. We also noted that the Canadian Environmental Assessment Agency tracked and reported on the percentage of environmental assessments completed within their legislated timelines, and the percentage of projects where measures were effective at mitigating environmental impacts.

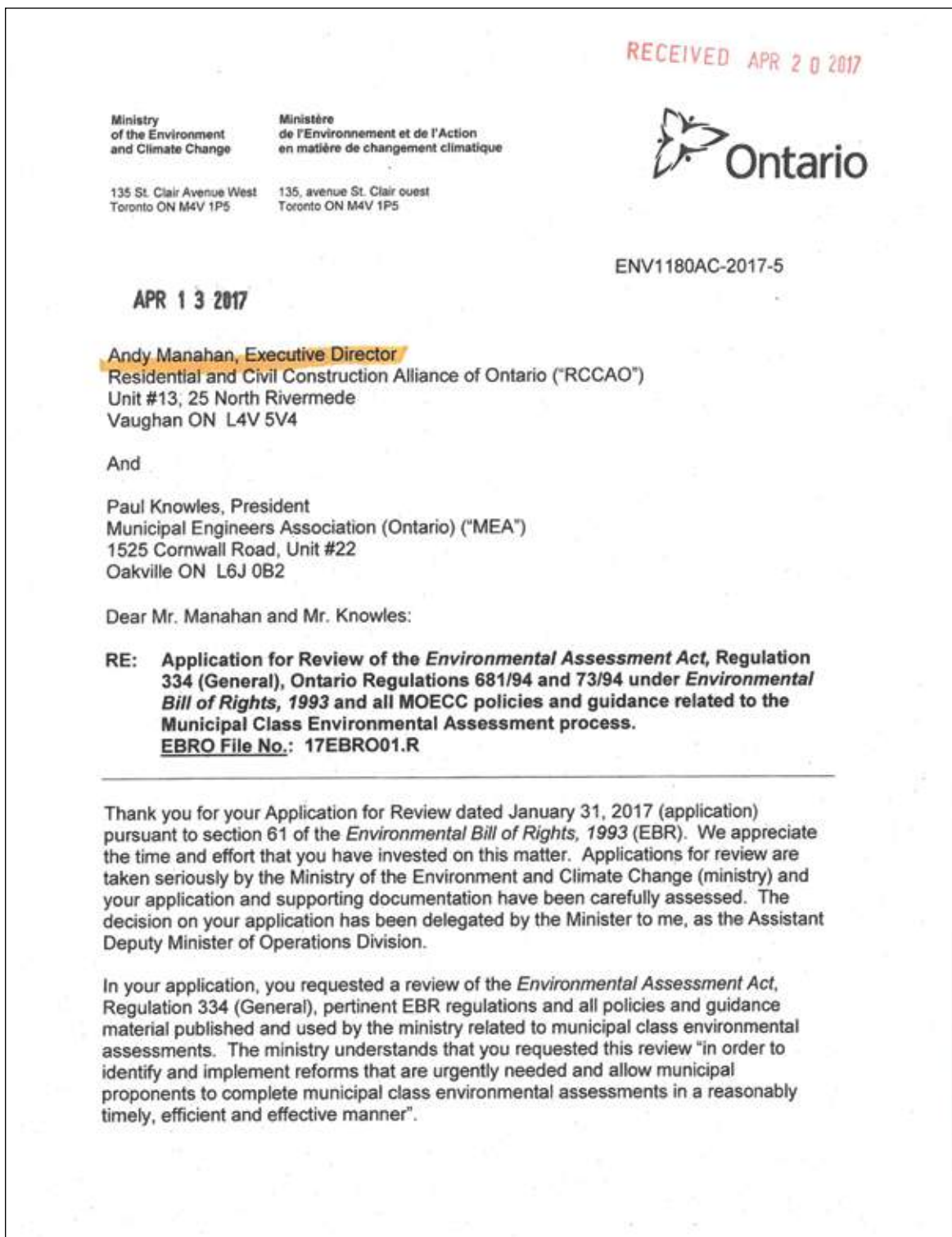
Our follow-up found that, in fall 2017, the Ministry began reviewing potential performance measures, including reviewing case studies in other jurisdictions and determining its short-, medium- and long-term goals for the program. This review resulted in its developing priority performance measures for the program, which were circulated in spring 2018. The measures include looking at the percentage of projects that had deficiencies in the first submission, percentage of projects that included adequate consultation, percentage of projects completed in compliance with their commitments and conditions of approval, and timeliness of completing environmental assessment reviews. The Ministry expects to complete a feasibility analysis of these performance measures by December 2018, but could not provide us with a date by which it expects to implement them.

APPENDIX D

The list of stakeholder organizations endorsing the MEA-RCCAO Application for Review includes, but is not limited to, the following:

- Association of Registered Interior Designers of Ontario (**ARIDO**)
- Building Industry and Land Development Association (**BILD**)
- Ontario Home Builders Association (**OHBA**)
- Ontario Construction Secretariat (**OCS**)
- Ontario Electric League (**OEL**)
- Ontario General Contractors Association (**OGCA**)
- Ontario Good Roads Association (**OGRA**)
- Ontario Road Builders Association (**ORBA**)
- Ontario Sewer and Watermain Construction Association (**OSWCA**)
- Ontario Society of Professional Engineers (**OSPE**)
- Regional Municipality of Peel
- Residential Construction Council of Ontario (**RESCON**)
- Surety Association of Canada (**SAC**)

APPENDIX E



Andy Manahan and Paul Knowles
Page 2.

