

Patricia Becker (principal with P Becker Consulting) has over 35 years of experience working with municipalities and private sector proponents on completing Environmental Assessment (EA) projects in Ontario, including individual and Class EAs, for roads, water and wastewater projects. Based on this extensive experience and familiarity with the MCEA process Pat has reviewed the updates to the proposed regulation to focus on municipal environmental assessment requirements (specifically ERO-019-7891) and offers the following comments and questions.

Many of our private sector developers support the concerns raised below especially related to the Archaeological Assessment Process as they see that this will add unknown and undue delay to development projects, specifically related to collector or arterial roads. Developers are not opposed to completing Stage 1 and 2 Archaeological Assessments but this proposed process seems to be closely related to working with Indigenous communities that do not have the necessary resources and MECP has not in the past forced them to participate or work within the proposed timelines and to stay focused on the issue of only archaeology. In particular this is a concern since these Indigenous communities will recognize that this may be the only chance they have to comment on natural heritage issues, especially since many of to date indicated that they are not in favour of extensive development of Ontario's landscape that MECP and the provincial government is encouraging.

Archaeological Assessment Process

1. Project experience with the existing Archaeological Screening Process is that it takes longer to finish the process than to complete a Schedule B project. For example one of our projects issued the Notice of Screening to Exempt which is required to be sent to Indigenous communities and that has taken 5 months to date of working with them to address comments (largely related to natural heritage and the development itself). The project should have been able to proceed quickly since it was exempt but the Indigenous communities first asked to meet (virtually) and then have asked to review the Stage 1 and 2 Archaeological Assessment Reports as well as the natural heritage reports. They have then taken several months to review and provided comments that had to be addressed. This is for a project that is exempt and the Indigenous communities take a long time to review and they required capacity funding which developers will pay but this takes time to set up.
2. The archaeological assessment process proposed will take a lot of resources that the most Indigenous communities do not have. The increase in the number of reviews results since each collector and arterial road will likely require their review for all developments. Regardless of whether they are required to or not the Indigenous community will ask for the natural heritage reports and the archaeological assessments for comment but first there is a process to sign an agreement for each project. This all takes time and will add additional time to the process and will heavily tax the limited resources of the Indigenous communities.
3. How will developers and municipalities work with HDI/HCCC? They have not been willing to work on projects and they will likely take the opportunity to delay reviews. Is MECP proposing to address this issue?
4. Many of the agreements state and discussions with Indigenous communities raise the issue that they want to be offered the opportunity to provide monitors during the Stage 2 fieldwork.

Given the requirement for proponents to “notify Indigenous communities and seek their input on the results of the archaeological assessments” how does this address this desire for Indigenous communities to participate in the fieldwork? Will MECP inform Indigenous communities that they will not be offered the opportunity to participate in the Stage 2 fieldwork?

5. What is considered the “Project Area”? Since there will not be any EA requirements for most developments (very few will include undertakings on the Project List) what is the specific “Project”? Does the “Project Area” refer to each collector or arterial road or is it the entire development (e.g., Block Plan, Precinct)?
6. What happens to developments that have non-participating lands included? Can they proceed with constructing roads by splitting them into sections?
7. What happens for arterial roads that are boundary to developments that require widening? If they go beyond the existing road right-of-way and one side of the road is lands not being developed or non-participating will this slow down the widening since the municipality will need to undertake the archaeological screening process and in some instances they will need to go through expropriation for access to complete the fieldwork. The municipality may take longer in meeting the Indigenous community consultation and reporting requirements. Can the development proceed, including construction of other collector or arterial roads if this road is part of the “project area”? If a municipality is not in favour of a development they could slow this down by not undertaking the archaeological assessments in a timely manner. Unless each road can be done separately this process will be time consuming to do for each road individually.
8. Completing a draft summary report and working with Indigenous communities for projects that don’t have any potential for archaeological resources will add unknown time to projects. Under the current Archaeological Screening Process it usually takes at least 6 months to work with communities for projects that are Screened to Exempt. This will likely be the same result under this proposed process. Most Indigenous communities take closer to 60 days to provide comments currently and may take longer since they have reports to review. Will there be the opportunity to cut off comment periods at the end of 30 days so that the final summary report can be developed and the Notice issued to start the 15 day period? Can they also limit comments to the archaeological assessments? Currently proponents are always required to provide communities with the necessary time they require since a Section 16 Order can be considered by these communities regardless of the filing of the Notice of Completion and the 30 day period.

Proponents can’t proceed until 15 days after the Notice of final report has been provided but what happens if there are outstanding concerns raised in particular if they are not related to archaeological work but to natural heritage issues? What mechanism is there for these to be resolved?

