



October 16, 2017

Hon. Chris Ballard, Minister of the Environment and Climate Change  
11<sup>th</sup> Floor, Ferguson Block  
77 Wellesley Street West  
Toronto, ON M7A 2T5

Dear Minister:

**Re: Municipal Class Environmental Assessment (MCEA) Reform**

Thank you for taking the time to meet with us on September 28, 2017. This correspondence will highlight and expand upon the main issues we discussed, but we wish to emphasize that it has now been six months since the Ministry confirmed that it had accepted the joint application for review submitted by MEA and RCCAO. Your assistant deputy minister stated in the April 13, 2017 correspondence to us that 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." While we recognize that some of the delay was due to the midsummer resignation announcement by Min. Murray and your transition to a new portfolio, now is the time to begin the legislative review in earnest. Otherwise, the expected target of "end of December 2018", set by the MOECC to complete the review, will not be met.

Here are priority items for immediate attention:

**(1) Proceed with a full review of the *Environmental Assessment Act* and the MCEA process**

Please provide the workplan for this review so that we can engage the municipal sector and other stakeholders in the reform process. Unless the Ministry's workplan is developed and communicated shortly, we are very concerned that it will be extremely difficult for the Ministry to complete its review within the announced timeline.

The section 61 Application for Review under the EBR was formally supported by 13 organizations, and many other individuals and organizations expressed support for MCEA reform. In addition, the Ontario Good Roads Association held a Queen's Park advocacy day on September 13<sup>th</sup> and OGRA members met with 59 MPPs in total. We have been advised by OGRA that there was broad recognition that delays in the Class EA process are contributing to ever rising costs, with no additional value. All the delegations provided the joint letter to the editor that was published in the Sept./Oct. 2017 edition of ReNew Canada magazine entitled "Renewed Hope for EA Reform."

As you know, the Auditor General's (AGs) 2016 annual report contained a Value for Money (VfM) audit of Environmental Assessments. Bonnie Lysyk pointed out that an EA Advisory Panel had made recommendations for reform in 2005, but that these had not been acted upon. Expectations are thus high that tangible action will be taken now.

In July 2017, deputy minister Paul Evans advised that the Ministry would be willing to support efforts for specific reform measures while consideration was being given to how best to address the more comprehensive review. Our recommendations 2, 3, 4 and 5 highlight such short-term initiatives which are designed to improve the current MCEA process, and which do not require legislative reform.

## **(2) Address Delays in Completing Part II Order (PIIO) or Bump Up Requests**

This issue has long been a major concern for MEA and other stakeholders. We are disappointed with the Ministry's lack of significant improvement. In 2014, our data showed that the Ministry took 148 to 561 days to review bump up requests for MCEA projects. This is unacceptable, particularly when the province has for many years boasted that it is making strides to modernize approvals. Clearly this challenge has not been meaningfully addressed by MOECC.

PIIO delays add an extra year or more in many cases as the completion of the public consultation and final report often takes more than two years to complete. An improvement such as a bridge replacement to comply with current transportation safety standards could mean a continuation of unacceptable safety risks to the public or delays in access to emergency services and goods movement.

Delays to these types of municipal infrastructure projects also prohibit community building efforts and diminish economic activity. When projects finally do proceed, the cost of the project often increases, thereby necessitating further delays to obtain council approval for additional capital funds. Just as importantly, the threat of an excessive delay often results in less than optimal decision-making. For example, proponents might agree to pressure for project commitments that would not otherwise be considered, simply to avoid the excessive delay that would result from a bump-up request.

The AGs VfM audit succinctly stated that "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."