With due consideration on the reasons cited in your application, I have concluded that the public interest warrants the review you have requested. The ministry will be undertaking this review in parallel with commitments made to implement recent recommendations of the Auditor General and other initiatives to modernize the environmental assessment program.

The ministry has already begun working with Class Environmental Assessment holders, including the Municipal Engineers Association, as they have a critical role to play in the effective management of the Class Environmental Assessment process, including proposing amendments that could improve the Class Environmental Assessment.

As the ministry is taking a more comprehensive approach in looking at improvements to the environmental assessment program, completion of the review is expected by the end of December 2018. You will be advised of the outcome 30 days after the completion of the ministry's full review.

In the event that you have any questions regarding this matter, please contact Dolly Goyette, Director, Environmental Approvals Access and Service Integration Branch at 416-314-8171.

Yours truly,



Paul Nieweglowski
Assistant Deputy Minister
Operations Division

Attachment

c: Mr. Tyler Schulz, Environmental Commissioner's Office
Scott Shaw, Environmental Bill of Rights Office, MOECC

Report on Stakeholder Consultation Meetings re Improvements to the MCEA Process

Prepared by RCCAO and MEA
May 22, 2018

1. Stakeholders and Other Attendees

The MOECC hosted 7 full day stakeholder consultations in downtown Toronto each Wednesday from March 21, to May 2, 2018 inclusive. MOECC representatives for each of the seven meetings included: Adam Leus, Sarah Robicheau, Shannon Gauthier, Maria Lagarde, Shelley Graham (MOECC Legal Counsel). Other MOECC representatives attended one or more portions of the consultation meetings.

At least one representative of the Municipal Engineers Association participated in each meeting. Other stakeholder organizations included, but were not limited to: Residential and Civil Construction Alliance of Ontario, Toronto Region Board of Trade, Water Environment Association of Ontario, WaterTAP, York Region, Association of Municipalities Ontario, Durham Region, Northwestern Ontario Municipal Association, Ontario Good Roads Association, and various individual municipalities, consulting engineering firms and municipal planning consultants.

2. Background to Consultation Meetings

The consultation meetings were intended to address the following obligations of the MOECC:

- a) to fulfill its undertaking in response to the section 61 Environmental Bill of Rights joint Application for Review dated February 2017 by RCCAO and MEA for improvements to Municipal Class Environmental Assessment (MCEA) process;
- b) the Auditor General of Ontario's 2016 Annual Report, Value for Money Audit of Environmental Assessments, calling for improvements to the environmental assessment process for all classes of undertakings, including but not limited to MCEA projects;
- c) the November 2017 report by the Development Approval Roundtable Action Plan, a joint initiative by seven ministries including the Ontario Ministry of Municipal Affairs and the Ministry of Housing, to assist Ontario residents find affordable homes and to bring stability to the residential purchasing and rental markets;
- d) the Class Environmental Assessment Proponent Working Group requests for improvements and clarifications for one or more classes of projects; and
- e) resolutions from more than 110 separate municipal councils in early 2018 calling upon the MOECC to make improvements to the MCEA process.

Report on Stakeholder Consultation Meetings re Improvements to the MCEA Process

Prepared by RCCAO and MEA
May 22, 2018

On November 29, 2017 RCCAO, MEA and the OGRA hosted a consultation meeting in Richmond Hill, Ontario on MCEA issues. MOECC representatives also participated in this meeting. The need for improvements to the MCEA was also one of the major issues raised at a panel discussion at OGRA Annual Conference on February 27, 2018. Both of these meetings called upon the MOECC to schedule MCEA consultation meetings as soon as possible.

3. Consultation Meeting Agendas and Procedures

Each meeting consisted of between 10 and 15 attendees, approximately 40% of whom were MOECC representations. The Ministry provided a printed one-page agenda to attendees at the start of each consultation meeting and a PowerPoint slide deck of 23 pages was used throughout the day. Comments and feedback regarding issues of concern and potential solutions were handwritten onto poster sheets and taped to the meeting room walls throughout the day.

At the end of each consultation day, stakeholders were each provided with five adhesive coloured dots and were asked to affix one or more of their dots on statements or issues that represented their highest priorities.

4. Stakeholders' Top Five Issues

Based on the feedback of a significant number of stakeholders that attended the sessions, the five top issues appear to include the following:

- A) Part II Order Requests (PIOR) create substantial additional delays and impose additional costs on municipal proponents – how Ministry can reduce the time and costs associated with PIOR's including, exempting certain MCEA projects, limiting issues to those raised by PIOR applicant, delegating authority to respond to PIOR to Ministry director(s), setting reasonable deadlines following which PIOR presumed denied and project could without further delay;
- B) The lack of pragmatic guidelines and resources for smaller municipal proponents to complete the required consultations with indigenous communities and other agencies such as conservation authorities;
- C) Assessing which projects should be included based on environmental risk. This could include reclassification of schedules or exemptions;
- D) Reducing the time and costs of EA consultations and reports from 'scope creep' and avoiding duplication of other consultations or approvals such as MOECC certificates of approval, or approvals under the *Planning Act*, smoother and simpler transition to proceed with municipal infrastructure that is included in transportation and other master plans; and

Page 2 of 4

Report on Stakeholder Consultation Meetings on Proposed Improvements to the MCEA Process

Prepared by RCCAO and MEA
May 22, 2018

- E) Greater recognition and deference to decisions made by locally elected municipal officials regarding MCEA infrastructure projects, decisions by elected council members are a form of community consultation.

