

## I. INTRODUCTION

### 1. ABOUT THE RCCAO

The **Residential and Civil Construction Alliance of Ontario (RCCAO)** unites management and labour groups from the residential and civil sectors to advocate on behalf of the construction sector and provide real solutions. With our member expertise and strength in numbers, we are able to speak with one voice on matters such as infrastructure, land supply and use, and regulatory reform.

Since its origin in 2005, RCCAO has independently commissioned more than 36 reports on planning, procuring, financing, and building infrastructure, and has 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's website at [www.rccao.com](http://www.rccao.com)

### 2. RCCAO'S INTEREST IN THE MCEA PROCESS

The Municipal Class Environmental Assessment (MCEA) process is firmly entrenched in Ontario for core municipal infrastructure like 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 assessment process. RCCAO has commissioned in-depth research on the delays communities are facing. A February 2015 report compared Ontario's Municipal Class Environmental Assessment ("**MCEA**") process to EA procedures to other jurisdictions in and outside of Canada.

RCCAO members include the following:

- Joint Residential Construction Council
- Heavy Construction Association of Toronto
- Greater Toronto Sewer and Watermain Contractors Association
- LIUNA Local 183
- Residential Carpentry Contractors Association
- Carpenters' Union
- Toronto and Area Road Builders Association
- International Union of Operating Engineers, Local 793
- International Union of Painters and Allied Trades District Council 46
- Ontario Formwork Association

The November 2015 position paper by the Municipal Engineers' Association (the "**MEA**") deals directly with the costs and delays associated with municipal infrastructure planning and construction and as such has a direct impact on projects which involve many of RCCAO's member organizations.

## **II. SPECIFIC COMMENTS AND OBSERVATIONS**

### **3. GENERAL**

RCCAO's stakeholders and the public at large have a vested interest in ensuring that the MCEA is efficient in order to: (a) reduce the costs to proponents, which makes more funding available for additional infrastructure or other proponent needs, and (b) to reduce unreasonable time delays which add both costs and uncertainty to the delivery and management of municipal infrastructure.

RCCAO agrees with the general conclusions on page 7 of the MEA paper that the MCEA system must be Efficient, Consultative, Transparent, Thorough, Fair and Protective of the Environment. A brief commentary on each characteristic is provided:

**Efficiency:** RCCAO commissioned two independent studies and reviews of public data regarding the MCEA process (one in March, 2010 and the other in March, 2014)<sup>1</sup> which confirm the MEA's concerns that costs and delays are continuing to grow for the completion of reports through the MCEA process. Every dollar of additional costs for the MCEA process reduces the funds otherwise available to actually construct the needed infrastructure or respond to other local needs.

**Consultative:** it is vital that the MCEA process recognize the existence and results of prior public consultations, including official plan development and amendments, subdivision approvals and other consultation activities by municipalities regarding specific infrastructure needs and pragmatic and affordable alternatives. Where there has already been significant public consultation about specific infrastructure, the MCEA process should not require duplication.

**Thorough:** a significant number of MCEA reports in the past have used the MCEA process to question elements of official plans and approved municipal capital plans. If the Official Plan calls for the widening of an arterial road to service a new subdivision it may not be necessary to consider alternatives such as widening other roads or bridges.

**Fair:** it is important that both proponents and stakeholders are respected within the process. There are examples where only one or a small number of opponents who might not even live in the affected region will carry a disproportionately loud voice over a larger number of residents, including immediate neighbours who do not oppose the proposed local infrastructure.

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<sup>1</sup> See reports at <http://www.rccao.com/research/municipalAssessments.asp>

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***Protection of the environment:*** there are circumstances where opponents of the proposed infrastructure are simply opposed to a change, such as the approval of new infrastructure on lands that were previously dormant or had other uses.

#### **4. PROJECT CLASSIFICATION**

RCCAO is in agreement with the MEA that whatever Class EA system is to be used in Ontario, there should be multiple schedules or classifications of projects which reflect different potential for adverse environmental impacts.

