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Submitted online and via email to EAmmodernization.mecp@ontario.ca

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Ministry of the Environment, Conservation and Parks
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RE: New regulation to focus municipal environmental assessment requirements

The City of Guelph (the "City" or "Guelph") appreciates the opportunity to comment on the Ministry of Environment, Conservation and Parks (the "Ministry" or "Province") revised proposal to streamline municipal environmental assessment requirements.

The City of Guelph applauds the province's efforts to streamline the Municipal Environmental Assessment Process and appreciates the Ministry revising the proposed approach following substantial stakeholder input in early 2024. However, after a thorough review of the proposal, the City of Guelph has concerns remaining about the implementation and consequences of the proposed process. The City respectfully requests that the Ministry consider a series of discussions with the Municipal Engineers Association, other industry associations, representative municipalities and key stakeholders to assist the Ministry in constructing and implementing a new streamlined environmental assessment regulation. The City would be happy to participate in these further discussions and provide on the ground knowledge and experience to inform future iterations of the processes or regulatory changes.

Below, you will find the City's comments on the proposed new environmental assessment process for municipal projects, including specific feedback on process requirements, and general directions for improving and implementing the proposed framework.

General Comments:

Two-tiered approach to private and municipal-led projects:

Under the current proposal, the Municipal Project Assessment Process (MPAP) and Archaeological Assessment Process (AAP) would apply differently to municipal and private proponents - certain project types would be exempt from MPAP/AAP requirements when being undertaken by private proponents. While the City understands that private proponents may be less likely to undertake the project types where an MPAP/AAP exemption is proposed, the City believes that it is essential to

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have consistency, to ensure that the same rigorous standards are being applied for the same project types regardless of proponent, and to minimize public confusion.

There are common situations where municipalities lack resources to complete development servicing works and will permit the private sector to build the works and later assume them under municipal operation. In these situations, it is essential that the private proponent follows the same project assessment process, to avoid leaving the municipality with an asset which does not meet environmental standards, and requiring the municipality to incur significant retrofit or reconstruction costs should it undertake an expansion subject to the MPAP. Given growing resource constraints on municipalities, situations where a private proponent retains the operation of an asset well into its lifespan are feasible, and private proponents may be undertaking expansions to water/wastewater facilities. These project types therefore should not be exempt from MPAP requirements when undertaken by a private proponent, solely on the basis of them being rarely undertaken by the private sector.

This two-tiered system also creates confusion with respect to projects where municipalities and private developers are co-proponents, as often is the case for servicing for new developments. Should the province go forward with this two-tiered system, the province must provide clear guidance on which set of AAP/MPAP requirements apply for co-proponency situations.

Timelines and process:

The City appreciates the province amending the proposed new MPAP/AAP process to no longer have hard timelines for consultation, and allowing for pauses in the process. However, questions and uncertainties remain regarding the proposed timelines, and the consequences for ensuring due diligence in consultation.

The City believes that the 120-day timeline for MPAP/AAP projects remains unfeasible and not necessarily effective at encouraging faster approvals, especially with the new pause provisions. Within this proposed period, there is a minimum 30-day consultation period to receive comments (which is likely to need to be extended for consequential projects), and a requirement to respond to any comments at least 30 days before the final report, leaving a maximum of 60 days to respond to comments and make project modifications. Considering that there may be further feedback following the first round of responses, this 60-day period is almost certainly too short and will require proponents to pause the process in many cases.

Given the other streamlining efforts in this new proposal, the City recommends removing the 120-day timeline altogether, especially given the possibility for indefinite extensions. This would reduce administrative burden both on the proponent and the province and would still retain the minimum timelines for consultations and response to comments. Should the province wish to retain an overall MPAP/AAP timeline, the City recommends extending it to 180 days, to

allow more time to meaningfully address comments received through consultation.

Key uncertainties also remain with respect to municipal obligations to entertain comments received through the consultation process. The province should provide additional guidance on how proponents should navigate comments received outside of the initial commenting period, and the process, if any, for re-opening the commenting period if necessary to exercise due diligence. Clear guidance on addressing comments is essential to be able to communicate clearly to stakeholders and Indigenous rights holders, set realistic timelines from the beginning, receive meaningful input, and avoid having to re-open the project and delaying project completion.

Finally, the province should confirm whether proponents can proceed with administrative, planning and design activities during the 35-day waiting period following the final report notice, and while Minister's Order requests are considered, so long as no groundbreaking construction occurs. The City would also like to clarify if activities such as geotechnical and subsurface utilities engineering can proceed during this period, as they are often undertaken as part of option evaluations and cause minimal to no disturbance.

Overall, municipalities and private proponents would benefit from a more detailed process map to understand where key events in the MPAP/AAP process could and should occur, to allow for better planning and preparation.

