RESIDENTIAL AND CIVIL CONSTRUCTION ALLIANCE OF ONTARIO

RCCAO

Constructing Ontario's Future

Environmental Assessment Reform – a Tool for Economic Recovery

Residential and Civil Construction Alliance of Ontario

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The Residential and Civil Construction Alliance of Ontario (RCCAO) is an alliance composed of management and labour groups that represent all facets of the construction industry. Its stakeholders stem from residential and civil sectors of the construction industry, creating a unified voice. 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.

RCCAO members and contributors are:

- Joint Residential Construction Council
- Heavy Construction Association of Toronto
- Greater Toronto Sewer and Waterman Contractors Association
- Residential Low-rise Forming Contractors Association of Metro Toronto & Vicinity
- LIUNA Local 183
- Residential Carpentry Contractors Association
- Carpenters' Union
- Ontario Concrete & Drain Contractors Association
- Toronto and Area Road Builders Association
- International Union of Operating Engineers, Local 793.

For more information please visit:

www.rccao.com

The Residential and Civil Construction Alliance of Ontario (RCCAO) is an alliance of key industry stakeholders derived from the residential and civil construction industry. The RCCAO's goal is to work in cooperation with governments and related stakeholders to offer realistic solutions to challenges faced by the construction industry in a variety of areas including labour supply and market capacity, infrastructure development, growth planning and regulatory reform.

As a nation, we are facing global economic, environmental and social challenges that will require tough decisions and dedication to finding appropriate solutions. The environment, social well-being and the recent economic down-turn influence all Canadians and pose difficult problems for the government.

While the efficient deployment of public funds for infrastructure development is a public interest under any circumstances, it is particularly important during periods of economic decline and uncertainty. The alliance represents a key industry that has enormous potential to rapidly deploy resources in a way that can provide immediate employment, income and taxes. The alliance also provides core infrastructure that is good for the long-term economic prosperity of our communities that can provide immediate employment and help to generate locally-based income and taxes.

The industry has a long institutional memory and depth of experience. This means we are well positioned to act as a strong policy advisor with the ability to offer pragmatic advice for avoiding past mistakes. The industry's good organizational structures also make it easy for industry members to work collaboratively to find solutions. Our forethought is apparent in our internal benchmarking and strategic planning initiatives, also highlighting the importance of our industry to the economy.

The RCCAO supports the vision of a greener, more equitable Canada and are proud of the transit and housing projects we work on. Canadian support for these projects is at an all time high. Through strategic investment and effective implementation, these projects will generate a much needed economic boost in the short term, and ensure the long term sustainability of our economy by developing a modern, sophisticated, and efficient Canadian infrastructure system.

1 Introduction and Purpose of this White Paper

As governments and industry search for ways to stimulate the economy and generate employment, the RCCAO has identified a need to work collaboratively to remove barriers to infrastructure development and expedite project implementation. One opportunity involves reforming provincial and federal environmental assessment (EA) legislation. This has led to commissioning MMM Group Limited to prepare a white paper on behalf of RCCAO, outlining recommendations for reforms to the provincial and federal EA process.

The intent of environmental assessment, its values and its principles are very important in our society, but inefficiencies in the process have the ability to impede the timely implementation of infrastructure projects. Clearly, there is a public interest in having environmental scrutiny of infrastructure projects. However, process inefficiencies must be addressed if infrastructure investment is going to succeed in providing economic stimulus in the near term. These are not mutually exclusive public objectives. The EA system can operate efficiently in tandem with rapid deployment of government resources on infrastructure investments.

Delays in implementing new infrastructure may have adverse environmental implications. For example, delays in implementing new renewable energy facilities continue our reliance on more highly polluting fossil fuels. Delays in implementing advanced sewage or stormwater management facilities delay resolution of on-going water quality issues. Delays in providing infrastructure to remote communities in need have significant social implications.

This paper was prepared to identify and discuss inefficiencies in the implementation of provincial and federal EAs in Ontario and to recommend an Action Plan that summarizes potential means to improve the process. It is organized into six sections (including this introduction). **Section 2** introduces provincial (Ontario) and federal EA processes. This section is not intended to provide a comprehensive overview of the legislation, but rather to build context for the discussion of EA reform by highlighting key process elements. These elements form the basis for the discussion found in subsequent sections. **Section 3 and 4** describe process inefficiencies inherent in the federal and provincial system, supported by hypothetical examples to illustrate key points. Examples of process inefficiencies are provided, but out of courtesy to the proponents or stakeholders involved, specific details of the projects, their locations or persons involved are purposely omitted. **Section 5** summarizes the report's recommendations in an Action Plan. **Section 6** presents a brief conclusion.

2 Context

2.1 Provincial Process

The Ontario Environmental Assessment Act (OEAA) came into effect in 1975 and represents one of the earliest pieces of environmental assessment legislation in Canada. The original intent of the OEAA was to ensure that public infrastructure projects were subject to the scrutiny of an environmental review process. According to the legislation, the purpose of the OEAA is:

> "the betterment of the people of the whole or any part of Ontario by providing for the protection, conservation and wise management in Ontario of the environment."

The OEAA has two core requirements. The first is the requirement to consider fundamentally different methods of addressing a problem or opportunity (alternatives to the undertaking, also described sometimes as alternative solutions) and the second is the requirement to consider the environmental effects of an undertaking including measures to mitigate those effects. In the requirement to consider alternative to the undertaking for virtually all projects, the OEAA goes beyond the requirements of any other EA process in North America. In fact, where other EA regimes do call for the consideration of "alternatives to", the requirement is limited to only the largest, most significant projects. The OEAA is also unique in its inclusive definition of the 'environment' which includes not only the biophysical, but also the human environment (socio-economic, cultural, built form etc.).

