

March 15, 2024

EA Modernization Team
Environmental Assessment Modernization Branch
Ministry of the Environment, Conservation and Parks
135 St Clair Ave West, 4th Floor
Toronto, ON M4V 1P5

Re: MECP's Proposed Changes to the MCEA Process

Dear EA Modernization Team,

Introduction

The City of Hamilton's Environmental Assessment Working Group (EAWG) is pleased to provide input on the Province's commitment to modernize the Municipal Class Environmental Assessment Process (MCEA), specifically ERO-019-7891. These comments have been reviewed by subject matter experts across the City of Hamilton.

EAWG is supportive of the proposal to change the MCEA process to a regulation, but there are concerns with the current proposed Municipal Project Assessment Process (MPAP) Regulation.

Detailed feedback to the ERO is broken down into five (5) components:

1. Proposed MPAP Regulation
2. Proposed MPAP Regulation Project List
3. Proposed MCEA Revocation
4. Proposed Transition Provisions
5. Ministry of Environment, Conservation and Parks (MECP) Proposed Municipal Project Assessment (Feb.28) Webinar Comments.

1. Proposed MPAP Regulation

- There is support for certain processes of the proposed MPAP such as streamlining certain tasks, for example considerations for the removal of "Do Nothing" option when identifying the needs and justification for projects, as well as the certainty of time of feedback to be received from the MECP.
- During previous consultations on MCEA process updates and the development of the proposed MPAP regulation, the City of Hamilton and other municipalities requested more guidance on various topics (e.g., Indigenous

engagement), which is missing in the proposed MPAP regulation. Additionally, the proposed MPAP Regulation timeline does not appear to consider that Indigenous Nations may not work on the same timelines that MECP proposed for the proposed MPAP Regulation (Nations may have their own internal review timelines) and that they may not have the resources that would be needed to complete the review.

- It is misleading to state that the proposed MPAP regulation can be completed within a 6 - month window. This does not align with relevant field assessments that require varying timing windows (e.g., bat surveys and amphibian surveys) or assessments that take longer than 6 months to complete (e.g., Archaeology Assessment). Thus, the proposed MPAP Regulation will not likely be less onerous, less costly or take less time than the existing MCEA process for the listed projects.
- The proposed MPAP Regulation does not appear to account for the full scope of work necessary to complete a high quality transparent planning process, including long term cumulative impacts (e.g., climate change). Please confirm that MECP would require the Municipality to complete all work required prior to triggering the proposed MPAP.
- It is a concern that the 120-day timeline will make meaningful consultation with stakeholders challenging. It is currently interpreted that the entirety of the technical and pre-consultation work, including the development and consideration of alternative solutions as well as alternative design concepts must precede the issuance of the Notice of Commencement. As a result, consultation essentially will occur after the outcome for the project has been fully determined, and opportunities for the public to provide input will be superficial.
- It is noted that the 30-day timeout period is unlikely to be sufficient to address any major concerns or issues raised in the formal consultation period. MECP should also provide more rigid timelines on agency reviews (e.g. Ministry of Citizenship and Multiculturalism) in order to streamline the process and to minimize or eliminate approval delays.
- To issue a Notice of Completion, the study would require Council approval via a report to Council that in a larger municipality takes up to 3 months, which does not fit within the 6-month timeline set by the Province.
- Will the proposed MPAP Regulation address the requirements of other regulations that are currently required under the existing MCEA process such as Source Water Protection?
 - The proposed MPAP Regulation does not appear to address the requirements related to Source Protection Planning, nor does it consider source protection policies and assessments of drinking water threats. It is important to recognize and uphold the existing obligations for source protection technical work, input from the Source Protection Authority, and source protection technical reviews during a

MPAP study. These requirements should be duly acknowledged and maintained.

- The proposed MPAP regulation does not address the impacts to cultural heritage resources typically impacted by infrastructure projects. Additional guidance on this is requested.