5. Other Priority Issues to Improve the MCEA Process

Other issues were raised during one or more stakeholder consultation meetings including, but not limited to, the following:

- A) Although the MOECC has proposed timelines for decisions on PIOR's, many stakeholders believe that the decision for a PIOR should be no longer than 90 days for any MCEA projects, including Schedule C projects;
- B) The MOECC should facilitate greater public access to MCEA project information through a separate webpage that would include notices of commencement, notices of completion, environmental reports and information about the commencement and resolution of PIOR's, including copies of any issued Part II Orders;
- C) It is a growing trend for Indigenous communities and other stakeholders to demand compensation from municipal proponents for the cost of retaining an expert to review environmental reports for MCEA projects – municipal proponents in northern region have extremely limited resources to respond to such requests and often face multiple demands from organizations that can be as far as several hundred kilometres away from the proposed MCEA project;
- D) A number of municipal proponents are frustrated that the MOECC appears to use PIOR's as a trigger to do a full audit of the consultation process, and will require studies and other information that were not an issue in the PIOR; and
- E) There should be an exemption from PIOR's for MCEA projects that have a low environmental risk, e.g. Schedule A and Schedule A+ projects.

6. Next Steps

At most, if not all of the consultation meetings, MOECC representatives affirmed the Ministry's commitment to continue to work on MCEA improvements in the spring and summer months.

Report on Stakeholder Consultation Meetings re Improvements to the MCEA Process

Prepared by RCCAO and MEA
May 22, 2018

RCCAO and MEA request that the Ministry acknowledge that it will continue work on reviewing the MCEA process, and that such review will include the issues listed in this report.

RCCAO and MEA also recommend that the Ministry schedule a further meeting with a cross section of stakeholder representatives that participated in the consultation meetings between March 21 and May 2, 2018, to ensure that there is general agreement about the top priorities.

End of Document

Page 4 of 4

APPENDIX G

Ministry of the Environment,
Conservation and Parks

Environmental Assessment and
Permissions Division
135 St. Clair Avenue West
14th Floor
Toronto ON M4V 1P5

Ministère de l'Environnement, de la
Protection de la nature et des Parcs

Division des évaluations et des
permissions environnementales
135, avenue St. Clair ouest
14^e étage
Toronto ON M4V 1P5



Log: ENV1180AC-2017-5

January 30, 2019

Andy Manahan, Executive Director
Residential and Civil Construction Alliance of Ontario
Unit # 13, 25 North Rivermede
Vaughan ON L4V 5V4

and

Paul Knowles, President
Municipal Engineers Association
1525 Cornwall Road, Unit # 22
Oakville ON L6J 0B2

Dear Mr. Manahan and Mr. Knowles:

RE: **EBRO File No.: 17EBRO01.R**

Application for Review of the *Environmental Assessment Act*, Regulation 334 (General), Ontario Regulations 681/94 and 73/94 under *Environmental Bill of Rights, 1993* and all MECP policies and guidance related to the Municipal Class Environmental Assessment process.

Thank you again for the time and effort you have invested in your Application for Review submitted under Part IV of the *Environmental Bill of Rights, 1993*. Applications for review are taken seriously by the government and your application and supporting documentation have been carefully assessed. In a preliminary decision conveyed to you on April 13, 2017, the ministry concluded that public interest warrants the review you have requested and committed to complete the review by December 31, 2018.

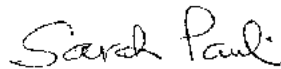
After careful consideration of the information available, and in accordance with section 67(1) of the *Environmental Bill of Rights*, the ministry has concluded the review of the *Environmental Assessment Act*, Regulation 334 (General), Ontario Regulations 681/94 and 73/94 under *Environmental Bill of Rights, 1993*, and all ministry policies and guidance related to the Municipal Class Environmental Assessment process. A review summary has been prepared and is attached to this correspondence in accordance with the provisions of Section 70 to provide further details on the outcome of the ministry's review.

Mr. Manahan and Mr. Knowles
Page 2

During the course of the review, the ministry implemented several measures to address a number of issues identified in your request, particularly around the Part II order process. In order to build on these improvements, the government announced a plan to modernize Ontario's environmental assessment process in its recently released "A Made-in-Ontario Environment Plan." The ministry is set to release a discussion paper this spring on revitalizing the environmental assessment program. We look forward to continue working closely with you and other stakeholders on this initiative.

We appreciate the time and effort that you have invested in this matter and thank you for your application. If you have questions regarding the outcome of the review, please contact Eugene Macchione, Director of Client Services and Permissions Branch at 416-314-8171 or by email at eugene.macchione@ontario.ca.