There are two methods by which a proponent can comply with the OEAA. Complex undertakings with unique, project specific issues and potential environmental effects are typically planned in accordance with the Individual EA process (Part II of the Act). This process is comprehensive, requires formal government review and approval, and can take in excess of two years to complete.

As a means of streamlining the process, infrastructure projects that are planned frequently, stem from a common need, are similar in nature, are limited in scale and result in predictable, and generally mitigable adverse environment effects, are permitted to be undertaken following one of the Class EAs that has been approved in accordance with Part II.1 of the Act. The Class EA further subdivides groups of projects according to similarities in scope and outlines a planning process with increasingly onerous process requirements depending on the complexity and likelihood of adverse environmental effect. Once a Class EA has ministerial approval, projects planned in accordance with the process do not require additional government review or approval, except when stakeholder concerns are raised, as described below.

Under the Class EA process, stakeholders with a concern regarding a project may request the Minister of the Environment to order the proponent to comply with the requirements of the Individual EA process. This is referred to as a Part II Order Request[1] and may result in lengthy project delays. As relatively few Part II Orders are issued by the Minister, the delay is primarily in the time between a Notice of Completion

[1] A Part II Order request is sometimes referred to as a "Bump Up Request".

for a project is issued and the date upon which the Minister issues a formal notification that the Order is refused. This timeline can vary considerably. It could occur in a few weeks, or it could be several months before a conclusive decision is reached.

The Class EA system is relatively unique to Ontario. Currently, there are 10 Class EA documents in effect across the province. In many jurisdictions outside of Ontario, the projects identified in these Class EAs are not subject to environmental assessment at all, for the very reason that they are considered routine and have predictable environmental effects.

In addition to the Class EA process, Ontario has also introduced other streamlined processes for EA review including the Electricity Projects Regulation (O. Reg. 116/01), the Waste Management Projects Regulation (O. Reg. 101/07) and most recently, the Transit Regulation (O. Reg. 231/08). Under these regulations, certain projects are exempt from following the requirements of the EA Act provided that they are planned in accordance with the requirements specified in the regulation. Figure 1 illustrates this process.

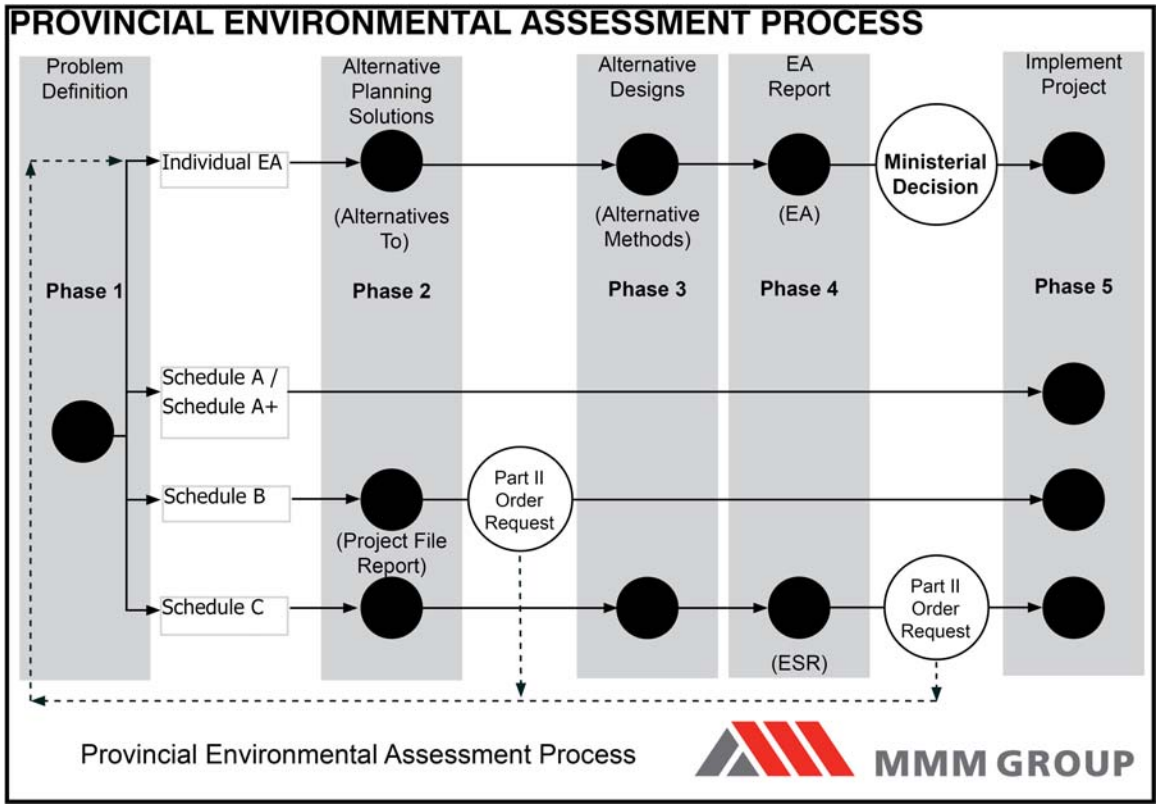

Figure 1

2.2 Federal Process

The Canadian Environmental Assessment Act (CEA Act) forms the legislative basis for federal EAs and describes an environmental review process for federal agencies that have a decision making role in a project. The agency with responsibility in relation to a project is referred to as the Responsible Authority (RA) and is required to ensure that an EA is completed "to ensure that projects are considered in a careful and precautionary manner before federal authorities take action in connection with them, in order to ensure that such projects do not cause significant adverse environmental effects".

The CEAA process is RA driven (unlike the Ontario process which is proponent driven), and a mandatory step before many other Federal approvals can be given or funding delivered.