9. Most lands in Southern Ontario have archaeological potential so Stage 2 will be required. Planning applications under the Planning Act require completion of archaeological assessments by a licensed archaeologist. If this has been done by a licensed archaeologist why is it being proposed that the draft summary report and comment periods are required? As noted in the previous comments this will add undue delays unless MECP allows proponents to proceed regardless of whether communities have provided comments in the comment period. Will proponents have to constantly contact and work with the Indigenous

communities or is release of the draft summary report sufficient? What happens if an Indigenous community is opposed to the project or is difficult to work with (e.g., HDI/HCCC)? How can the process proceed? Proponents can't proceed until 35 days after the Notice of final report has been provided but what happens if there are outstanding concerns raised in particular if they are not related to archaeological work but to natural heritage issues?

10. Most of the Developers we have worked with are finding the current Archaeological Screening process under MCEA to be cumbersome and it can be faster to complete Schedule B or C processes than to meet the requirements imposed by Indigenous communities. This proposed archaeological assessment process will increase these timelines with no other options for proceeding available.
11. Can collector or arterial roads be split into sections if there are issues or non-participating landowners? Since "project area" is not defined it is not clear how to deal with this and whether this will tie up the entire road or possibly all collector or arterial roads in a development? Often the roads are part of different stages in the development so that the non-participating issues can be part of future stages of development. Will this new process allow for the dividing of the roads into sections? If not then how can Stage 2 be completed since on-site fieldwork won't be able to be completed on these lands.
12. Overall the Archaeological Assessment Process will likely add time to projects and unless MECP adds wording in the Regulation that limits the Indigenous community's review to only archaeology and to the specified timelines this will be an unknown delay.

General Comments

- i. The Proposed Project List indicates that the MPAP only applies to the projects undertaken by a municipality. What if the private sector is undertaking this project can they proceed without following MPAP or any other process?
- ii. There is no definition of what "undertaken by a municipality" means. To get development proceeding private sector developers in numerous instances have completed the design and construction of many of the projects on the list but this would seem to mean no MPAP would need to be completed if they undertake the project instead of the municipality. Does it matter if the municipality will operate and maintain the infrastructure? It would seem that private sector should "undertake" the infrastructure projects on the Project List since they could proceed without doing any MPAP process and could begin detailed design without consideration of potential environmental impacts.
- iii. If only municipalities complete the MPAP then who is the "proponent" compared to the "municipality"? There are numerous references to the proponent doing a task. For example, for the Notice of Commencement what is the proponent's general website? Won't it just be the municipality posting the notice on their municipal website?
- iv. For infrastructure projects that are not on the MPAP project list but may trigger another Class EA. Will the private sector or municipality be responsible for addressing these Class EA requirements? Previously a collector or arterial road crossing Hydro One or MTO lands would not trigger the other Class EA since the project was addressed under the MEA Class EA process. Will these other Class EAs now be required to be completed?

- v. Another overall main concern is that the proposed regulation would appear to download the responsibility for consideration of environmental issues and possible alternatives to the municipality. Many municipalities may see this as uncertainty in how to deal with this and will they now need to develop their own process? What will be the mechanism for ensuring consistent application of environmental requirements in the planning application process?
- vi. To date Municipalities have completed Master Plans for water, wastewater and road infrastructure following the MCEA process and the approaches outlined. These Master Plans provide a good opportunity for Municipalities to look at the larger picture and to plan for infrastructure needs over longer time frames, e.g., 20 years. Master Plans would no longer be part of a specific process since they are not on the Project List and most of the projects in Master Plans would also be exempt. What will be the incentive and process for Municipalities to follow to develop Master Plans and to keep them updated? Will Municipalities just use Official Plans to determine their infrastructure needs in the future? By following the Planning Act this will remove the need to look at or to evaluate alternatives and to take into consideration potential impacts on the environment.
- vii. Since private sector developers would no longer be automatically subject to the EA Act process for development related projects (water, wastewater or roads) will municipalities now require the need for an Environmental Impact Statement and other environmental studies to a greater level be undertaken for all development projects throughout the Province? Will there be any consistency within the Province as to how this will be addressed?
- viii. Previously the applicable municipality tended to follow the MCEA to ensure that the appropriate alternative was being selected as preferred and that appropriate studies (e.g., natural heritage, archaeological assessments, cultural heritage) were completed. Since there is no longer a requirement to consider alternatives for any project not on the Project List will municipalities determine if the Provincial Planning Statement has been met to permit roads, sewers and watermains to cross sensitive features even though no consideration was given to alternatives or protection of the environment? If not, it would seem that the municipality would now be looking at the alternatives considered and studies undertaken and determining if they were satisfied. The concern is that most municipalities do not have the staff or the expertise to determine this and will this potentially slow down the approval process under the Planning Act. If staff or a municipality are not in favour of a development can they slowdown the process or include additional Conditions of Approval on a planning application resulting in more time required to clear these conditions?
- ix. The transition process indicates that any project not on the Project List as well as any project being undertaken by a private sector development may complete the MCEA process or withdraw from the process. We recognize that most municipalities and developers would choose to withdraw from the process when there are no section 16 Order requests associated with the project. The proposal states that “direct notice”; would need to be provided but what happens if an Indigenous community has concerns or raises issues with this process? It is not clear as to who would have the responsibility, if anyone, for resolving these concerns.