Her office's review found that of the 116 municipal projects reviewed by the Minister, only three were decided within the target 66 days. The average time for a decision was an unacceptable 240 days. The AGs audit further stated:

"Based on the Ministry's analysis of time taken to review all requests received in the last five-and-a-half years, the median time for Director sign-offs was 80 days, subsequent sign-offs added an additional 110 days. We reviewed a sample of bump-up requests and found that in all but one of the requests we reviewed, the post-Director review did not substantively change the outcome of the review. We found these reviews generally resulted in grammatical wording changes or merely restated existing commitments in the assessments. The Act allows the Minister to delegate the authority to approve or deny these requests to the Director."

The Auditor General does an excellent job portraying the serious problem with the delays associated with decisions on bump-up requests and confirms that senior level sign off causes significant delay (110 days) with little or no added value. For years, we have been calling for improvements to the process and delegation of the Minister's authority to the Director. We were disappointed that your staff continue to downplay the benefits of a delegation of authority and resist the implementation of this practical advice from the AG and other stakeholders.

A pilot project between MOECC and the City of London is an excellent example of successful delegation being done for environmental compliance approvals for “less environmentally sensitive” works for new development and growth infrastructure. If it is possible for the Ministry to delegate authority to a municipality, then surely delegation from the Minister to a senior staff member responsible for preparing advice to the Minister on a PIIO request is a perfectly reasonable amendment to address systemic delays. A useful summary of the pilot project is contained in the report prepared under the Business Burden Reduction Project for the Association of Municipalities of Ontario and the Ministry of Economic Development and Growth.

**MEA and RCCAO call on the Minister to:**

- 2a) ensure that priority is given to promptly review and respond to Part II Order Requests**
- 2b) delegate decisions related to Part II Order Requests for the MCEA to the Director of the Environmental Approvals Branch**
- 2c) implement a pilot project that would integrate MCEAs as part of the process for updating municipal official plans (the Secretary of Cabinet is supportive of better integrating MCEA and municipal planning processes)**

The attached Appendix “A” includes a list of actual MCEA projects that were subject to long delays due to Part II Order Requests due to local concerns and non-environmental issues that could or should have been delegated to a Director.

**(3) Proceed with Amendments to the Current MCEA Document**

In discussions between MEA and Ministry staff, Ministry staff have repeatedly stated that given MEA’s role in drafting and maintaining the MCEA Manual, that the MEA has the authority to implement any changes it believes are necessary to the descriptions of various types of projects and/or the procedures to be followed for public consultation. The fact of the matter is that while MEA can initiate a change to the MCEA Manual through an application to the MOECC, the Ministry has in recent years proceeded to draft additional changes to the MCEA Manual that were beyond the scope of the application by the MEA.

For instance, up until 2014, subsections A.2.8.2 4) and A.2.8.4 of the MCEA Manual provided specific guidelines of 45 days for the Ministry’s EAA Branch to review the application and file and make specific recommendations to the Minister, and a guideline of 21 days for the Minister to make a decision on whether to accept or amend the EAA Branch’s assessment of the PIIO Request. When the MEA applied for a change to the MCEA Manual to deal with amendments of other parts of the MCEA Manual for matters such as cycling lanes, the Ministry insisted on deleting the timing in the amendment.

The MEA acknowledges and accepts that the MOECC has the final word on what changes can and cannot be made to the MCEA Manual, but up until 2012 the Ministry has simply responded to applications by the MEA for proposed changes to specific sections of the Manual and did not alter any other parts of Manual that the MEA was satisfied to leave ‘as is’. The MEA is therefore extremely reluctant to propose specific changes to the MCEA Manual unless the Ministry agrees that it will not amend other sections of the MCEA Manual that were not within the scope of the MEA’s application.

**(4) Implement a Standardized Application Form for Requesting Part II Orders**

For several years the MEA has recommended the use of a standard PIIO Request form that would assist the Ministry and other stakeholders to determine whether such a request raises valid environmental concerns and is not simply an effort to delay a project for personal gain or dissatisfaction with a zoning or Planning Act decision.

environmental concerns and is not simply an effort to delay a project for personal gain or dissatisfaction with a zoning or Planning Act decision.