Yours truly,



Sarah Paul
Assistant Deputy Minister
Environmental Assessment and Permissions Division

Attachment

- c: Tyler Schulz, Environmental Commissioner's Office (File No. R2016008)
Scott Shaw, MECP Environmental Bill of Rights Office (File No. 17EBR001.R)

REVIEW SUMMARY
Application for Review – Environmental Bill of Rights
Re: Municipal Class Environmental Assessment Process
File No. 17EBRO01.R

ISSUE:

The Ministry of the Environment Conservation and Parks received an application on February 13, 2017 under the Environmental Bill of Rights, 1993 (EBR) for a review of the Environmental Assessment Act (the Act), Regulation 334 (General), Ontario Regulation 681/94 (Prescribed Instruments) and Ontario Regulation 73/94 (General) under EBR, 1993 and all ministry policies and guidance documents related to the Municipal Class Environmental Assessment (EA) process.

The ministry concluded in its preliminary consideration that public interest warranted the review. The applicants were informed on April 13, 2017 that the ministry committed to complete the review by the end of December 2018.

As per subsection 71(1) of the Environmental Bill of Rights, within 30 days of completing a review under section 61, the ministry will give notice of the outcome of the review, by January 30, 2019.

The application identified the following select elements of the Municipal Class EA process requiring review and their specific desired results:

1. Availability of Part II Order Requests – confirmation in writing that Municipal Class EA Schedule 'A' and 'A+' projects are not subject to Part II order requests or pass a regulation or other instrument to exempt Municipal Class EA Schedule 'A' and 'A+' projects from the Part II order request process.
2. Delegation of Authority to Respond to Part II Order Requests – the ministry and/or the Legislature to expressly provide the Minister with the authority to delegate responsibility for Part II order requests to a Director.
3. Mandatory Use of Part II Order Request Form – to require applicants to provide specific information in a consistent manner might significantly reduce the time needed to complete the review process for Part II order requests.
4. Ensuring that Part II Order Requests are Bona Fide – ensure requests represent a legitimate perceived deficiency in the assessment of environmental impacts of a proposed project.
5. Posting of Part II Order Requests and Part II Orders on the Environmental Registry – to provide a means to determine if or when any requests for Part II orders were made for a specific Municipal Class EA project, but also provide a repository for the actual application and response documents from the Minister.
6. Municipal Class EA Process Transparency and Stakeholder Access – use of the Environmental Registry for the posting of Notices of Commencement, Notices of Completion and copies of relevant reports and amendments is consistent with the overall purpose of the Municipal Class EA process of providing residents with timely and relevant information on proposed Municipal Class EA projects.

7. **Harmonization and Integration of the Municipal Class EA and Planning Act Processes** – to recognize public participation and decisions made under planning act Instruments and recognition of public participation and decisions made under Planning Act instruments.
8. **Focused Scope of Reports and Studies** – to avoid scope creep in Municipal Class EA review, the ministry to participate in the development of the Municipal Class EA Companion Guide and to provide additional guidance and tools on climate change to address local concerns without increasing the costs and time to complete it.
9. **More timely ministry responses to proposed Municipal Class EA Process Changes.**

EBR Application and Review

The decision on the assessment of the application was delegated by the Minister of the Environment, Conservation and Parks to the Assistant Deputy Minister of Environmental Assessment and Permissions Division. On April 13, 2017, the ministry notified the applicants that the requested review would be undertaken, focusing on the issues identified.

In conducting this review, the ministry carefully considered the information provided in the application. The ministry also relied on the information found in its files as well as ministry staff knowledge about the issues. Furthermore, the ministry undertook the following assessments/activities to complete this review:

- Reviewing the applicants' concerns in parallel with the work being undertaken in response to the findings raised by the 2016 Auditor General's Value for Money audit on the EA program, and from the 2018 Development Approvals Roundtable discussions.
 - Some of the recommendations in the Auditor General's 2016 Annual Report (specifically recommendations 6, 7, 9 & 10) directly touched upon the class EA process and the Part II order process.
- Working alongside the Municipal Engineers Association (MEA), the ministry completed seven focused engagement sessions with key stakeholder groups (i.e. municipal associations and EA practitioners) to inform the review and identify the best path forward on improvements to the Municipal Class EA process.
 - The objectives of these sessions were to:
 - 1) ascertain the challenges that the many stakeholders and users of the Municipal Class EA have experienced;
 - 2) achieve some consensus on a set of desired program outcomes; and
 - 3) generate a list of suggested actions for improvement, which the ministry can consider in more comprehensive EA reform initiatives

See Appendix 1 for a detailed summary of these engagement sessions.

Applicants' Concerns and Ministry Assessment:

Issues:

- 1. Availability of Part II Order Requests – confirmation in writing that Municipal Class EA Schedule 'A' and 'A+' projects are not subject to Part II order requests or pass a regulation or other instrument to exempt Municipal Class EA Schedule 'A' and 'A+' projects from the Part II order request process.**

Section 16 of the Act does not provide for a limitation to be placed on the types or classes of activities covered by a class EA for which a Part II order can be requested. Based on this legal interpretation, the ministry has consistently taken the position that a Part II order can be requested on any project under the Class EA. The ministry recognizes that municipal stakeholders are of the opinion that Part II order provisions should not apply to these low environmental risk projects.