- x. For projects on the Project List, in particular water and wastewater treatment plants, is there the potential for more section 16 Order requests by Indigenous communities that are not satisfied with how the MPAP was undertaken?
- xi. For Ancillary Activities it is proposed that a new access road to a water or wastewater treatment plant would be considered as part of the MPAP for the plant. If the access road is part of a proposed development will the MPAP required for the road result in a delay for part of the development? Can the access road be split apart so that the portion servicing the development could proceed and the remainder would be captured by the MPAP?
- xii. Our experience is that the TPAP process does not reduce the timelines for completing the project and it typically results in just as onerous and costly a process as a Schedule C completed for a project. What typically happens is that the work is done upfront and this often takes an extended period of time. The regulated timelines only start when the Notice of Commencement is issued but does not consider that pre-planning is undertaken, which is the key to slowdowns and costs. Projects under MPAP will be similar to the existing TPAP and they won't formally start until pre-planning is done and proponents know they are ready and can proceed. Under TPAP this has also resulted in the process starting when decisions have already been made without any input from public, stakeholders and Indigenous communities.

SPECIFIC COMMENTS

Environmental Assessment Modernization

Under "Context/Overview"

- 3rd paragraph – What is intended in the last sentence by "before proceeding"? Does this mean implementation? Currently there is no "approval" for the EA process by MECP and once completed the project can proceed to implementation (detailed design and construction). Is that what is intended by "before proceeding"?
- 4th paragraph O.Reg. 345/93 was already revoked in 2024. Should this not be referring to O.Reg. 53/24? What does the last sentence mean "projects undertaken by a municipality"? Does this mean they design, construct, operate and maintain the infrastructure? It is not clear what the distinction is between 'private sector' and 'municipality' for the infrastructure. This needs to be clarified.

Table 1: Projects proposed to be subject to the Archaeological Assessment Process

For Table 1 Notes ^{2,3} in the Table for an "ancillary project" what determines if the Project is done by a municipality or private sector? Is this based on who will 'design and construct' or 'pay for' or 'own, operate and maintain' the infrastructure? It is not clear when private sector applies.

Road and Road-Related Projects

- a) **Under #3, 6 & 7** – what does "greater than 1 lane kilometer (i.e. 1km single lane road)" actually mean. What is a 1 lane kilometer? The example given of "1km single-lane road" in southern Ontario exactly where are single lane roads constructed other than a driveway? It is not clear what this actually refers to and would seem that any road other than a driveway is subject. What is the definition of a "collector road"? Is that changing to

now be how the Planning Act defines this and not the function of the road as currently used in the MCEA?

- b) **Under #4** – the construction of these greater than 1 km (I assume it means in length) would require the archaeological process be completed by for almost all of these facilities since for new developments there are likely very few existing right-of-ways. It also doesn't distinguish between any that would be along local roads. There are some of local roads that may exceed 1 km in length and the sidewalk would require the archaeological process but not the road (since they are not along collector roads).
- c) **Under #6** – For any road that is longer than 1 km and more than a single-lane road it would appear that the archaeological process would be required since almost all widening of roads will change the capacity and not be the same location. It doesn't seem to matter if this is within the right-of-way. The only reference to "requires property" is for a continuous centre turn lane.
- d) **Under #7** – all new roads would require the archaeological process. There is no longer a cost associated with this road which usually differentiated between arterial and collector roads. This seems to negate #3 for collector roads as it makes all "new roads" subject. This would capture local, collector and arterial roads that are longer than 1 km.
- e) **Under #8, 9 & 10** – There is no archaeological process required but will the Indigenous communities not likely request an aquatic archaeological assessment be undertaken? This is currently required for bridges over 40 years old.

Municipal Drinking Water Projects

- f) **Under #19** – For a "new drinking water system" #12, 14, 16 and 18 individually don't require the archaeological process but it seems when grouped together to be a drinking water system they would?
- g) **Under #23** – This would seem to require the archaeological process for any smaller expansion? What if the land being used for the expansion was disturbed from the original construction of the plant, which is often the case?

Municipal Wastewater Projects

- h) **Under #34** - This would seem to require the archaeological process for any smaller expansion. What if the land being used for the expansion was disturbed from the original construction of the plant, which is often the case?
- i) **Under #37** - What if the land being used for the expansion was disturbed from the original construction of the plant, which is often the case?

It was difficult when legislation removed the opportunity for the public to raise concerns (previously Part II Order requests) and they felt they didn't have a voice in the process. This proposed regulation of revoking the MCEA will remove them from the process and move us to just building homes and associated infrastructure. We will no longer take into consideration the potential impacts on all aspects of the environment, as defined in the Environmental Assessment Act. More thought should be given as to how to address consideration of

alternatives and potential environmental impacts since once they occur and infrastructure is constructed we remove the opportunity to step back in time and correct it to the previous state.

Sincerely,



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