The MEA, RCCAO and other stakeholders believe that a standardized application form for Part II Orders is an important environmental assessment tool that should be part of a consultation process and not imposed by the Ministry without a reasonable opportunity for stakeholders to comment and suggest improvements.

**MEA and RCCAO recommend that:**

**4a) Investigate the possibility of posting Environmental Study Reports and outcomes from Part II Order Requests to the Environmental Bill of Rights web site**

**(5) Initiate a Pilot Project to Enhance Transparency and Public Access to Relevant Information to All Stakeholders**

The Auditor General, the MEA and RCCAO have called upon MOECC to enhance transparency and public access to the proponent's public consultations as well as access to the final reports and the particulars of any Part II Orders related to MCEA projects.

Note that many smaller municipalities do not have the administrative and financial resources to maintain such information. Further, MOECC does receive the relevant documentation from proponents whenever it receives a PIIO Request. Thus, it would be practical for the Ministry to support a pilot project of this sort where there would be improvements to the transparency of public information.

Finally, during our September 28<sup>th</sup> meeting we discussed Schedule A/A+ projects and how the Ministry unilaterally removed the PIIO exemption in 2011, again without consulting MEA or other stakeholders. Even though there have been no bump-up requests for low-risk projects such as winter maintenance, this does not mean that this topic should be dismissed out of hand by staff. The reason for the consultative review should be to address the Class EA system from first principles. Fundamental questions to be asked include: "how does public consultation under planning legislation fit with the more comprehensive environmental oversight that is imbedded within the current system?" The Ministry is now suggesting that there be significant changes to the requirements of the Class EA system such as the consideration of cumulative effects. While this is a valid component, is the Class EA process an effective means to achieve this objective, or should this type of assessment be done at a regional scale as part of a comprehensive provincial-municipal strategy?

Thanks again for meeting with us to discuss these matters. If there are any questions, please do not hesitate to contact us.

Sincerely,



Paul Knowles  
President  
MEA



Andy Manahan  
Executive Director  
RCCAO

Encl.: Appendix / ReNew letter to the editor / ad

Copy to:

Bonnie Lysyk, Auditor General of Ontario

Dianne Saxe, Environmental Commissioner of Ontario

Steve Orsini, Secretary of Cabinet (chair of Development Approval Roundtable)

Paul Evans, Deputy Minister, MOECC

13 supporting organizations:

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**)

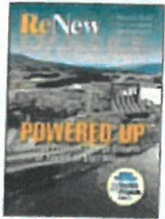
Surety Association of Canada (**SAC**)