The ministry reviewed statistics on Part II order decisions made by the Minister within the five-year period 2012 to 2017. Based on these statistics, the Minister made decisions on a total of 117 undertakings with Part II order requests involving Municipal Class EA projects. Only two of these were for the lowest risk category (Schedule A and A+), 47 were for Schedule B, and 63 were for Schedule C. A and A+ projects rarely receive Part II order requests. However, through the engagement sessions some proponents suggest this low number can be attributed to members of the public being largely unaware of the option for requesting a Part II order for this type of project, since typically projects in this schedule require no or limited public notification. Despite the low likelihood of a Part II order request on low risk projects, municipalities are concerned that a member of the public could request a Part II order for routine and vital activities such as winter road ploughing, salting or sanding.

To partly address this issue and to reduce the timelines for a decision, the ministry has delegated the Minister's decision-making on Part II order requests for Schedule A and A+ Municipal Class EA projects to the Director since April 2017. It is anticipated that the option of exempting low-risk projects from EA requirements (which would also eliminate the potential for a Part II order request on these projects) will be considered in the discussion paper on EA revitalization expected in spring 2019.

- 2. Delegation of Authority to Respond to Part II Order Requests – the ministry and/or the Legislature to expressly provide the Minister with the authority to delegate responsibility for Part II order requests to a Director.**

The Minister has the authority to delegate decisions on Part II order requests to the Director.

As noted in response #1, the Minister used this authority in April 2017, to delegate his decision-making authority on Part II order requests for Schedule A and A+ Municipal Class EA projects to the Director.

The ministry has also taken the following steps toward reducing the time it takes to go through the Part II order decision-making process:

- c In July 2017, introduced "triage meetings" between ministry staff and proponents to obtain critical project information at the onset of the review of the Part II order request. The triage meetings are scheduled early in the Part II order review process to discuss the project and concerns raised. As of November 2018, the ministry has held 18 triage meetings and received positive feedback from proponents
 - c Established providing proponents with an Information Requirements Form as soon as a Part II order request is received.
- 3. Mandatory Use of Part II Order Request Form – to require applicants to provide specific information in a consistent manner might significantly reduce the time needed to complete the review process for Part II order requests.**

The ministry agrees with the applicants that having specific information upfront from requesters has the potential to reduce the time in the decision making process for Part II order requests. As a result, in July 2018, the ministry launched a new "smart form" on the Government of Ontario's Forms Repository that the public must use to submit a Part II order request per Regulations 152/18 Request for Order to Comply with Part II. This form helps to ensure that the requester provides the ministry all of the information needed to properly evaluate the request.

- 4. Ensuring that Part II Order Requests are Bona Fide – ensure requests represent a legitimate perceived deficiency in the assessment of environmental impacts of a proposed project.**

The ministry agrees that Part II order requests should contain appropriate information to help the Minister make an informed decision.

As stated in response #3 the ministry has made mandatory a new smart form that will help in this regard. In addition, in February 2018, the ministry released draft public guidance on how to submit a Part II order request for comment on the Environmental Registry. The ministry has reviewed the comments received through this process and anticipates finalization of the guide by spring 2019.

- 5. Posting of Part II Order Requests and Part II Orders on the Environmental Registry – to provide a means to determine if or when any requests for Part II Orders were made for a specific Municipal Class EA project, but also provide a repository for the actual application and response documents from the Minister.**

In 2016, the ministry committed to the Auditor General to examine strategies to improve transparency in providing EA information, including through the use of

websites. The ministry also engaged with class EA holders to identify opportunities to improve the accessibility of EA information. The ministry will continue to consider the best path forward as part of a continuing efforts to revitalize the EA program that will be laid out in a discussion paper to be released in spring 2019.

6. **Municipal Class EA Process Transparency and Stakeholder Access – use of the Environmental Registry for the posting of Notices of Commencement, Notices of Completion and copies of relevant reports and amendments is consistent with the overall purpose of the Municipal Class EA process of providing residents with timely and relevant information on proposed Municipal Class EA projects.**

In 2016, the ministry committed to the Auditor General to examine strategies to improve transparency in providing EA information, including through the use of websites. The ministry initiated discussions with class EA holders to identify opportunities to improve the accessibility of EA information. The ministry will continue to consider the best path forward as part of a continuing efforts to revitalize the EA program that will be laid out in a discussion paper to be released in spring 2019.

7. **Harmonization and Integration of the Municipal Class EA and Planning Act Processes – to recognize public participation and decisions made under Planning Act instruments and recognition of public participation and decisions made under Planning Act instruments.**

The ministry looked at cases where a project that had been subject to an appeal before the Ontario Municipal Board (now the Local Planning Appeal Tribunal) also received a Part II order request. The timing of the appeals varied from case to case, and the grounds for the appeal were not necessarily the same between a Part II order request and a planning appeal. While the Local Planning Appeal Tribunal can include environmental considerations, it currently does not have jurisdiction over EA matters. In other words, it cannot elevate a project schedule, make determinations as to whether a class EA has been satisfactorily completed, or ensure if requirements under the Act have been met.