RCCAO takes the view that those projects currently characterized as Schedule A projects should be subject to an outright exemption. While there is little difference in operational procedures if they are 'pre-approved' under the current framework, or 'exempted', the use of an exemption would eliminate any doubt that such projects are not intended to be subject to a Part II Order request.<sup>2</sup>

#### **5. STAKEHOLDER INPUT AND APPEAL**

RCCAO is in agreement that appropriate stakeholder input is critical for successful implementation of the MCEA process. Stakeholders for purposes of consultation and notices of commencement of a study normally include local residents and businesses, public and other agencies.

RCCAO has repeatedly raised a concern that persons, whether they are individual residents or other legal entities should not be entitled to appeal rights, specifically a Part II Order request, in such circumstances where the person knew or ought to have known about the consultation process and chose not to participate in meetings or provide other forms of input, but simply await completion of the final report and file a broad appeal requesting a Part II Order. RCCAO is also concerned that residents and other persons who have no bona fide local interest in an infrastructure project have the right to request a Part II Order. Persons who choose not to participate or provide input into the consultation process and those with no bona fide stake in a local infrastructure project should not enjoy Part II Order request or other appeal rights.

From the 1980's to 2011 the MCEA process had always excluded Schedule A projects from Part II Order requests, not with an outright exemption but a clear statement that such projects were pre-approved and therefore did not need to proceed with the MCEA process. Schedule A+ projects have also been categorized as pre-approved with the only qualification that the public was to be advised as soon as it was clear that the project was proceeding. It was only in 2011 that the Ministry's legal advisors

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<sup>2</sup> See section II.7 of this submission for further comments and observations regarding the Part II Order request process.

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suggested that even pre-approved projects were subject to a Part II Order request, however the Ministry has not deemed it appropriate to publish the new interpretation or provide an explanation of what event or development prompted the new interpretation. RCCAO is in agreement with the MEA concerning the Ministry's interpretation of an unrestricted right of any person to appeal any municipal infrastructure activity, including both maintenance as well as construction of Schedule A and Schedule A+ projects, through a Part II Order request. RCCAO is not aware of any statutory amendments that would have prompted a sudden and dramatic expansion of Part II Order request rights to ordinary maintenance activities or construction of Schedule A infrastructure.

RCCAO agrees with the MEA that certain routine projects and activities should be able to proceed without any requirements for Class EA documentation or consultation. Those projects currently characterized as Schedule A projects should be exempted from the *Environmental Assessment Act*. To the extent that an infrastructure project currently characterized as a Schedule A+ is the subject of legitimate concerns by stakeholders, those projects should be subject to resolution by local lower or upper tier municipalities and not through a formal Part II Order request.

## **6. PROJECT SCHEDULES**

RCCAO has already agreed that there should be multiple schedules or classifications of projects which reflect different potential for adverse environmental impacts. As such, RCCAO commends the MEA and the Ministry for making several changes to the Schedule classification criteria by referencing physical measurements, such as the length of road to be widened instead of the estimated capital cost of such an infrastructure project to distinguish between Schedule B and C projects. Furthermore, RCCAO recommends that all remaining use of project capital costs to distinguish the various Schedules of projects should be eliminated in favour of objective criteria such as physical distance or area measurements, volumetric capacities or number of residents serviced by an infrastructure project proposal<sup>3</sup>.

RCCAO completely agrees with the MEA position that projects currently characterized as either a Schedule A or a Schedule A+ should have no ability for a Part II Order request, and that any concerns regarding a Schedule A+ project would be referred to a local decision body. RCCAO advocates that Schedule B projects should also use a local authority, e.g. a municipal council, to address any legitimate concerns or issues

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<sup>3</sup> An independent RCCAO study in 2012 (published at [http://www.rccao.com/news/files/RCCAO\\_Report\\_JAN2012.pdf](http://www.rccao.com/news/files/RCCAO_Report_JAN2012.pdf)) concluded that Ontario appeared to be the only jurisdiction in the global community that relied upon capital costs as a means to decide which infrastructure construction projects required an environmental assessment. The report recommended that Ontario use physical attributes instead of capital costs to differentiate potential environmental impacts of infrastructure projects.

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brought forward by stakeholders, and that the right to request a Part II Order would be limited to Schedule C projects only.

#### **7. PART II ORDER PROCESS**

RCCAO agrees with the MEA that the current delays for reviewing Part II Order requests are unacceptable and that significant changes must be made to the Part II Order request review process.

RCCAO supports MEA's request that any Part II Order request by any stakeholder utilize the standardized Part II Order request developed by the MEA.