The vast majority of federal EAs are carried out as Screenings (99%). Federal screenings are required to be completed early in the planning process to systematically document the anticipated environmental effects of a proposed project and to determine whether the project is likely to result in significant adverse environmental effects. There are considerable differences among Federal Departments on what constitutes a "screening". For some projects, it can be as simple as a five to ten page evaluation, where others require substantial analytical methods and detailed technical studies.

If an RA determines that a project is likely to result in significant adverse effects, the project can not proceed. In contrast, under the provincial EA process, projects may still proceed even if significant adverse effects are likely, provided that the overall benefits of the project outweigh any negative effects.

Similar to the provincial process, the screening of some repetitive projects may be streamlined through the use of a Class Screening Report. Under the Act, an RA can apply to have a report declared as a class screening report for a group of projects that are routine and repetitive and where there exists sound knowledge of environmental effects and appropriate mitigation measures. There are currently 29 declared class screenings. As with the provincial Class EA process, the RA is still required to factor project specific issues and effects into the assessment of each project proposal.

Unlike the provincial process, the federal CEA Act is a screening process and not a planning process. RAs require detailed information with respect to the proposed design and, while design modifications may be recommended to mitigate adverse environmental effects, there is no requirement to consider alternative solutions to an undertaking.

In our federal system, both the Government of Canada and the Province of Ontario each have their own legislated responsibilities to comply with environmental assessment legislation. While both CEAA and the OEAA generally acknowledge that assessments prepared under either process may satisfy legislative requirements at each level of government, there has been no practical application of this principle. So a duality of independent and unrelated review often remains on virtually all projects, regardless of complexity, magnitude or likelihood of effect.

While a number of federal/provincial EA Harmonization Agreements have been developed to address this duality, significant differences in purpose, process, scope and documentation requirements between the federal and Ontario legislation make coordination a challenge. There is a "Canada-Ontario Agreement on Environmental Assessment Cooperation". The agreement coordinates the environmental assessment process for projects that are subject to both jurisdictions, but it does not state that a

single assessment could be used to address both requirements. For example, many projects that are pre-approved under the OEAA are still subject to assessment under CEAA.

3 OEAA Process Inefficiencies

3.1 Alternative Solutions

There are a number of process problems with the OEAA requirement for proponents to consider alternative solutions, regardless of the scope and complexity of the undertaking.

First, the process can be very time consuming with significant public consultation demands. Even the scoping of alternatives exposes a proponent to significant risk of a Part II Order Request since stakeholders may not agree with the process to narrow down the alternatives that are considered. For many projects, the identification of alternatives is not necessarily practical, and it can be quite disingenuous when an undertaking has already followed/is following an extensive public planning process (such as a land use planning process).

Proponents who diligently consult stakeholders are vulnerable to spending an inordinate amount of time addressing comments or concerns regarding the evaluation of Alternative Solutions by individual stakeholders who oppose an undertaking. Those stakeholders may not be acting in the broader public interest, and may oppose a project for personal interests or ideology.

For many projects, particularly where there is a high level of public interest, the process of screening alternatives frequently generates more attention than the management of environmental effects. This unintended consequence of the EA legislation is most unfortunate and not in the best interests of society. In many cases, alternatives are not necessarily available to a proponent (e.g., a private sector proponent who needs to look at alternatives that are outside of their core business or mandate) but that proponent will have solutions that will be beneficial to the environment.

In recognition of the inherent inefficiencies associated with the universal requirement to consider alternatives, the Province has introduced a series of regulations, most recently the Transit Regulation, which removes this requirement. For projects that are time sensitive (such as those in the economic stimulus packages), removing this requirement would accomplish two things: it would shorten the process for completing environmental assessments, and it would reduce the scope of matters that would be exposed to a Part II Order request – potentially saving even further time. It is not reasonable or logical to consider alternatives in circumstances where the Province has identified a specific project through a mandated planning process such as a Growth Plan, nor amongst the projects that will come forward as part of a package to stimulate immediate economic growth. Figure 2 illustrates several places where the provincial EA process can be delayed.