## APPENDIX 'A' to MEA/RCCAO joint letter

1. **Pine Street Road Extension Project in Sault Ste. Marie**, which was in the current municipal Official Plan. Completion of the consultation and project report took 14 months to complete, but the project was delayed further as the Minister's decision on the Part II Order requests took 22 months to complete.
2. **Road 24 Bridge Replacement project in the Municipality of Kawartha Lakes**. Completion of the consultation and project report took 20 months to complete. City had relied upon Transport Canada comments on navigable water clearance dimensions needed, however five separate local Part II Order requests were made by residents who disagreed with Transport Canada recommendations.
3. **Highway 20 Road Widening Project in Pine Street Road Extension Project in Niagara Region**. Road Widening was previously approved under Planning Act and included in Official Plan. Completion of the consultation and project report took 31 months to complete, but the project was delayed further as the Minister's decision on the PIIO requests took an additional 15 months to complete.
4. **Chine Drive Sewer Replacement (replacing combined sewer with separate sanitary and storm sewers triggered the Schedule B characterization), Toronto**. As a result of a recent fatality involving a girl walking to school (there were no sidewalks at that time) local residents demanded that the project be amended to include a sidewalk to the school. Another resident with no young children filed a PIIO request objecting to the new sidewalk which would 'negate the rural look of the neighbourhood'.
5. **Collingwood Street Bridge Replacement project in the County of Simcoe**. Prior bridge built in 1913 and was inadequate for modern traffic conditions. Completion of the consultation and project report took 30 months to complete. Multiple PIIO requests were filed objecting to the replacement of the bridge for aesthetic reasons as well as increased traffic.
6. **Port Union Road Widening, Toronto**. Road Widening EA Study completion August 14, 2014. Four PIIO requests objecting to removal of some trees and opposing centre median and bike lanes in design. The road widening is an essential link to rail transit in the area for local residents, was already included in the Official Plan, and would have impacted perhaps a dozen trees in the highway right of way. Part II Order decision took 150 days.
7. **Britannia Road Widening, Halton Region**. Study completed November 2014. Four PIIO requests objecting to road alignment. One application was withdrawn and the other three applications were denied. Applications based on alignment and property expropriation. Part II Order decision issued 18 months after applications filed.
8. **Steeles Avenue Grade Separation and Road Widening, Toronto and York Region. EA Study completion March 2017**. Two PIIO requests based on purely local concerns, one objecting insufficient access to make left hand turn into private driveway and the other had concerns about impact on property values. Part II Order decision took 98 days.
9. **Trafalgar Road Road widening and realignment, Halton Region**. Report completed and four PIIO requests filed in July 2017. Grounds for application are the municipality and local Conservation Authority's approved sub-watershed study, which is a separate consultation process by Conservation Authorities and is not part of the Municipal Class EA process. None of the objections are directly aimed at the proposed municipal infrastructure, they are disputes with the plans and policies of the local conservation authority. No decision has been made as of October 13, 2017 regarding the PIIO requests.

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BIGGEST STORIES OF 2018?



In the January/February issue of ReNew Canada, we discussed 10 infrastructure

stories that we thought were worth watching over the calendar year.

**For the 2018 edition, we want to hear from you!**

Whether it's a project under development, a project that has been proposed, or one that should be built, we want to know what projects you think will be worth discussing in the January/February 2018 edition of ReNew Canada.

Provide us with your expert opinion, and you could be featured in our January/February edition.

Email editor Andrew Macklin at [andrew@actualmedia.ca](mailto:andrew@actualmedia.ca) on or before **November 1st, 2017** to have your voice heard.

Send your letters to the editor to [andrew@actualmedia.ca](mailto:andrew@actualmedia.ca)

# RENEWED HOPE FOR EA REFORM

By Andy Manahan and Paul Knowles

When a strong political figure like Glen Murray leaves a cabinet portfolio such as the Ministry of the Environment and Climate Change (MOECC), it is possible that the disruption can set back the policy reform agenda.

Murray deserves praise for his commitment to public service in Manitoba and Ontario and for his efforts to implement a climate change action plan. However, there are sometimes important issues that stay on the periphery of a minister's portfolio—and with Minister Murray and five predecessors over 12 years, one of these is the municipal class environmental assessment (MCEA) process.

MCEA's apply to the construction, improvement, replacement, operation, maintenance, and repairs to a broad range of municipal works such as bridges, roads, water and wastewater systems, flood control works, and recreational paths. Impact studies, along with public meetings, often take two years or more to complete before construction can commence.

When a member of the public submits an objection in the form of a Part II Order (PIIO), delays follow while the minister must personally decide whether a broader environmental review and a hearing are warranted.

In 2005, an EA Advisory Panel recommended that the Ontario government pursue reform of the EA system. Since then there have been numerous requests for reform, but little progress has been made. Despite written commitments made by the ministry in the 2013-2015 period to exempt low-risk projects from the PIIO request—as was the case prior to 2011—or to consider delegating authority for dealing with the PIIO requests to an MOECC director, no action has been taken.

There is hope, however, that incoming minister Chris Ballard will see this as an issue that deserves attention. Ottawa, for instance, will be providing billions of infrastructure dollars to Ontario. But if local projects do not have the necessary approvals these funds could be delayed significantly (we saw in 2009 that Ontario municipalities had to put forward “shovel ready” projects rather than “shovel worthy” projects because the MCEA processes would have taken too long).