Clarifying the role of the Province:

The proposed process requires draft and final MPAP/AAP reports to be shared with the Ministry of the Environment, Conservation and Parks (MECP), and the Ministry of Citizenship and Multiculturalism (MCM). The City requests clarification of whether the reports are required to be shared for information purposes only, or whether MCM and MECP expect to act as a reviewer and commenter. If the province is looking to step into a reviewer role, the City requests confirmation that the province has the resources to provide responses within the minimum 30-day window, and that any comments received following the conclusion of the consultation period cannot be the subject of a Minister's Order.

Need for guidance around project notices:

The proposed process requires notices with "certain specified content" to be provided to Indigenous Communities. This content should be clearly described and provided to proponents to ensure consistent communications. Additionally, the province should provide standard language describing the process for making Minister's Order Requests, including the timelines and criteria for consideration of these requests, to provide a shared understanding of this process to proponents and Indigenous Communities.

Archaeological Assessment Process (AAP):

Guidance on archaeological screening:

Under the proposed new framework, certain project classes would only be subject to an AAP, without the additional requirements of an environmental assessment. As a prerequisite for the AAP, the proponent must conduct an initial archaeological screening, to determine whether a project area has archaeological potential and if a subsequent Stage 1 Archaeological Assessment is necessary. The proponent would then have to share a draft project report with Indigenous Communities and the province for comment, either documenting the lack of archaeological potential, or documenting the findings of the subsequent Archaeological Assessments.

Under the current MCEA process, the archaeological screening process does not require formal notification to the province or Indigenous communities if the project area does not have archaeological potential. In keeping with the provinces' goals of streamlining this process, the City recommends that in the absence of archaeological potential, the proponents simply note this in their project file, or share the report with Indigenous communities for information only, without a consultation period.

Should the province require a formal report and consultation period when a proponent has found no archaeological potential, the province should provide more detailed and comprehensive criteria for screening, beyond existing MCM guidelines. More detailed guidance would empower proponents to conduct this screening to the appropriate standard and provide a shared set of criteria that would give Indigenous communities confidence in the results of this initial screening, and minimize back-and-forth on comments.

Aside from screening criteria, the province should also provide guidance on the level of detail required in the initial screening report if no archaeological potential is found.

Comments on the list of projects subject to the AAP:

As part of this proposal, the province has provided a list of project types that would only be subject to an archaeological assessment requirement. Overall, the City recommends that this list be accompanied by additional criteria to evaluate the risk of archaeological finds, to avoid unnecessary work for proponents and Indigenous communities. For example, an AAP should not be required if the area of new or disturbed lands is less than 0.5ha, or another prescribed amount, where the potential for archaeological discoveries is minimal.

The following are additional comments regarding the project list, with reference to items in Table 1 of the [Proposed Streamlined Environmental Assessment and Archaeological Assessment Processes and Project Lists](#):

- *Item 1:* An AAP is not relevant to the initial filling of de-icing material into a constructed building because it an environmental concern and not archaeological. This activity should not be subject to an AAP and is better covered by other approval processes.
- *Item 2:* The area of the parking lots subject to an AAP (currently 60,000 sqft) should be in metric units. The stated criteria should be 0.5ha. Furthermore, the current project description is ambiguous and can be perceived as referencing the area of a building rather than the parking lot. The City suggests replacing the description with: "Construction of new parking lot over 0.5ha not associated with a building".
- *Item 3:* the term "collector road" should be clearly defined based on projected or designed road allowance width, number of traffic lanes, or other objective criteria. Clarity is needed on the reasoning behind including roads and collector roads in separate line items, if they are both subject to the same AAP requirements.
- *Item 4:* confirmation is needed on whether the minimum threshold for triggering an AAP for sidewalks and active transportation paths is based on the total length along centerline, or on total area covered. A potential option is to use an area threshold based on the length and width of the paths.
- *Item 6:* similar to above comment, confirmation is needed on whether the intention is to have a threshold based on lane length, regardless of width, or to have a minimum disturbed area threshold. If so, the project description should provide a minimum area threshold.
- *Items 8 and 10:* project description should be clarified to explicitly include pedestrian and non-vehicular bridges as water crossings. The minimum size of a "water crossing" to which the AAP applies should be explicit - a municipal structure is defined as one that spans more than 3m and could be used as a basis to screen out lower risk projects.
- *Item 14:* confirmation is needed that the AAP is not applicable to the construction of a new drinking water pumping station if it is constructed on an existing water treatment plant (WTP) site or is ancillary to the operation of a WTP.
- *Item 17:* the City recommends removing the installation of a new well on a municipal well site from requiring an AAP. The risk of archaeological finds within the minimal footprint of a well and well head building on an existing site is very small. If the ministry wishes to retain this project class, the description can be clarified to state that the AAP is not applicable if the disturbed area is below a certain threshold (e.g. 0.5 ha).
- *Item 25:* The City recommends not requiring an AAP for installing sewer connections for the removal of wastewater from a WTP. This is minor work

connecting one disturbed site to another, usually done at the same time as the construction of the water treatment plant or expansion. The risk of archaeology finds is very small. Many if not all such connections will look like a service connection no different from a sewer lateral to a commercial building. If inclusion of this project is necessary, the ministry should provide additional clarification when an AAP would be required (ex. previously undisturbed area is less than 0.5ha).