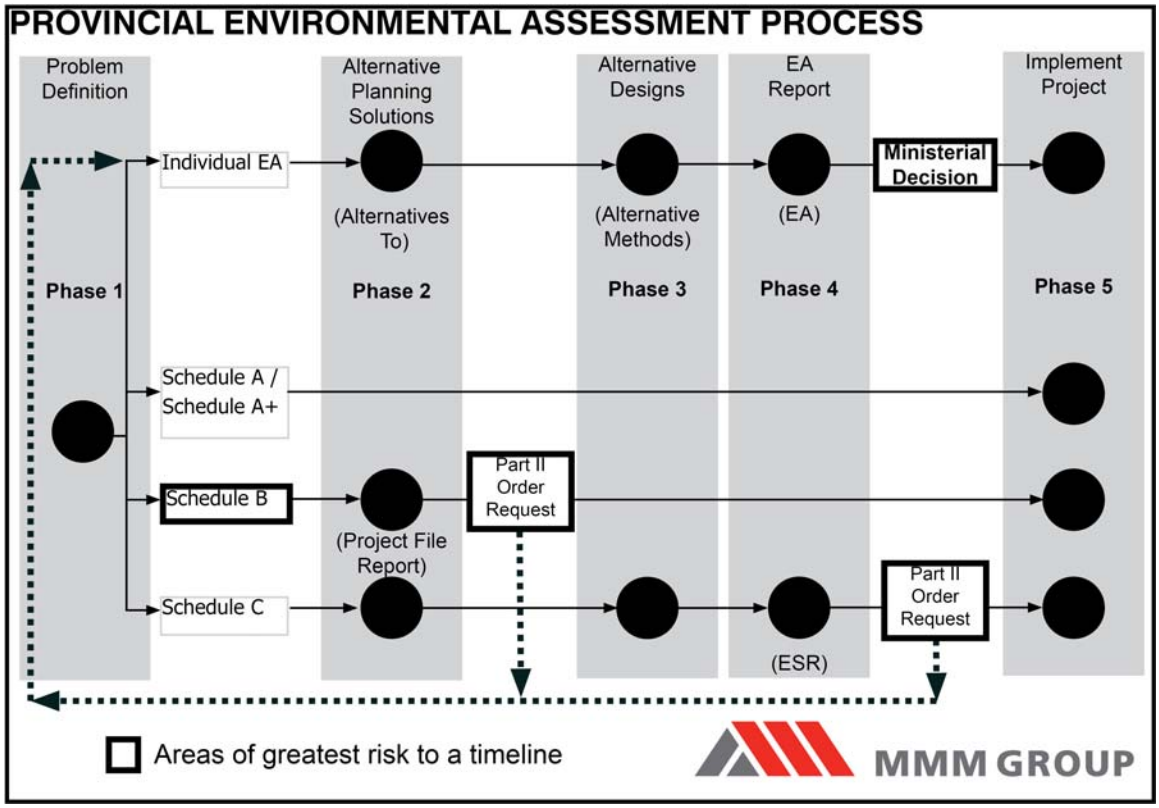

Figure 2

Example: A municipality in central Ontario completed a three year land use planning process for an urban expansion resulting in a Secondary Plan adopted under the Planning Act. The Secondary Plan was appealed to the Ontario Municipal Board by local residents who opposed urban expansion. The Ontario Municipal Board approved the Secondary Plan after lengthy hearings. When the municipality proceeded to seek a Class EA approval for the extension of trunk sewer services to service the approved community, the same stakeholders sought a Part II Order request, challenging the consideration of alternatives as the basis for the request. They claimed that the process failed to adequately consider not providing new services to the approved urban expansion area. Ultimately, the Minister of the Environment refused the Part II Order request, but the project was delayed for over a year and a half by the process.

Recommendation:

a) Projects of Special Status: In the short term, as part of the economic recovery process, the Province should either adopt a special regulation or issue a Declaration Order[2] for all economic stimulus projects to remove the requirement for consideration of alternatives for this defined list of projects.

[2] A Declaration Order is a process that exists within the current Environmental Assessment Act. It allows the Minister to declare an alternative process to comply with the Act for specific projects. This legislative provision gives the Minister broad powers, but understandably it has been used quite sparingly.

3.2 Coordination between EA and Land Use Planning Processes

In the early days of Environmental Assessment legislation, the parallel land use planning system in Ontario had a fairly narrow mandate related to; the orderly deployment of land use and infrastructure, control over the fragmentation of land, the protection of prime agricultural land, and the prevention of development in flood prone areas. Starting in the 1980s, numerous reviews of planning legislation expanded the scope of planning matters to embrace a broader range of environmental and resource protection issues. Watershed-based planning, conservation of environmentally sensitive lands, planning for linked natural heritage systems, source water protection, and infrastructure master planning have become inherent components of Official Plans in the last decade. In addition, municipalities have become much more sophisticated in the manner in which they address stakeholder engagement.

The Province has introduced a much stronger system of growth planning through the *Places to Grow* legislation and the *Growth Plan for the Greater Golden Horseshoe*, 2006. Municipalities are required to conform to this plan. Further provincial planning instruments are being produced through Metrolinx to weave a transportation plan with the land use decisions for growth management.

As land use planning generally precedes infrastructure deployment by five to ten years, by the time an Environmental Assessment begins, many significant decisions have been vetted by stakeholders, finalized and occasionally mediated. Notwithstanding this extensive effort, the process must start *de novo* with an Environmental Assessment, presuming that all matters are open for review. The most effective Class EA processes still typically take six to eighteen months to conclude.

The Municipal Class Environmental Assessment generally speaks to the opportunity to achieve compliance with the Act during a municipal planning process, but the actual procedural steps are not clear. This concern was outlined as a key issue in the MEA Class EA renewal project. There is still a lack of clarity of what constitutes an acceptable level of consideration of alternatives in a municipal planning process. Matters that can be appealed to the Ontario Municipal Board are unclear, and the Board itself has no clear guidance on its jurisdiction.

There is also considerable confusion within municipalities about the level of engineering detail that is necessary to conduct an EA. Land use planning processes at the Secondary Planning level typically only identify routing options for major infrastructure, but they do not generally involve the preparation of plans and profiles for roads, or details of structures for the crossings of watercourses. To undertake an EA in tandem with the land use planning process demands additional resources for engineering design and environmental planning. While the work eventually needs to get done, it is not clear that a municipality can re-coup the planning and engineering costs through development charges should the project proceed under the integrated approach.

Process uncertainty, and the perceived additional costs have led many municipalities to avoid complicating traditional land use planning processes, and address EA requirements separately.

Example: At least four municipalities in the Greater Golden Horseshoe Area have piloted integrating land use planning with EA processes. Three have effectively run concurrent Secondary Plan or Precinct plan processes with Class EA processes. The consideration of infrastructure alternatives is done along with the consideration of alternative land use arrangements. The fourth has gone further and piloted working in partnership with a private landowners group (private proponent) to address EA requirements in a block planning process. The primary advantages of these approaches are that the two processes are done in tandem, as opposed to back to back, saving considerable time. The two processes share common environmental and socio-cultural information, ensuring a more consistent approach. Sharing this information and sharing stakeholder engagement processes results in a more efficient use of resources. Finally, the environmental management recommendations arising from the EA process inform the subsequent conditions for development, achieving more effective environmental management results.