8. **Focused Scope of Reports and Studies- to avoid scope creep in Municipal Class EA review, the ministry to participate in the development of the Municipal Class EA Companion Guide and to provide additional guidance and tools on climate change.**

The ministry appreciates the work completed by the MEA on the Companion Guide and welcomed the opportunity to participate in its development through providing comments.

The Act allows for a broad set of considerations to be taken into account in supporting a Minister's decision on Part II order requests.

The ministry will continue to examine other ways to address the issue of “scope creep” through public consultations around the forthcoming discussion paper on EA modernization expected to be publicly released in spring 2019.

9. More timely ministry responses to proposed Municipal Class EA process changes.

The ministry will continue to work closely with MEA to consider amendments to the Municipal Class EA.

Review Conclusions

The review provided the ministry with significant insights, and a clearer understanding into the challenges that municipalities, developers and associations face through the Municipal Class EA process and the EA program, at large. Some progress has been made on the key recommendations relating to operational business processes put forward by the applicants. While these changes are important steps towards improving EA processes, there is more opportunity to revitalize the EA program.

More can be done to modernize and transform the class EA process with the view of reducing duplication, creating greater certainty of timelines and aligning risk with level of assessment, while ensuring and maintaining protection of the environment. As a result, the ministry is drafting a discussion paper on EA revitalization expected in spring 2019 for public comment.

Overall Conclusions

While this concludes the ministry’s review of this application, the concerns noted in this application were raised with the current government, and the government has responded. On November 29, 2018, the ministry released its Made-in-Ontario Environment Plan. This plan represents a new vision for preserving and protecting Ontario’s environment, and specifically looks to modernize Ontario’s EA process to address duplication; streamline processes; improve service standards to reduce delays; and better recognize other planning processes. It also aims to improve coordination of land use planning and environmental approval processes.

Through implementation of the plan, the ministry will continue to work with Municipal Class EA stakeholders on furthering progress in revitalizing the Municipal Class EA and the EA program as a whole. The ministry is working to release in spring 2019 a discussion paper on EA revitalization in Ontario to the broader public, and will continue to consult and engage stakeholders, the public, and Indigenous Communities on new initiatives for the EA program.

SCHEDULE 6 ENVIRONMENTAL ASSESSMENT ACT

1 The definitions of “Minister” and “Ministry” in subsection 1 (1) of the *Environmental Assessment Act* are repealed and the following substituted:

“Minister” means the Minister of the Environment, Conservation and Parks, or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*, (“ministre”)

“Ministry” means the Ministry of the Minister, (ministère)

2 (1) Section 11.4 of the Act is amended by adding the following subsection:

Minister may require plans, etc.

(3.1) For the purposes of making a decision under this section, the Minister or the Tribunal may, by order, require the proponent of the undertaking to provide plans, specifications, technical reports or other information and to carry out and report on tests or experiments relating to the undertaking.

(2) Subsection 11.4 (4) of the Act is repealed and the following substituted:

Amendment, revocation

(4) Where the Minister or the Tribunal reconsiders an approval under this section, that approval may be amended or revoked
Rules, etc.

(4.1) A decision under this section shall be made in accordance with any rules and subject to any restrictions as may be prescribed.

3 (1) Subsection 12.4 (1) of the Act is amended by striking out “This Part” at the beginning, and substituting “Subject to subsection (4), this Part”.

(2) Section 12.4 of the Act is amended by adding the following subsection:

Application of s. 11.4

(4) Despite subsection (1), a notification given under subsection (2) or any order made under subsection (3), section 11.4 applies in respect of an environmental assessment to which all or part of the predecessor Part applied and such an environmental assessment is deemed to be an application for the purpose of section 11.4.

4 Subsection 14 (2) of the Act is amended by adding the following paragraph:

1.1 A description of any undertakings within the class that are proposed to be exempt from this Act and the basis for the proposed exemption.

5 The Act is amended by adding the following sections:

Non-application of Act, certain undertakings

15.3 (1) A class environmental assessment as it is approved or amended may provide that this Act does not apply with respect to one or more undertakings within the class, including as a result of the evaluation of screening criteria specified within the class environmental assessment.

Exemption of undertakings

(2) An undertaking provided for in subsection (1) is exempt from this Act.

Specific exemptions that are based on meeting criteria

(3) Where a proponent determines that it is not required to conduct further assessment or public consultation in respect of an undertaking based on evaluation of screening criteria specified within one of the following class environmental assessments, as amended or re-named from time to time before May 1, 2019, that undertaking is exempt from this Act as long as any conditions specified within the class environmental assessment are complied with:

1. Class Environmental Assessment for MNR Resource Stewardship and Facility Development Projects approved by the Lieutenant Governor in Council on June 26, 2002 under Order in Council 1381/2002.
2. Class Environmental Assessment Process for Management Board Secretariat and Ontario Realty Corporation approved by the Lieutenant Governor in Council on April 28, 2004 under Order in Council 913/2004
3. Class Environmental Assessment for Provincial Parks and Conservation Reserves approved by the Lieutenant Governor in Council on September 23, 2004 under Order in Council 1900/2004.
4. Class Environmental Assessment for Activities of the Ministry of Northern Development and Mines under the Mining Act approved by the Lieutenant Governor in Council on December 12, 2012 under Order in Council 1952/2012

5. Class Environmental Assessment for Minor Transmission Facilities of Hydro One approved by the Lieutenant Governor in Council on November 16, 2016 under Order in Council 1726/2016.