Furthermore, as a result of a recommendations made by Ontario's Auditor General to modernize EA processes, plus a successful application by RCCAO and MEA, MOECC has agreed that a comprehensive review of the MCEA process will be underway in the coming months with expected completion in December 2018.

Reforming the MCEA process, including changes to the PIIO process, is an opportunity for a new minister to take a bold step forward. As stakeholders, none of us can afford to let this opportunity slip away—we need meaningful reform of the MCEA process in Ontario. Too much is on the line—like building a modern economy and providing the vital services that our communities deserve.

Andy Manahan is the executive director of the Residential and Civil Construction Alliance of Ontario.

Paul Knowles is president of the Municipal Engineers Association.

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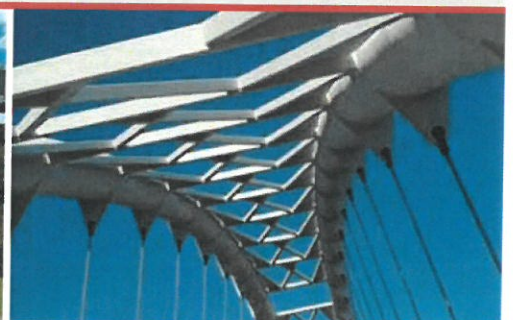
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## Ministry will review Municipal Class Environmental Assessment process

Late in 2016, Ontario Auditor General Bonnie Lysyk tabled her annual report which contained a chapter on ways that the environmental assessment process could be “modernized and aligned with best practices in Canada and internationally.” Two months later, the Residential and Civil Construction Alliance of Ontario (RCCAO) and the Municipal Engineers Association (MEA) also made the case for EA reform by jointly submitting an Application for Review to request that this issue be addressed on a priority basis.

RCCAO’s research has shown that there are growing delays to study the impacts on core municipal infrastructure projects through the Municipal Class Environmental Assessment (MCEA) process. These assessments take more than two years on average to complete and hold up important infrastructure investments which help us to build better communities. When a Part II Order or “Bump-Up” request is made to the Minister of the Environment and Climate Change, the review process can be slowed down ever further.

On Feb. 3, RCCAO and MEA submitted the application to Dianne Saxe, Environmental Commissioner of Ontario, concerning MCEAs, pursuant to section 61 of the Environmental Bill of Rights.

The application calls for a review of changes that may be needed to the *Environmental Assessment Act*, various regulations under that statute, and all policies and guidance documents related to the MCEA process. It also includes why it is in the public interest to do so.

Among the requests:

- 1 Expediting the response process for Part II Orders or Bump-Up requests.
- 2 Supporting changes to better integrate and harmonize the MCEA process with processes under the *Planning Act*.
- 3 Reducing the scope of MCEA reports and studies to reduce duplication with existing public processes and decisions made under municipal Official Plans and provincial legislation.

**In April, the ministry advised RCCAO and MEA that “completion of the review is expected by the end of December 2018.”**

The application was supported by Ontario’s broader construction industry and the municipal sector. RCCAO and MEA are grateful for the support of these 13 organizations.

Saxe’s office responded to our application within a week and forwarded the application to MOECC. In April 2017, the ministry advised RCCAO and MEA that a comprehensive review will be underway in the coming months, and that it is scheduled to be completed by December 2018.

We will strive to ensure that this review will lead to meaningful changes to the MCEA process in Ontario.

In her annual report, Lysyk pointed out that an EA Advisory Panel had made recommendations in 2005 which called for “new procedures that would support a more efficient process for reviewing bump-up requests, but the Ministry has not acted on this recommendation.” Twelve years is an unacceptable length of time to wait for meaningful reform and helps to explain the growing frustration of the municipal sector and other stakeholders.

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