

Comments re

ERO Instrument #013-5101

Modernizing Ontario's Environmental Assessment Program - Discussion Paper

1. INTRODUCTION

The following stakeholders are submitting their joint comments and recommendations on the proposals contained in the Discussion Paper posted by the Ministry of the Environment, Conservation and Parks ('MECP' or the 'Ministry') regarding the *Environmental Assessment Act* (the "Act"):

Residential and Civil Construction Alliance of Ontario ('RCCAO')

Municipal Engineers Association (Ontario) ('MEA')

Ontario Good Roads Association ('OGRA')

RCCAO, MEA and OGRA are collectively referred to herein as the "Stakeholders".

2. ABOUT THE STAKEHOLDERS

RCCAO is a not-for-profit industry association that represents both labour and management in the residential and civil sectors of Ontario's construction industry. RCCAO and its members strive to provide real solutions to complex issues by commissioning independent research on issues such as the Municipal Class Environmental Assessment (MCEA) process which provide recommended courses of action.

OGRA is a not-for-profit association representing public works interests of Ontario municipalities through advocacy, consultation, training and the delivery of identified services. OGRA advocates the collective interests of municipal departments, including public works and transportation, through policy analysis, assessment of legislation and consultation with partners and stakeholders such as RCCAO and MEA.

MEA is a not-for-profit association representing public sector Professional Engineers in the full-time employment of municipalities performing the various functions that comprise the field of municipal engineering. MEA is the proponent and maintainer of the MCEA process manual ("MCEA Manual") for the planning, design, construction and operation of municipal public works.

In early 2017, RCCAO and MEA jointly submitted a section 61 EBR application and were successful in having the Ministry initiate a review. Other stakeholders, including OGRA, supported the application and participated in a short-lived consultation process in the spring of 2018 to discuss implementing improvements to the MCEA process.

3. KEY ISSUES

The Stakeholders are focusing their comments and recommendations on Municipal Class EA issues:

1. **REDUCE DUPLICATION – RECOGNIZE PLANNING ACT PROCESSES** – The examples listed on page 4 of the Discussion Paper of "all aspects of the environment" are unnecessarily broad with respect to the MCEA process because decisions made by municipal proponents under the *Planning Act* already address social and economic impacts for municipal infrastructure as well as the presence and interaction with existing infrastructure. Thus, the scope of MCEA review should be adjusted to avoid duplication with the *Planning Act* processes. MECP should ensure that the scope of the MCEA

process, and any studies or reports required from municipal proponents, exclude impacts for that specific project that have already been considered through the *Planning Act* processes.

The Stakeholders note that many private sector projects on private lands, such as new factories or warehouses and commercial office developments are ordinarily subject to planning and zoning restrictions. The zoning restricts the potential uses for the property and imposes setbacks for buffering between the new projects and existing or other planned uses. If the Ministry is considering EA requirements for private industry projects, municipalities should be included in the process to ensure consistency and avoid unnecessary duplication of efforts.

With respect to municipal infrastructure such as local roads, alternatives to the proposed project are likely to have already been considered and included in the current Official Plan, secondary plans or transportation master plans. The Stakeholders submit that there is often overlap and duplication of studies and consultations between MCEA and *Planning Act* processes. MECP should ensure that the MCEA process does not duplicate municipal efforts if alternatives have been considered through *Planning Act* processes. MECP should also work with the Ministry of Municipal Affairs and Housing to avoid the possibility of conflicting decisions for the same MCEA projects.

Although less common, another source of duplication is the application of two separate EA processes. Examples are work on municipal roads that trigger an MCEA project and an interchange with or alteration of a provincial highway which triggers an MTO Class EA. Another example of duplication of EAs is where an MCEA project requires acquiring lands from the Province, thereby triggering an IO Class EA.

2. **FOCUS PART II ORDER REQUESTS** – The time to complete the Part II Order responses adds to an already unacceptably long time frame for many low risk municipal infrastructure projects. The percentage of MCEA Schedule B and Schedule C projects which incur a Part II Order request remains relatively high. The Discussion Paper suggests that restricting the right to make Part II Order requests to residents of Ontario would be an improvement, but the Stakeholders have rarely, if ever, encountered a Part II Order request for a MCEA project from a person resident outside of Ontario. What the Stakeholders have found is that many of the Part II Order requests come from persons who have not indicated a direct adverse impact from the proposed project, e.g. improvement of a local road might spur unwanted development, which has not been approved through the *Planning Act* process. *Planning Act* processes ordinarily determine where additional residential and commercial development should take place, and where it should not. A proposed MCEA project that involves a road improvement may be proposed for safety purposes, such as additional turn lanes or reducing blind spots, and should not be halted by a resident who opposes development which still requires *Planning Act* approvals. The Stakeholders respectfully submit that the MECP restrict the Part II Order process to persons who reasonably claim that they are close enough to the proposed project to have a 'direct adverse impact'.