2. Proposed MPAP Regulation Project List

- It is unclear where Master Plans fall into the proposed MPAP framework (and their associated approaches or 'modified' approaches) which currently exist in the MCEA process.
- It is strongly advised that new road construction and widening of roadways should be included in the proposed MPAP Regulation, due to the cumulative impacts of such projects and to ensure municipalities can protect land required for future roads and road widenings.
- Depending on a private development's project and its location, there are other legislative, regulatory and/or municipal requirements outside of the EA Act. For example, an Official Plan carries requirements for the MCEA to establish private services within a permanent residential area (e.g., trailer parks). It should be clarified within the proposed MPAP Regulation if the municipal policies take precedence over provisions of the EA modernization approach.
- Certain project descriptions and the Proposed Part II.4 Project List include elements that are confusing. For example, it is not clear if a new pumping station with chlorination and UV (treatment within a small well system) within an existing system would be considered a water treatment facility and require an EA study. At present, this initiative falls under Schedule B. A clearer delineation of project types and scenarios would be helpful. Additionally, it is essential to acknowledge the distinction between small groundwater systems and large surface water systems.
- There is support for the Municipal Engineers Associations' (MEA) comments on the proposed MPAP Regulation, particularly the Project List section.

3. Proposed MCEA Revocation

- There is a need for municipalities to protect future road allowances. Notwithstanding provisions included in an Official Plan or a strategic Master Plan, it will be difficult to defend a municipal interest through a Planning Act application if a development is submitted as a Site Plan and the municipality is unable to define the precise land requirements for a new or widened road (currently defined through a Schedule B or C approved Class EA).
- Studies that are currently completed outside of the Planning Act process and subjected to MCEA's Schedule B and C requirements (e.g. increased capacity on a new pumping station, new stormwater outfalls, communal wells), are defined through the EA process and defensible through a regulatory appeal process (e.g. OLT, Minister's Order Request). Removing the requirements to

adequately define municipal infrastructure needs and constraints, through a transparent and engaging process, will leave maintenance and expansion of public infrastructures at risk.

- During previous consultations on MCEA process updates and the development of the proposed MPAP regulation, municipalities requested more guidance on various topics (e.g., Indigenous engagement). Road related projects often garner Indigenous interests. The proposed exclusion of road projects from the proposed MPAP Regulation appears to contradict the intent of Indigenous Reconciliation including United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). It also does not support municipalities that will continue to experience challenges with Indigenous engagement. While the above specifies road projects, there may be other project types that have been excluded from the proposed MPAP Project List where UNDRIP and Indigenous Reconciliation concerns would also apply.
- The revocation is contrary to the municipal, provincial, federal, and global objectives to combat climate change.
- The exclusion of roadway projects from the proposed regulation is a significant concern and it is not supported. These are projects that are often complex and generate public, Indigenous, and stakeholder interest. Without the MCEA process (or a provincial body oversight), and even with the Planning Act, there will be no provincial requirements for proponents to engage with the public, Indigenous Nations, and stakeholders the same way. It is understood that the proposal intends to enable completion of road projects on time and budget, however, the complete exclusion of roads from the proposed MPAP Regulation will lead to inconsistent and/or inadequate assessments of important considerations such as natural heritage, archaeology, cultural heritage, stormwater, etc... at the expense of the “time is money” principle. While there is nothing stopping proponents and private developers from undertaking good planning and having the MEA maintain a guidance document, the lack of framework and enforcement as provided by the proposed MPAP Regulation reduces good planning from a “requirement” to “discretionary and ad-hoc” as decided by a proponent and/or private developer. This will lead to degradation of the process and outcomes including inconsistencies in how municipalities plan for infrastructure.
- The past 30-years of the MCEA’s process experience has resulted in the protection of the environment including natural and cultural heritage resources. The introduction of new instruments, through the proposed MPAP Regulation, should ensure the protection measures mentioned above are intact.
- With many municipalities who may have different requirements and expectations for various aspects of project planning, the proposed MPAP Regulation will be required to provide additional guidance in order to:

- Ensure consistency in assignments for consultants across municipalities, it's important to standardize requirements. Varying requirements among municipalities can make it difficult for consultants to understand specific needs, hindering efficiency.
 - Provide consistency and transparency for meaningful engagement with the public and stakeholders.
 - Ensure that Indigenous Nations can meaningfully participate as they work with many municipalities who would each have different requirements and expectations.
- There are also concerns about the exclusion of Master Plans for all municipal infrastructure types. Master Plans are a key tool for all infrastructure planning projects. It is highly recommended that Master Planning provisions be included, particularly Approach 1 and Approach 2 of the current MCEA process. While the City of Hamilton typically only uses Approach 1, it is recognized that there may be value in maintaining Approach 2. It is not anticipated that Approach 3 would ever be feasible for the size and complexity of Master Plans completed by large municipalities such as ours.
- The proposed regulation is holding a municipality to a higher standard for completing an activity than a private development. Private development is for profit and much more likely to circumvent processes or cut corners than a municipality that is typically more devoted to the overall protection and benefit of the local area/municipality.
- The benefits of not having EA appeals (Section 16) after an EA project is completed and filed, does not outweigh the potential legal actions taken against proponents during the Ontario Land Tribunal (OLT) process. The MCEA process serves as a rationale and documentation for decisions made on why certain standards and guidelines are required.
- Furthermore, certain environmental, social, or economic triggers/ conditions should require a developer to complete an EA. For example, whenever a private developer is proposing a realignment of a planned arterial road, they should be required to provide a justification for change and a comparison between impacts from the Master Plan's approved arterial road alignment and the new alignment. The current Planning Act process does not require a comparison. Instead, the onus would fall on the municipality to request such a comparison on a case-by-case basis, which is challenged through a regulatory appeal process through the OLT. The existing MCEA process is a well proven and effective tool for that. The proposed regulation should apply to both private and public proponents.

4. **Proposed Transition Provisions**

- It is requested that as much notice as possible be given so that municipalities can develop a new process in-lieu of the proposed MPAP regulation. For

example, it may take a minimum of 12 months for a new process to be developed and approved by Council in municipalities.

- For Master Plans that have been completed and have used Approach 1 and Approach 2, the expectation is that additional work will be completed for projects identified through the Master Plans. In the event that the proposed MPAP regulation is approved, there are concerns about gaps of assessment work needed should developers be responsible for completing the remaining assessment work (Phase 3 and 4 of the existing MCEA process). The roles and responsibilities of the proponents and developers for these projects (Phase 3 and 4) should be clearly defined.
- There is support for transition provisions that would allow for:
 - Projects that are not on the MPAP Project List to complete the MCEA process or easily withdraw from the process by providing notice.
 - Projects that are on the MPAP Project List to be able to complete the EA Act requirements either under the existing MCEA process or the proposed MPAP Regulation.
 - Inclusion of transition timelines e.g. 6 -12-month window to complete ongoing MCEA projects before the new regulation is in place.

5. Proposed Municipal Project Assessment Process (MECP) Feb 28 @ 2pm Webinar

- MECP had noted that larger municipalities can and have been utilizing Master Plans to fulfil inventory assessments (i.e., Approach 3). City of Hamilton does not use this approach for Master Plans. Instead, Approach 1 and occasionally Approach 2 are used, but never Approach 3 (which includes detailed inventory assessments) due to the size, complexity, and long timelines of implementation of Master Plans. It is not anticipated that Approach 3 would ever be feasible for the size and complexity of Master Plans completed by large municipalities such as ours.
- It was disappointing that MECP indicated that it is not responsible for providing other mechanisms that would compensate for the removal of the existing MCEA process e.g., guidance documents or other legislation. Administrative impacts that have not been anticipated will need to be addressed, which the Province should be responsible for.

Final Comments

The above comments have been prepared by City of Hamilton Staff but have not yet been reviewed by the City of Hamilton Council due to the short commenting window set by the MECP. Due to the significance of the proposed changes, it is Staff's intent to seek Council review and provide the MECP with any additional comments. Staff expect to finalize comments in late Spring 2024.

Thank you,

City of Hamilton Environmental Assessment Working Group (Co-Chairs)

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