- *Additional project type to be included:* If the ministry requires an AAP for new parking facilities, the construction of new snow storage facilities should also be subject to the AAP if the size is over 0.5ha, given similar threats. Snow storage facilities should be exempt if a similar assessment has already been completed through site plan control or other process.

Municipal Project Assessment Process (MPAP):

Inconsistencies and interactions with planning requirements:

The proposed MPAP excludes several project types, including roads, which are currently included under the MCEA process, and relegates them to the much more limited AAP, which does not address environmental project impacts. The City is concerned that this introduces inconsistencies with existing environmental requirements under the Provincial Planning Statement (PPS) and municipal official plans and impacts the ability of municipalities to plan for and protect corridors and undertake expropriations reliant on the MCEA process for justification.

First, there is the matter of reconciling these changes with PPS requirements. The PPS currently refers to environmental assessments throughout the document and defines “development” to exclude infrastructure that is authorized under the environmental assessment process. The MPAP regulations will need to be accompanied by corrections to language in the PPS to avoid gaps in infrastructure studies, as well as more substantial modifications to the definition of “development”, given the exclusion of several project types under the new MPAP.

The City is also concerned that the exemption of various project types from the MPAP limits the ability of municipalities to plan for and protect corridors and associated rights-of-way. For example, PPS 3.3.3 states that planning authorities shall not permit development in planned corridors that could preclude or negatively affect the use of the corridor for the purpose it was identified. Without knowing the full extent of the planned corridor through a comprehensive study like an Environmental Assessment, especially with the exclusion of road projects from the MPAP, the protection of these corridors risks becoming more ad hoc. The City of Guelph would recommend that the Province develop guidelines that would include approaches for identifying and protecting planned corridors or modify other regulations accordingly to not lose their ability to properly plan for and protect corridors and their associated rights-of-way.

Additionally, the City is concerned about the impacts of this more limited project list on land acquisition. Land acquisition, particularly through expropriation, often makes use of the MCEA process to justify need - especially under S7.5 of the Expropriation Act or Hearings of Necessity. Examples of land acquisitions needing MCEA justification include road widenings identified under a Schedule C MCEA and trunk water and sanitary servicing under and Schedule B MCEA. In absence of the MCEA process, the Ministry is requested to modify regulations or take other actions to provide adequate tools to municipalities to support expropriation where it becomes necessary without delaying the implementation of infrastructure, especially in cases where it is required to support housing growth.

Finally, the City requests that the province provide guidance on reconciling references of the MCEA in municipal official plans (OPs). Guelph OP references the MCEA as a mechanism to require wider rights-of-way than those required by the OP, and to assess impacts of infrastructure on Natural Heritage Systems. The province should provide clear regulatory changes, guidelines and timelines on how municipalities can bridge their OP requirements between the time that the MPAP regulation is enacted and the next OP update. The province should also provide support for future OP policy language that will be needed to replace some of the requirements for an MCEA where sensitive features are concerned.

Addendums and Project Reviews:

The proposed MPAP regulation would provide a means to address changes to the preferred solution and will describe the threshold for a major change requiring an Addendum and Project Review. The regulation should state that it's the sole discretion of the proponent to judge whether there has been a substantial change to the original scope of work, similar to the current process outlined in the MCEA.

Under the proposed MPAP, a Project Review is required if the project hasn't "substantially proceeded" within 10 years. The regulation should provide the same test as included in the MCEA – that is – where construction has commenced in a meaningful way such that it is obvious the project is proceeding.

Comments on the list of projects subject to the MPAP:

The following are additional comments regarding the MPAP project list, with reference to items in Table 2 of the [Proposed Streamlined Environmental Assessment and Archaeological Assessment Processes and Project Lists](#):

- *Item 1:* Confirm if the addition of a new well to an already-established drinking water system is considered to be "constructing a new drinking water system which includes a new well", and if it subject to the MPAP under this item.
- *Item 5:* Confirm if UV/chlorination at an already-established well site would be considered to be "construct(ing) a new drinking water treatment plant or

expand existing water treatment plant beyond rated capacity", and subject to the MPAP under this item.