3. **EXPEDITE THE PART II ORDER PROCESS FOR THE MINISTRY'S RESPONSE** – The Ministry's responses to Part II Order requests over the past decade have been unacceptably slow. Several additional measures are needed to expedite the process. One of the frequent suggestions made by the Stakeholders is that the Minister should delegate his or her responsibility for Part II Order responses to the Director. It is acknowledged that the Minister made a limited delegation for Schedule A and A+ projects, but that would only impact a small percentage of the Part II Order requests for MCEA projects. Furthermore, Bill 108 would, if it becomes law, fully exempt Schedule A and A+ projects from the Act. The Minister's authority for responding to Part II Order requests should be delegated to the Director for both Schedule B and C projects.

Response times for Part II Order requests would likely be improved if there was a regulation stipulating a hard deadline for responses from the Ministry. The Ministry already has legislated deadlines for responses related to individual environmental assessments, so a regulation setting out a timeline is not without precedent.

4. **HELP MUNICIPALITIES FULFILL INDIGENOUS CONSULTATIONS** – It is acknowledged that Ontario, as the Crown, has a legal obligation to consult with Indigenous communities on relevant projects, but this burden is often transferred to small municipal proponents in northern and more rural regions, and these municipalities often have insufficient funding and resources to undertake this role. Indigenous groups often demand that the municipal proponent cover the costs of independent consultants to review and comment on the proposed MCEA project. MECP needs to step in to shoulder the burden for smaller municipal proponents by providing funding and other resources when needed.

5. **IMPROVING TRANSPARENCY AND PUBLIC ACCESS TO RELEVANT INFORMATION** – Greater transparency and public access to relevant information is an important objective. Following a Notice of Completion, relevant information should be readily accessible to all stakeholders. While there is merit in a centralized web site, over the past few years the Ministry has expressed concern that this would be a difficult task. MEA pointed out that maintaining this information on each municipality's web site was feasible but that there could be challenges for smaller municipalities that, for example, do not have the resources to regularly update its web sites. We recommend that discussions be held with MECP following implementation of the Modernization exercise to discuss ways in which post-Notice of Completion transparency can be improved.

6. **FOCUS ON HIGHER RISK PROJECTS** – The Stakeholders agree that lower risk projects should proceed through the approvals process more efficiently and that Schedule A and A+ projects should not be subject to Part II Order requests. The Stakeholders have noted that the number of Schedule A+ projects that have been subject to Part II Order requests is small, but growing. The Stakeholders are not aware for any Part II Order requests that were submitted for Schedule A or Schedule A+ projects prior to 2011, the period in which these projects were characterized as "pre-approved". These projects should be exempted from the Part II Order request process as was the original intention.

Many MCEA Schedule C projects take significantly more than two years before a Notice of Commencement is published, whereas Schedule B projects typically require a shorter timeframe. MECP should work with the MEA in identifying MCEA Schedule C projects which should be MCEA Schedule B projects and exempt MCEA Schedule A and A+ projects from the Act.

7. **SUPPORT MEA's PROPOSED AMENDMENTS TO THE MCEA MANUAL** – The MEA has been the creator and custodian of the MCEA Manual and the updates thereto, each of which requires approval from the Ministry. MEA intends to revise and reorganize the project descriptions used in Appendix 1 of the MCEA Manual to focus on project impacts instead of project construction details. The Stakeholders ask that the Ministry continue to work with the MEA in making improvements to the MCEA.

With respect to the use of tiered project lists approach, as used in the Province of Manitoba, the Stakeholders believe that such a list of municipal infrastructure should remain as a component in the MCEA Manual and not through any changes to the Act.

8. **REDUCING MCEA PROCESS TIMELINES** – Long delays for MCEA projects such as wastewater management improvements or bridge replacements add costs and uncertainty to deliver municipal infrastructure. Exempting low risk projects such as Schedule A and A+ will likely improve timelines for smaller projects. Improving the Part II Order request process by requiring that requests are bona fide will reduce the time and resources to move key projects forward. Improving transparency and public access to relevant information may speed up the consultation process and reduce the number and scope of Part II Order requests. Avoiding duplication with *Planning Act* processes and other approvals will certainly reduce the scope of studies and reports and likely improve consultation timelines. In short, many of the recommendations made by the Stakeholders in this submission will both improve the quality of the MCEA process and shorten the MCEA process timelines.

Overall, the Stakeholders appreciate that ERO Instrument #013-5101 has acknowledged several key deficiencies with the MCEA process and provided the Stakeholders with the opportunity to recommend specific improvements.

End of Submission