Exemptions, specific undertakings

(4) An undertaking listed in the following schedules, groups or categories of an approved class environmental assessment, as amended or re-named from time to time before May 1, 2019, and that is carried out by a person authorized to proceed in accordance with that class environmental assessment, is exempt from this Act.

1. Group A of the GO Transit Class Environmental Assessment Document approved by the Lieutenant Governor in Council on December 13, 1995 under Order in Council 2316/1995
2. Group D of the Class Environmental Assessment for Provincial Transportation Facilities approved by the Lieutenant Governor in Council on October 6, 1999 under Order in Council 1653/1999
3. Schedules A and A- of the Municipal Class Environmental Assessment approved by the Lieutenant Governor in Council on October 4, 2000 under Order in Council 1923/2000
4. Category A of the Class Environmental Assessment for MNR Resource Stewardship and Facility Development Projects approved by the Lieutenant Governor in Council on June 26, 2002 under Order in Council 1381/2002
5. Category A of the Class Environmental Assessment Process for Management Board Secretariat and Ontario Realty Corporation approved by the Lieutenant Governor in Council on April 28, 2004 under Order in Council 913/2004
6. Category A of the Class Environmental Assessment for Provincial Parks and Conservation Reserves approved by the Lieutenant Governor in Council on September 23, 2004 under Order in Council 1900/2004.
7. Category A of the Class Environmental Assessment for Activities of the Ministry of Northern Development and Mines under the Mining Act approved by the Lieutenant Governor in Council on December 12, 2012 under Order in Council 1952/2012.

Amendment of an approved class environmental assessment

15.4 (1) The Minister may amend an approved class environmental assessment in accordance with this section.

Notice and comment

(2) When the Minister is considering amending an approved class environmental assessment under this section, the Minister shall ensure that adequate public notice of the proposed amendment is provided and that members of the public have an opportunity to comment on it.

Approval

(3) The Minister may amend an approved class environmental assessment if the Minister is satisfied that the amendments are consistent with the purpose of this Act and the public interest.

Reasons

(4) When amending or refusing to amend an approved class environmental assessment, the Minister shall give written reasons to the person given approval in respect of the class environmental assessment under section 9 and to any other persons the Minister considers advisable.

Administrative amendments

(5) The Director may amend an approved class environmental assessment to make one or more of the following administrative changes:

1. Correcting errors that are editorial or typographical in nature.
2. Updating references to an Act or regulation, or provisions or other portions of an Act or regulation.
3. Updating references to bodies, offices, persons, places, names, titles, locations, website or addresses.
4. Clarifying the existing text of the class environmental assessment.

Own initiative

(6) The Minister or Director may amend an approved class environmental assessment on the Minister's or Director's own initiative.

Commencement of amendment

(7) An amendment to an approved class environmental assessment, whether by the Minister or the Director, comes into effect upon publication of a notice of the amendment in the registry under the *Environmental Bill of Rights, 1993*.

Section prevails

(8) Amendments to approved class environmental assessments must be made in accordance with this section despite any amendment processes that may be set out in those class environmental assessments or any conditions set out in an approval given under section 9.

6 (1) Subsection 16 (1) of the Act is amended by striking out “The Minister” at the beginning and substituting “Subject to subsection (4.1), the Minister”.

(2) Subsection 16 (3) of the Act is amended by striking out “The Minister” at the beginning and substituting “Subject to subsection (4.1), the Minister”.

(3) Paragraph 4 of subsection 16 (4) of the Act is repealed and the following substituted:

- 4 Any reasons given by a person who requests the order, as long as the request complies with subsection (5) and deals with a matter described in clause (4.1) (a) or (b).

(4) Section 16 of the Act is amended by adding the following subsection:

Grounds for order

(4.1) After considering the matters set out in subsection (4), the Minister may issue an order under subsection (1) or (3) only if the Minister is of the opinion that the order may prevent, mitigate or remedy adverse impacts on,

- (a) the existing aboriginal and treaty rights of the aboriginal peoples of Canada as recognized and affirmed in section 35 of the *Constitution Act, 1982*; or
- (b) a prescribed matter of provincial importance.

(5) Subsection 16 (5) of the Act is repealed and the following substituted:

Request for order

(5) Any person resident in Ontario may request the Minister to make an order under this section or the Minister may make an order upon the Minister's own initiative

(6) Subsection 16 (7) of the Act is repealed and the following substituted:

Deadline after request

(7) The Minister shall decide whether to make an order under this section before any deadline as may be prescribed.

If deadline not met

(7.1) If the Minister has not made a decision in respect of a request under subsection (5) by a deadline prescribed for the purpose of subsection (7), the Minister shall provide written reasons to the following persons indicating why a decision was not made and when a decision is expected to be made:

- 1 The proponent of the undertaking.
- 2 Any person who requested the order.

