



Ontario
Home Builders'
Association

March 15, 2024

To: EAmmodernization.mecp@ontario.ca
EA Modernization Project Team
Environmental Assessment Modernization Branch
Ministry of the Environment, Conservation and Parks
135 St Clair Ave West, 4th Floor
Toronto, ON M4V 1P5

RE: ERO 019-7891 / 23-MECP025 New Regulation to Focus Municipal Environmental Assessment Requirements

The Ontario Home Builders' Association

The Ontario Home Builders' Association (OHBA) is the voice of the residential construction industry in Ontario, representing 4,000 member companies organized into 27 local associations across the province. Members include builders, developers, professional renovators, trade contractors, suppliers and manufacturers serving the residential construction industry. The OHBA coordinates our industry's public policy response regarding municipal environmental assessment requirements.

Environmental Registry Background

Ontario is proposing to revoke the Municipal Class EA (MCEA) and make a streamlined EA regulation for municipal infrastructure for higher-rise projects. The new regulation would deliver critical public works to support housing infrastructure for Ontario's rapidly growing population.

OHBA Response

Please accept the below as our submission to the government's request for feedback on the 'New Regulation to focus municipal environmental assessment requirements' (ERO 019-7891 / 23-MECP025).

Our comments follow on and complement our previous submissions on ERO 019-4219 (Moving to a Project List Approach Under the *Environmental Assessment Act*) and ERO 019-6693 (Evaluating municipal class environmental assessment requirements for infrastructure projects).

Proposed Municipal Project Assessment Process (MPAP) Regulation

OHBA supports the Ministry's efforts to streamline environmental assessment (EA) regulations on municipal infrastructure for higher-risk projects. Public works are the backbone of infrastructure that supports and enables housing, and regulation that reduces delays and costs is most welcomed by the industry. However, the government should take steps to prevent possible impediments to ensure a process that is both effective and efficient.

Proposed projects subject to the new Regulation

OHBA generally endorses the Municipal Project Assessment Process (MPAP) Project List that describes the municipal infrastructure project types subject to the process (to be designated as Part II.4 projects under the *EA Act*).

In order to encourage maximum flexibility in the development planning process while still safeguarding environmental and water management objectives, **OHBA recommends that each project under the MPAP be more fully and carefully defined, in future regulations, to ensure that municipalities do not use an overly-conservative interpretation of the project that could be misaligned with the provincial intent.**

As an example, we suggest a revision of MPAP Project Type #15 found in the Summary of Requirements:

“Construction of a diversion channel or sewer for the purpose of diverting flows from one watercourse to another”

Development plans often consist of drainage areas directed to multiple watercourses. The diversion of flow from one watercourse, or one river, to another already has protections in place. Scenarios involving minor alterations to watercourse drainage areas (for which a clear definition is needed) should be exempt from the stringent approval processes.

OHBA recommends that the reference to watercourse be changed to watershed, that minor alterations be defined and exempt, and a threshold for impact be designated as part of the definition, in the new regulation.

Proposed projects not to be subject to the new Regulation

Although we support the removal of projects which are currently subject to MCEA (Municipal Class EA) and not listed in the proposed regulations, OHBA is concerned that **the language in the ERO posting is too ambiguous, subject to interpretation, and invites municipalities to find loopholes to include otherwise exempted projects:**

“Depending on the type of project, there may be other legislative, regulatory and/or municipal requirements outside of the EA Act. Any applicable permit or approval would still be required. Municipalities will continue to consult on official plans. Municipalities may continue to carry out master servicing planning under their own processes to assess planned municipal infrastructure.”

It is the industry’s experience that municipalities will use any ambiguity to assert their own processes, which ultimately frustrates the government’s intention and adds red tape that causes delays, increases land carrying costs and delays the production of needed housing supply.

For example, some municipalities institute policies that specifically set out requirements for an EA to be undertaken, even if the project is exempt from the EA process at the provincial level (e.g., Ottawa dictates this in its Official Plan – Sections 4.1.6 (1c), 4.1.7 (4), 4.1.7 (9), 4.7.1 (16), 4.7.2 (6e), 4.9.3 (6b), 4.11 (8) & 7.3 (2i)).