Recommendations:

b) Where a piece of infrastructure is shown in a provincial growth management plan, a proponent should not be required to consider "Alternative Solutions" for the undertaking, as recognition should be given to the broader planning exercise done by the Province or Metrolinx.

c) Clarify and improve the process of harmonization between land use planning and environmental assessment processes, so that there are not independent or 'dueling processes'. This includes improving the way land use planning considers alternatives, but then allowing the land use planning process to fulfill EA requirements. This would also require clarifying the role of the Ontario Municipal Board, and the role of private players in the process Figure 3 illustrates potential coordination between the planning process and EA processes.

Phase 1
Phase 2
Phase 3
Phase 4
Phase 5
MUNICIPAL CLASS ENVIRONMENTAL ASSESSMENT PROCESS
Problem Definition
Develop Alternative Planning Solutions and Evaluate and Select Recommended Alternative
Develop Alternative Designs and Evaluate and Select Recommended Design
Complete and Document an Evaluation of Environmental Impacts in a Environmental Study Report (ESR)
Implement Project through Engineering Functional Design Development
INTEGRATED TASKS
Initial Notices
Background Studies
Preliminary Agency Meetings
Public Meeting 1
Agency Meetings
Public Meeting 2
Public Meeting 3
Agency Meetings
Public Notice of Study Completion
ESR Review
Appeal Period for Master Plan/ Site Development
PLANNING PROCESS
Application Submitted/ Master Plan Initiated
Develop Proposed Master Plan/Site Development Concept
Refine Master Plan / Site Development Concept
Finalize Master Plan / Site Development Concept
Council Adoption / Approval
Example of Integrated Planning Process
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Figure 3

3.3 Part II Order Requests

Part II Order Requests are an important appeal mechanism by which a stakeholder with a serious concern about an environmental effect of a proposed Class EA project can request an Individual EA with formal government review. However, all too often this avenue is used to unnecessarily delay the planning and implementation of a project simply because it is not wanted, or to gain awareness for a broad policy issue. The current legislation places requirements for the request and no limits on the matters that would merit such a request. As such, Part II Order Requests with little or no merit have the ability to significantly delay implementation resulting in the unnecessary escalation of project costs. Very few Part II Orders have been issued, but the number of times the Minister is required to make a decision on Requests is significant. This suggests that there are frequent requests that are not in the public interest that are clogging up the system.

Under the current legislation, the final decision on a Part II Order Request rests with the Minister. Given the breadth of the Minister's responsibilities, **it** is infeasible to put forward Part II Orders to the Minister and for MOE staff to sufficiently brief the Minister on the relevant issues. Thus, this single point of decision-making has significant time implications.

Improving the process could involve further delegation of decisions in the EA process, particularly under approved Class EAs, from the Minister to the Director, when matters have already been subject to extensive land use planning public processes or a project is in conformity with an approved Provincial Growth Plan.

Example: A regional municipality in the western GTA completed a Class Environmental Assessment for an individual segment of road that was consistent with a prior Transportation Master Plan. Having successfully addressed very complex issues with a variety of stakeholders including protecting natural and cultural features, impacts to community amenities and property matters, the project was completed with the resolution of the issues of many active players in the process. When the Notice of Completion was issued, the only Part II Order request came from a single resident of the municipality, who did not live near the proposed project. The basis for their request was that the construction of a new road would adversely affect air quality in the region, with the premise that the municipality should build no new roads anywhere. While this stakeholder's concern for the broader environment can be admired, this person had no direct "interest" in the project, their concerns were a matter of broader public policy and not necessarily related to the specific project; and they had not directly raised these broader policy questions within the stakeholder engagement process.

Recommendations:

d) Give the Director the power to dismiss a "Part II Order Request" when it is being used frivolously to frustrate the implementation of a project that has already had extensive public process.

e) Provide general criteria in the legislation for the Minister to grant a Part II Order, and as in other legislation, include a specific prohibition for requests that are

frivolous, vexatious or for the purpose of delay. These are requests that are apparently intended to serve the interests of an individual, at the expense of broader public interests, or which have no reasonable environmental grounds and are merely attempts to frustrate or slow a project. There are certainly legitimate concerns raised on many projects, but there must be some limits on blatant abuse and delay tactics.

f) Implement a requirement to pay a nominal fee to request a Part II Order (e.g., $125.00 as is used for the Ontario Municipal Board), so that it would eliminate the most frivolous requests.

3.4 Application of the Municipal Class EA Process

Ontario has built a wealth of experience in managing the environmental effects associated with infrastructure projects. Since the first Class EAs were written, review efforts have not successfully reconciled the 'mis-match' between certain projects (and their likely environmental effects) and the process which they are required to follow.

Under the Municipal Class EA (MCEA) process, very routine municipal projects that require minimal environmental protection measures are deemed to be pre-approved. These projects are listed as Schedule A projects. There is an inherent recognition in this approach that, while these projects may have minor environmental effects, the process of mitigation is well understood, or the scale of impacts is not truly a provincial interest.

A recent innovation in the process was the introduction of Schedule A+ projects to the MCEA. Similar to Schedule A projects, Schedule A+ projects are pre-approved, however, an added obligation of public notification has been added to the process. This makes local municipal decision makers more accountable for both the project and the approaches to managing impacts on adjacent communities. This recognizes that municipal governments ultimately have responsibility to manage effects and engage the community. This is an effective idea that should be applied to a broader range of routine projects.

Schedule B projects are also routine projects, but with the potential for some adverse environmental effects. Schedule B projects generally include improvements and minor expansions to existing facilities. Schedule B projects require the filing of a Project File Report, that addresses "alternative solutions". Schedule B projects are liable to be subject of a Part II Order Request.