Review of request by Director

(7.2) Before a request for an order is considered by the Minister, the Director shall review the request to determine whether or not it,

- (a) raises an issue related to a right described in clause (4.1) (a) or a matter prescribed for the purposes of clause (4.1) (b), or
- (b) is made by a person who is qualified to make the request

Same

(7.3) After the review of the request described in subsection (7.2), the Director shall,

- (a) refuse all or parts of the request if it does not raise an issue related to a right described in clause (4.1) (a) or a matter prescribed for the purposes of clause (4.1) (b); or
- (b) refuse the request if it was not made by a person qualified to make the request.

Notification

(7.4) If, after reviewing the request, the Director has decided to refuse all or part of it, the Director shall notify the person who made the request of the decision and shall give the person reasons for the decision.

7 (1) Section 17 of the Act is amended by adding the following subsection:

Transition: amendments to class environmental assessments

(5) An amendment to a class environmental assessment made before section 15.4 comes into force shall be deemed to have been approved under that section and to have been valid from the date on which it was amended.

(2) Section 17 of the Act is amended by adding the following subsections:

Transition: orders

(6) Section 16, as it read before subsection 6 (5) of Schedule 6 to the *More Homes, More Choice Act, 2019* came into force, applies to a request for an order made under subsection 16 (5) and not finally dealt with before that section came into force.

Same

(7) A decision to issue an order and an order under subsection 16 (1) or (3) are exempt from subsection 16 (4.1) if the order is in respect of a request made but not finally dealt with before subsection 16 (4.1) came into force.

8 Paragraph 4 of subsection 31 (3) of the Act is repealed and the following substituted:

4. The power under section 11.4 to reconsider a decision. However, the Minister may make a delegation to the Tribunal as provided in that section or in respect of the power to issue an order under subsection 11.4 (3.1).
5. The power to amend a class environmental assessment under subsection 15.4 (1).

9 (1) Clause 39 (g) of the Act is amended by adding “or subsection 15.3 (3) or (4)” at the end of the portion before subclause (i).

(2) Section 39 of the Act is amended by adding the following clauses:

- (g.1) providing that Part II of this Act or specific provisions of an approved class environmental assessment apply in respect of an undertaking designated in a regulation made pursuant to clause (g) and requiring compliance with that Part or process;
- (g.2) permitting persons or entities other than those provided for in subsection 16 (5) to make a request under that subsection, and making such requests subject to conditions and limitations;
- (g.3) defining or clarifying the meaning of the expression “resident in Ontario”;

Commencement

10 (1) Subject to subsection (2), this Schedule comes into force on the day the *More Homes, More Choice Act, 2019* receives Royal Assent.

(2) Section 6, subsection 7 (2) and subsection 9 (2) come into force on a day to be named by proclamation of the Lieutenant Governor.

APPENDIX I



RESIDENTIAL AND
CIVIL
CONSTRUCTION
ALLIANCE OF
ONTARIO
RCCAO Constructing Ontario's Future

Download MCEA Reports and Submission Letters at rccao.com



BEFORE



AFTER

This and the bottom two photos show the upgrade to the Collingwood Street Bridge in Creemore, Ont.



REFORM MCEA NOW!



RED TAPE CAUSES YEARS OF UNNECESSARY DELAY TO MUNICIPAL INFRASTRUCTURE PROJECTS

Ontario's Municipal Class Environmental Assessment (MCEA) process for the construction of infrastructure desperately needs to be streamlined. It is costly, inefficient and causes unnecessary delay.

RCCAO will release a new report this spring to demonstrate, through actual case studies, how problematic the process has become and how urgently the MCEA system needs to be reformed.

Over the past decade, RCCAO has published independent reports which have found duplication in the MCEA system. For example, municipalities are required to hold separate public consultation meetings under both Planning Act and MCEA requirements — for the **same project**. This kind of red tape can delay approvals to begin construction on infrastructure projects by an average of 27 months. This includes bridge replacements, better storm sewers, new bike paths and other transportation improvements. The Part II Order, or "bump-up" process, also adds months and often years to the timeline because municipalities must wait for the Minister of Environment, Conservation and Parks to decide on whether a local project should be subject to a higher level of review.

One of the projects in RCCAO's 2014 report authored by lawyer Frank Zechner was the Collingwood Street Bridge in Creemore, Ont.

The original one-lane bridge, built in 1913 and refurbished in 1980, was corroding and needed replacement. The MCEA process lasted **30 months**, ending in 2012, which in turn was followed by many bump-up requests to retain the iron truss structure. Responding to these requests added another year to the timeline. That's almost four years of delay to address whether a "heritage" bridge was worth preserving, rather than dealing with environmental matters.

In early 2017, RCCAO and the Municipal Engineers Association submitted a joint Environmental Bill of Rights application to undertake a formal review of the legislation and MCEA processes. Earlier this year, the Ministry announced that the review process had ended and that instead a discussion paper on EA reform would be released this spring. The Government of Ontario has advised that it wants to modernize approvals. To help convince the government to take immediate action, we want to provide further evidence of projects that have been subject to delays and additional cost pressures as a result of the current MCEA system to include in our spring report.

If your municipality has recent examples relating to the cumbersome MCEA process, please email media@rccao.com.

p: 905-760-7777
e: media@rccao.com

rccao.com

 **@_RCCAO**



View this report and more at
rccao.com