This disconnect between provincial and municipal EA regulations will have a negative impact on the cost and timeliness in delivering municipal infrastructure and the creation of housing supply.

OHBA recommends that the provincial government state explicitly that only it has the authority to set EA requirements, not municipalities, and that the Regulation explicitly state that in the event of a conflict the Provincial EA regime takes precedence. Requiring municipal policy to be consistent with provincial policy will help eliminate loopholes that allow municipalities to retain unnecessarily stringent EA processes.

Further to the above, however, the removal of these projects from the *EA Act*, in and of itself, does not provide any certainty as to timelines for completion.

Private Sector Infrastructure Projects

The ERO posting outlines the government's intent to have private sector infrastructure projects exempt from the MPAP:

Proposed projects not to be subject to the new Regulation

Other projects which are currently subject to the MCEA and not listed in the proposed regulation would no longer have EA Act requirements. This would include:

"...all private sector infrastructure projects for residents of a municipality regardless of size, including a new sewage treatment plant of any size."

OHBA recommends that the 'private sector developer' project exclusion be clearly defined, within the regulation, to avoid confusion or misinterpretation.

Regulatory clarity or clear guidelines around whether this applies to municipal infrastructure projects designed/constructed/funded by private sector developers, but then conveyed to a municipality via development agreement, is needed (e.g., it is not clear if off-site infrastructure, like downstream stormwater works, is intended to also be relieved from EA requirements).

Proposed Assessment Process

The introduction of the legally binding obligations of the Environmental Project Report (EPR) are a welcome addition to the process.

The implementing Regulation, *O. Reg 50/24* contains a definition of "sensitive area" that includes a 'catch-all' phrase at the end of the definition that allows for "or other sensitive land uses". **OHBA recommends that this be amended to delete "or other sensitive land uses" as this addition to the definition is so broad that it is not an effective definition.**

The following change is recommended:

"sensitive area" means,

- (a) an area of residential land use, or
- (b) an environmentally sensitive area such as an area that includes natural heritage features, cultural heritage or archaeological resources, recreational land uses ~~or other sensitive land uses~~;

The old provincial definitions found through the Environmental Protection Act and the MECP Land Use Compatibility Guidelines could be used to develop a single definition that should be used in all applications. This will require a review of not just the definition used in the EA process, but that of the Environmental Protection Act and the finalization of the review of the D-Series Guidelines that has been paused.

In addition, the ability of a municipality to defer the undertaking of the defined process to seek additional information can be never ending, and have a significantly negative impact on timelines and cost.

Presently, the pre-planning phase of the current process for transit and rail introduces the idea without providing any direction as to the contents or timing for this work.

OHBA recommends that the process be amended to clearly add the initial ‘pre-planning phase’ stages of a project, including the completion of seasonal studies and identification of potential issues. Currently, it is not included within the defined process.

The MCEA provides for the types of issues that should be identified and details if they should be examined. The issue identification and analysis is stated so it is known to everyone. This makes it more transparent and easier to apply.

If such a concept were included for an EA for master planning, and potentially for the transit and rail projects, it would be possible to define a timeline for the projects based upon the types of issues that are to be reviewed as a part of the Municipal EA process.

For example, if there is a sensitive habitat associated with a creek system, or if there is a long-term care facility abutting the project, it is possible to clearly define the timing for the studies needed and thus scope the length of the project.

Further Considerations - Master Servicing Planning

Master Servicing Planning (MSP) also represents an area where there can be significant impediments to bringing land online for housing, both in cost and timelines.

It is not clear if there is intent within this ERO to enable the MSP process to be fast-tracked as well, and therefore, **OHBA urges the government to consult further with the residential construction industry on how MSP can be simplified and accelerated to enable more housing.**

The *Planning Act* acknowledges the importance of EAs but does not include any instruction for how or when these assessments should be incorporated or coordinated. This results in vastly varying processes and timelines, all of which negatively affect the ability to deliver new housing efficiently and affordably.

For example, incorporating Master Planning exercises into the planning process for transit projects would ensure that they are aligned with broader planning and environmental considerations as outlined in the *Planning Act*. This approach would also create a more cohesive, sustainable, and efficient urban development that integrates transit with housing and land use planning.