RCCAO also agrees with the MEA, that in those limited circumstances where a Part II Order request is made by a stakeholder raising legitimate deficiencies in an environmental report or consultation process, the review process should focus on the specified deficiencies and not a comprehensive review. Over the past few years, there has been an expansion of requests to project proponents for additional information such as Archaeological Assessment work, Source Water Protection or Species at Risk when none of these issues were referenced in the Part II Order request documentation.

Even if the right to a Part II Order request is restricted to Schedule C projects only and such requests utilize the MEA's standardized request form, RCCAO advocates that the Minister delegate his or her authority to respond to a Part II Order request to a Ministry director. Such a delegation would be consistent with other classes of projects under the *Environmental Assessment Act* and would not restrict the Minister from becoming more directly involved should the nature of the project or the requesting stakeholders warrant the Minister's direct involvement.

#### **8. SCOPE CREEP**

RCCAO agrees with the MEA that the scope and costs of completing Schedule B and Schedule C reports have increased dramatically. In many instances study costs have tripled over the last 10 years, despite the fact that there have been no changes in the relevant statute or regulations.

The MEA paper cites the Minister's review process for responding to Part II Order requests as an example of 'Scope Creep'. The MEA paper suggests that in some cases the Minister's "*process has morphed into the Ministry conducting a detailed review of the entire MCEA process before making a decision which results in a year's delay*" instead of the targeted 66 day turnaround for a decision. Given the broad range of issues being raised by the Ministry in responding to Part II Order requests, some project proponents and/or their consultants may be loading more information at the front end to reduce delays in the event that the EA report triggers a Part II Order request.

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The MEA's preferred solution is to develop an MCEA Companion Guide that will provide useful tips for proponents and illustrate minimum requirements with examples. RCCAO encourages all stakeholders to work with the MEA to develop an appropriate MCEA Companion Guide and to make all reasonable efforts to streamline the scope and documentation associated with EA reports. RCCAO also encourages the Ministry to support the MEA's efforts to develop and obtain adherence to the Companion Guide.

#### **9. AMENDMENTS TO THE MCEA PROCESS**

RCCAO is in agreement with the MEA that the documentation for the MCEA process needs to be amended from time to time to reflect evolving issues, new technologies and alternative procedures to reduce delays and costs. The fact that amendments made in October of 2015 took more than four years to receive the Minister's approval is a clear indication that there is a serious flaw in the process or prioritization that the Ministry places on improving the MCEA processes.

RCCAO supports the MEA's recommendation that the Minister delegate authority for approval of amendments to the Director and take such other measures as may be necessary to ensure that the MOECC and the MEA work cooperatively throughout the MCEA process amendments.

### **III. CONCLUSIONS AND RECOMMENDATIONS**

#### **10. Project Schedules**

RCCAO is in agreement with the MEA that there should be multiple schedules or classifications of projects which reflect different potential for adverse environmental impacts. RCCAO submits that Schedule A projects be exempted from the *Environmental Assessment Act* instead of being characterized as pre-approved to establish certainty that such projects will not be subject to a Part II Order request.

As previously mentioned, RCCAO also supports the use of physical criteria, such as length of a road, to distinguish between Schedule B and Schedule C projects and that any remaining references to capital costs as a distinction criteria be replaced with physical measurements.

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#### **11. Part II Orders and Appeal Rights**

RCCAO agrees with the MEA that significant changes are necessary to avoid the growing delays to respond to Part II Order requests. RCCAO submits that part of the solution would be to replace the right to request a Part II Order for Schedule A+ and Schedule B projects with a decision process and body that is locally-based.

Any right to request a Part II Order or other form of appeal for an MCEA project must be based on a legitimate flaw in an environmental report or consultation process and is raised by a genuine stakeholder who has participated or otherwise provided input into the public consultation process.

In order to expedite the process, the authority to respond to a Part II Order request could easily be delegated from the Minister to a Ministry director. This would assist in reducing the backlog and would be especially prudent in times when the Minister has far more pressing matters.

#### **12. Further Dialogue and Assistance for the MCEA Process**

RCCAO remains committed to working with the MEA and the Ministry to identifying and implementing improvements to the MCEA process in order to improve overall effectiveness and efficiency.

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