Schedule C projects have the potential for significant environmental effects, and as a response, the must follow a proportionately more rigorous environmental planning process. Schedule C projects generally include the construction of new facilities and major expansions to existing facilities. Schedule C projects require the filing of an Environmental Study Report that addresses both "alternative solutions" and "alternative design concepts". Schedule C projects are also liable to be subject of a Part II Order Request.

The process for Schedule B projects was originally intended to provide a transparent and accessible record of municipal decision-making and intent for environmental protection. The notice and the "Project File" were intended to be a mechanism for public access. Over the years, the Schedule B process has evolved in practice (without any legislative change) to more closely resemble the more rigorous Schedule C process.

Many municipalities feel that they are required to conduct extensive processes and provide a very detailed Environmental Study Report (rather than a simple record of the

decision making process). This confusion has led to lengthier and more costly EA studies than was ever intended.

Recommendations:

g) Conduct a detailed review of Schedule B Municipal Class EA projects. Many could be reclassified as Schedule A+ projects. This would expand the list of "pre-approved projects", even if the proponent is still required to do some form of public notification. Others might be reclassified as Schedule C if the range of environmental interests routinely merits a more extensive process. The result may be that Schedule B is redundant. Examples of potential reclassifications are included in Appendix A of this report.

h) In the event that Schedule B remains valid, the intent, content and documentation requirements of the "Project File Report" should be clarified.

i) Provide additional education to municipalities and the public on effective participation in the process, including providing more information on best practices for environmental management and mitigation of construction projects. Better education on these basic process parameters will create benchmarks against which processes can be tested in the event of a process-related Part II Order request.

4 CEAA Process Inefficiencies

The federal screening process is potentially a very straightforward and efficient process. The legislation requires few procedural steps, and the responsibilities are fairly clear. It does not necessarily expose a proponent to excessive delays or process risks. However, in practice there are significant differences in the manner in which it is administered that introduce uncertainty and delays for project implementation.

4.1 Inconsistent Application of CEAA Across Federal Departments

The legislation is silent on what a Screening should look like. While screenings are often as simple as a short checklist completed in-house by departmental staff, they can also be complicated and onerous processes involving binders and binders of assessment and requiring the bulk of the work to be outsourced. Many federal departments are required to conduct Screenings when a project requires a particular regulatory permit. Those other regulatory processes have their own notification and review procedures, and often duplicate the consideration of environmental matters and stakeholder interests. Ultimately, the permit and its conditions of approval and compliance become the much more significant enduring regulatory control rather than the CEAA Screening.

Example: One federal department that routinely provides projects to community facilities or infrastructure projects has developed an effective Screening process that is effectively completed in a short period of time. This process acknowledges that projects built within existing urban communities are subject to a vast array of local and provincial regulations. Where funding is the only federal "trigger", this department does not seek to replicate the local or provincial regulation through the CEAA Screening. In one specific example, a major community recreation facility had a CEAA Screening approval in one week.

Recommendations:

j) The Agency should be charged with developing a procedure for screening routine projects, including sample Screening forms. They should encourage a consistent approach to and simplified screenings among Departments. They should encourage streamlining of the matters considered in the screenings when funding is the only trigger, and/or when routine federal permits are the trigger.

k) The Agency should be charged with working with each Federal Department to develop a two-track Screening process. "Routine Screenings" for projects that are common, limited environmental impact, or for which comparable approval processes have addressed environmental management issues should have a proportionately simple Screening form and process. In particular, this should be targeted to projects where the only Federal participation is in the funding of a project. "Complex Screenings" should remain the case for projects that merit a more rigorous review, where Federal environmental commitments are more

significant, or where there is a demonstrated controversy of the project in the general public. Projects could be elevated at the discretion of the RA from "Routine" to "Complex Screening". No legislative change is required for this.

4.2 Lack of Coordination Across Federal Departments

Due to the broad scope of federal interests, and the time sensitive nature of most infrastructure development projects, there is a need to ensure that federal departments with specific interests in a project do not work to fulfill legislative requirements in isolation. Currently, when there is more than one potential Responsible Authority, a Federal Environmental Assessment Coordinator (FEAC) may be assigned to coordinate the participation of federal agencies and facilitate communication and cooperation with other levels of government. When a project is subject to more than one EA process (i.e., federal and provincial) the FEAC is the Canadian Environmental Assessment Agency (CEAA).

Example: A project in Eastern Ontario being planned in accordance with the requirements of the OEAA Class EA process triggered CEAA through the requirement for two permits/approvals from two separate federal departments. Project information was supplied to both agencies as part of the permit application process. Near the conclusion of the project, it was revealed that both federal agencies were in the process of completing screenings of the same project in isolation from one another. The responsibility for coordinating the two screenings in order to ensure permits/approvals were in place prior to construction fell to the proponent. Ultimately, both screenings were combined to address the mandate of both agencies; however, this uncoordinated approach resulted in the duplication of work and an unnecessary delay in the permitting/approvals process.

Recommendations:

l) Federal Departments are required to post information on screenings on a computer registry, but this tool is still difficult to use, and it is not used effectively as a management tool to track screenings. The Agency should upgrade the site as both an information and as a management tool to avoid these problems;

m) In the event of a conflict between the activities of multiple departments, or merely in the event of excessive delay in a single department, the Agency should be given the mandate to assist project proponents to resolve these issues in the most expedited manner possible.

4.3 Timing of the Screening Process & Identification of Triggers

One of the challenges of the CEAA process right now is that there is an expectation that there is a considerable amount of design detail to support the EA. While the provincial EA process takes place during the planning stage, CEAA triggers (i.e. permits/approvals, land transactions, funding agreements) are typically formalized near to project implementation which means it is often difficult/not possible to identify RAs and CEAA

triggers early in the planning process. Federal departments are often reluctant to participate in a project until a formal trigger and the associated RA have been identified.