Adjusting the requirements under the *Planning Act* and expanding the scope of EAs are steps to achieve this integration. Creation of a clear provincial definition of an assessment report and its contents, and a connection to the EA would provide appropriate direction.

This will require MMAH to amend the requirements under Section 16.1 of the Planning Act, where the introduction states:

“The council of a municipality or a planning board may by by-law elect to follow the prescribed processes and develop the materials prescribed for the preparation of an official plan, and any

processes followed or materials developed in the preparation of the plan may be considered under the Environmental Assessment Act with respect to any requirement that it must meet under that Act. 1994, c. 23, s. 9.”

In 2016, *Bill 7, Promoting Affordable Housing Act, 2016*, introduced Section 16(9) of the Act that requires an Assessment report:

(9) Before adopting the parts of an official plan which contain policies described in subsection (4), the council of the municipality shall ensure that an assessment report has been prepared. 2016, c. 25, Sched. 4, s. 1 (3).

This assessment report has evolved to be very limited in scope and generally only includes an analysis of demographics, income, housing supply, housing need and demand, current average market prices and rents and an analysis of potential impacts on the housing market, and does not deal with any related environmental, transportation, transit or servicing issues.

Thus, municipalities then launch separate work for transportation/transit and infrastructure planning. The disconnect between the *Planning Act* Assessment Report and a municipal master plan is that each follows its own process and timeline, which might be a duplication and/or create further delay.

Creation of a clear provincial definition of an assessment report and its contents, and linkage to the EA, would provide direction and guidance as to content and timing.

Further Considerations – Surface Water Features

Although the definition of a surface water feature was recently revised under legislation related to Conservation Authorities, further clarity would be beneficial if the government included when such features are manmade – such as a ditch or a swale.

OHBA requests that the regulation be revised to clarify that the definition of a surface water feature excludes those created by human actions.

Further Considerations - Strong Mayor Powers

In addition to a few amendments to the proposal as presented, we urge the provincial government to consider whether expansion of Strong Mayor Powers in this area would be beneficial.

Although the current regulation provides clear authority for the Mayor to exercise their power related to the *Planning Act and Development Charges Act* matters, expanding a Mayor's authority under the MPAP Regulation under the *Environmental Assessment Act* would allow them to “direct staff” to consistently bring forward infrastructure projects on a timely basis, and those aligned with provincial priorities.

As the regulation includes both housing and servicing, along with transit roads and utilities, this could also include items like master servicing, master transportation, and master infrastructure plans, through defined processes that include timelines from the outset to the completion of the project.

OHBA requests that the regulation be revised to state a Mayor's power may also be exercised under the MPAP Regulation under the *Environmental Assessment Act*.

Conclusion

OHBA supports the Ministry's efforts to focus environmental assessment (EA) regulations on municipal infrastructure for higher-risk projects.

To have a process that is both effective and efficient, OHBA makes the following recommendations:

- *That each project under the MPAP be more fully and carefully defined to ensure that Municipalities do not use an over-conservative interpretation of the projects that could be misaligned with the provincial intent.*
- *That related to MPAP Project Type #15, the reference to watercourse be changed to watershed, and a threshold for impact be designated as part of the definition.*
- *That the provincial government state explicitly that only the Province has the authority to set EA requirements, not municipalities.*
- *That the 'private sector developer' project exclusion be clearly defined, to avoid confusion or misinterpretation.*
- *That O. Reg 50/24 definition for 'sensitive land areas' be amended as this definition is so broad that it is an ineffective definition.*
- *That the process be amended to clearly add the initial 'pre-planning phase' stages of a project.*
- *That the government consult further with the residential construction industry on how MSP can be simplified and sped up to enable more housing.*
- *That the regulation be revised to clarify that the definition of a surface water feature excludes those created by human actions.*
- *That Strong Mayor powers be expanded to also apply under the MPAP Regulation under the Environmental Assessment Act.*

We thank the Ministry for the opportunity to comment on these proposals and look forward to further discussing specific details with Ministry officials later. We look forward to continuing engaging with the provincial government on how to encourage efficient infrastructure projects that support and enable housing.



Neil Rodgers
Interim CEO, Ontario Home Builders' Association



Dave Depencier
President, Ontario Home Builders' Association