This is contrary to the EA principle that an impact assessment is best carried out as early as possible in the decision-making process. It limits expert federal advice to last minute design changes or costly mitigation measures (even retrofit), as opposed to providing meaningful input during the planning stage. When advice is offered early in the planning process, opportunities to mitigate through avoidance are optimized.

Example: A redevelopment project in southwestern Ontario followed a phased implementation schedule. As the scope of Phase 1 included elements covered by one of Ontario's Class EA documents, the project was planned in accordance with the Class EA process. While federal funding was required for later phases of project construction, the funding agreement was not reached during project planning and the formal federal EA trigger (and associated RA) was not identified. Provincial EA process requirements were satisfied and the first phase of the project was constructed. When the federal funding agreement was finalized prior to subsequent project phases (2 years after the Provincial EA/project planning was completed), the Federal EA process was triggered and a screening required.

Recommendations:

n) The Agency should be charged with developing procedures for the earlier assessment of projects, and earlier participation of Federal departments, even if triggers for CEAA are not fully known.

o) The Agency should be empowered to be a "one-window" for approaching the Federal government on all CEAA Screenings. They should be able to coordinate Federal participation in a project, even if triggers are not fully certain (the "in the process until you are certain you are not" principle). They should be legally empowered to be the "coordinating Responsible Authority" where no other clear RA is identified.

4.4 Lack of Coordination with Provincial EA approvals

The current Screening process provides little or no formal recognition of where either Provincial legislation or local government by-laws address matters of environmental performance. As noted earlier, projects that have satisfied Provincial EA requirements often need to be 're-assessed' under CEAA sometimes with no apparent additional benefit to the environment or the tax-payer. This is even the case where projects are pre-approved under the provincial process.

The Federal departments are unable to give regard for an Environmental Assessment prepared under the Ontario process, unless a formal harmonization process exists. The current Cooperation Agreement merely sets the process for notification of the other government, a one point of contact, and an order for issuing decisions. Since the two pieces of legislation do not fully align, a proponent usually cannot just provide the same report to both governments, regardless of how comprehensive the assessment has been; this is illustrated in Figure 4.

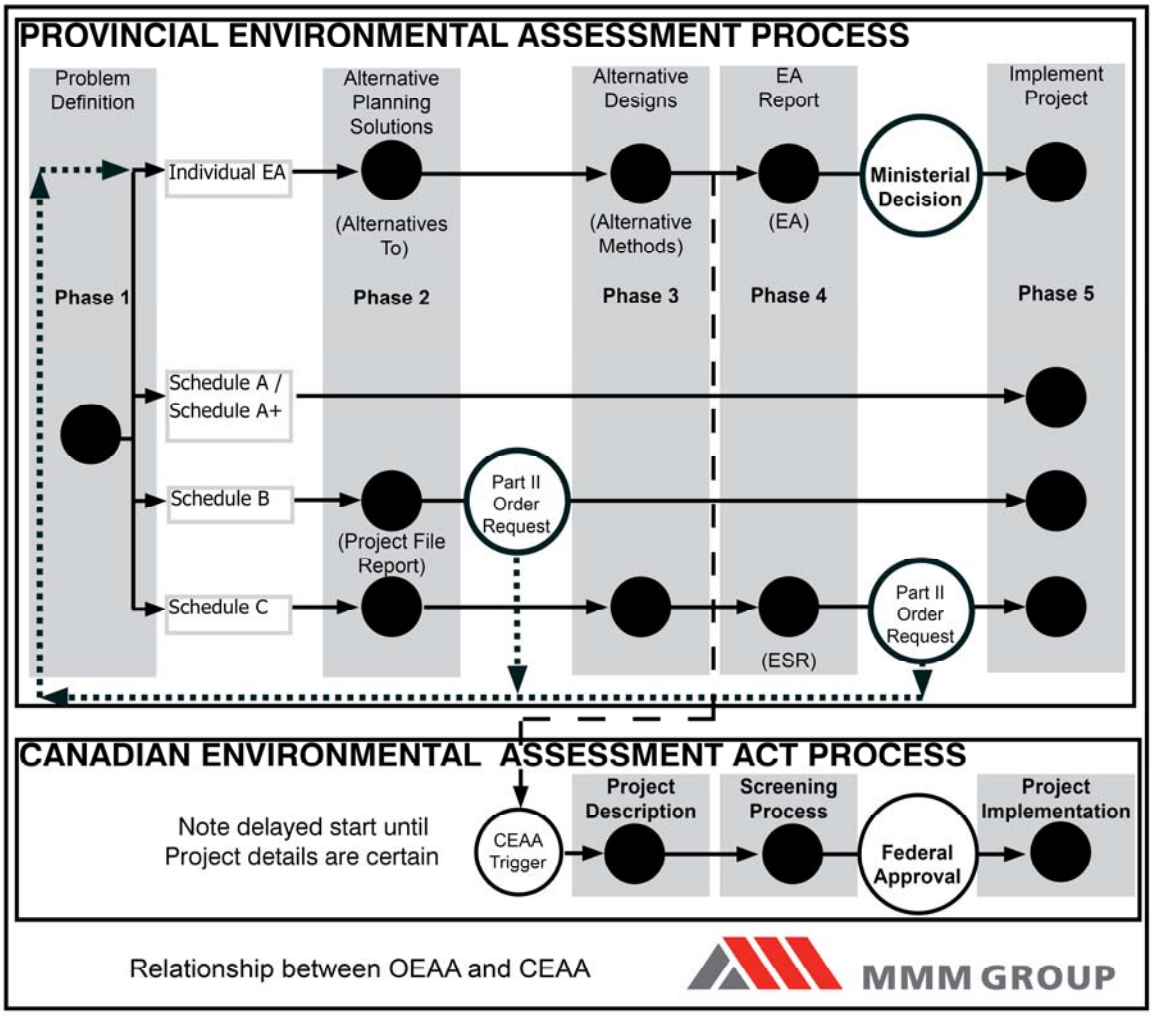

Figure 4

The Federal process puts much more emphasis on follow-up and monitoring as a means to verify the accuracy of assessments of the effectiveness of mitigation measures. However, this does not generally reflect that other approvals processes or regulations may apply, such as Provincial Certificates of Approval, Conservation Authority Approvals, building permits, Municipal zoning, noise by-laws, sewer use by-laws, etc.

Finally, the principal challenge is that many Federal RAs do not wish to formally start the Screening process until much later in the project planning process, since their role as an RA may be uncertain until most project details are locked down. So a project may have essentially completed all of its Provincial process before the Federal process even begins. This has been a common problem on Provincial highway projects, when a CEAA trigger under the Fisheries Act or the Navigable Waters Protection Act is only identified late in the process.

Recommendation:

p) The RAs should be instructed to defer to or "harmonize" the Screenings with comparable environmental management processes of other levels of government.

5 Action Plan

Urgent action is required to facilitate the roll-out of Economic Stimulus packages. There are few projects in the pipeline in communities around Ontario that can be implemented without having to go through both Provincial and Federal EA review. With this in mind, the following reforms are proposed:

- While broader reforms are undertaken, the Province should initiate a Declaration Order to address the roll-out of economic stimulus projects using a comparable approach as the Transit Regulation, since any changes to the legislation or the existing Class EAs are likely to take more than a year to implement.

- On a concurrent track, the Province should re-open the various Class EAs, particularly the Municipal Class EA to address the recommendations above.

- The Province should initiate amendments to the Planning Act and the Environmental Assessment Act to address coordination between these two processes.

- The Province should monitor the effectiveness of the Electricity Sector Regulation and the Transit Regulation to determine if a broader application of this approach to other infrastructure projects is merited.

- The Federal Government should direct the Canadian Environmental Assessment Agency to immediately initiate a six to twelve month program to implement the recommendations described in this white paper. Since no legislative changes are necessary, this can be implemented on a fast track.

The businesses involved in the infrastructure industry met in January 2009 at a roundtable hosted by the RCCAO (www.rccao.com). There was broad consensus that the industry could respond immediately to the government's plans to ramp up infrastructure investments.

6 Conclusion

While it might appear to be a challenge to develop an approvals process that ensures high quality projects and protects natural ecosystems and social communities, there are prudent reforms that can be made to the EA approvals process. The current process is burdensome and often does not succeed in protecting those things it was set out to protect. With modest changes in procedure and in regulation, the EA process can be more efficient and effective. By working together, all levels of government can develop a better, more targeted and streamlined EA process. Developing this process with input from industry will ensure that requirements which are ineffective and inefficient are removed, and requirements are targeted to ensure Environmental Assessments processes fulfill their intended function.

Streamlining the EA process will accelerate the approval or rejection of a project and will provide better return on taxpayers' investment. There is a need to address resistance to innovation and it is in the interest of all Canadians to have industry and government working collaboratively to build a strong and resilient economy. The current economic imperative and the enduring infrastructure deficit (estimated to be over $120 billion) are good reasons for this to be a high public priority.

Engaging the construction industry in EA reform will help government develop a more effective Environmental Assessment process. Infrastructure is at the centre of economic stimulus and ensuring the efficient operation of the infrastructure approvals process will allow the industry to react quickly to infrastructure investments. This can be achieved by following through on the Action Plan presented in this paper.

Appendix A: Examples of Projects that Could Be Reclassified Under the Municipal Class EA

Type of Undertaking	Existing Schedule	Proposed Schedule
Streetscaping (> $2.2 million)	B	A+
Construction of localized operational improvements at intersections (> $2.2 million)	B	A+
Installation of traffic control devices (e.g., signage or signalization) (> $8.7 million)	B	A+
Construction of new parking lots (> $8.7 million)	B	A+
Establishment of a roadside park or picnic area	B	A+
Reconstruction of a water crossing where it is not for the same purpose, use or capacity or at the same location (> $2.2 million)	C	B
Construction of underpasses or overpasses for pedestrian, recreational or agricultural use (> $2.2 million)	C	B
Reconstruction or alteration of a structure or the grading adjacent to it when the structure is over 40 years old	B (< $2.2 million) C (> $2.2 million)	A+
Expansion of patrol yards where land acquisition is required (> $2.2 million)	C	B
Establish new patrol yards or maintenance facilities (> $2.2 million)	C	B
Establish sewage flow equalization tankage in existing sewer system or at existing sewage plant …	B	A
New service facilities for wastewater/water plants	B	A+

Type of Undertaking	Existing Schedule	Proposed Schedule
Works undertaken in a watercourse for the purposes of flood control or erosion control	B	A+
Construction of a new sewage holding tank	B	A+
Installation of standby power in a water treatment facility	B	A+
Establish new or expand/replace existing water storage facilities	B	A+
Replacement of a water intake pipe for a surface water source	B	A+
Construct new shoreline works, such as off-shore breakwaters, shore connected breakwaters, groynes and sea walls	C	B
Construction of localized transit operational improvements	B	A+
Installation, etc. of traffic control devices for transit with the potential for some adverse environmental effects.	B	A+
Installation of safety projects (i.e., lighting, glare screens, safety barriers, energy attenuation) with the potential for some adverse environmental effects.	B	A+