- *Item 13:* The MPAP proposes to no longer require an environmental assessment for "provid(ing) sewage effluent for land application through spray irrigation system or overland flow", with the rationale that this activity is associated with the establishment or expansion of a sewage retention facility, which is already covered under the MPAP. However, this doesn't address the situation where the capacity of the plant doesn't change, and an MPAP is not triggered, but the disposal needs changes. For example, a treatment plant may have stopped hauling waste and implemented treatment of biosolids and spray irrigation, while retaining the same treatment volumes. The MPAP should continue to be required for this activity to cover these scenarios.
- *Item 14:* confirm that a Low Impact Development Measure that infiltrates via a method such as bioretention would not be subject to the MPAP under this item.
- *Item 16:* The MPAP would be required for new shoreline works and erosion works. The City would like additional definition of where shoreline works would be subject to the MPAP, including any size thresholds for the lake or water course, or other criteria where this project description applies. The City would also like confirmation if the intent of the project description is erosion caused by wave action and not the construction or re-construction of retaining walls not associated with erosion control. Finally, the province should provide criteria that would exempt minor works. The ministry should consider a minimum size, since most if not all these projects would be captured under a permit by the local Conservation Authority, the Department of Fisheries and Oceans, the Ministry of Natural Resources, etc. For example - works that extend less than a certain combined length along shoreline (e.g. 50m) would be exempt from MPAP provided a permit for works is required from another agency.

Navigating Indigenous Consultation Requirements and Minister's Order Requests:

Beyond the technical and regulatory concerns raised above, the City is ultimately concerned that the proposed updates do not address and have the potential to exacerbate the ongoing challenges around ensuring meaningful engagement with Indigenous communities.

Indigenous communities are seeking deeper involvement in municipal projects, and the City has received increasing requests for financial compensation to support First Nation participation in environmental assessment consultation activities. The City is committed to ensuring meaningful consultation, however, in the absence of consistent guidance from the province and the potentially significant costs of accommodating these requests, there can be different

interpretations of municipal responsibilities on this matter. This can lead to inconsistent approaches among municipalities, and relationship harms as municipalities that provide limited capacity funding could be perceived to not be fulfilling their delegated Duty to Consult. This lack of clarity has the potential to result in substantial project delays, with the City having to pause work on various environmental assessment projects, if there were to be an increased number of Minister Order Requests stemming from capacity funding disagreements.

We are concerned that the introduction of a new streamlined AAP risks exacerbating this issue. The AAP would see several project types currently subject to the Municipal Class Environmental Assessment process downgraded to only need archaeological assessment requirements. Because these projects may have other, non-archaeological impacts on Section 35 rights, these projects could feasibly be subject to a Minister's Order Request on the basis of these impacts, which would not have been considered through the AAP process. The province has stated that municipal proponents are expected to provide background study work to respond to these requests, and the province could impose additional requirements that must be satisfied before the proponent may commence or proceed with the project. Without clarity on what those requirements could be for AAP projects, we are concerned that this could require proponents to undertake additional environmental studies to satisfy consultation requirements, which would be outside of the scope of the AAP, and defeat the purpose of introducing the AAP as a streamlined archaeology-only process.

The City believes that the Minister's Order Request process remains an essential tool to ensure the protection of Section 35 rights. However, with a lack of provincial guidance on municipal consultation obligations, and no transparent criteria for entertaining a Minister's Order Request, there is an ongoing risk of significant project delays stemming from this process, especially if the province introduces new environmental assessment requirements which are more limited in scope.

The City requests that the province provide clear, public-facing guidance on the consultation requirements under the AAP/MPAP, and clarity on the Minister's Order Request process. The province should:

- Confirm what constitutes due diligence for the purpose of outreach, and municipal obligations to initiate additional points of contact with Indigenous communities should they not provide comments during the consultation period as part of the AAP/MPAP process,
- Confirm how municipal proponents should address comments received following the 30-day minimum consultation period, and whether comments received after the completion of the consultation period could be the subject of a Minister's Order,
- Confirm how municipalities should respond to comments on AAP projects which are not related to archaeological impacts, and whether the ministry will

entertain Minister's Order Requests on AAP projects on matters outside of archaeology. If so, confirm what additional requirements could be imposed on municipalities as part of a Minister's Order, and the justification for doing so,

- Clarify municipal responsibility to provide capacity funding as part of the consultation process, including those activities which may be subject to capacity funding. Additionally, confirm that the ministry will not issue Minister's Orders solely on the basis of capacity funding provision,
- Confirm whether the ministry would consider a Minister's Order based on a municipal proponent's means and methods, preferred solution, application of study findings, etc., if the proponent was working within the proposed regulations, and
- Confirm when a Minister's Order Requests may be made throughout the AAP/MPAP process, including if this timing is different from what is currently allowed under the MCEA process, and clearly outline this in guidance and regulation.

If the province aims to transition to a more streamlined environmental assessment process, it is imperative that both Indigenous communities and municipalities have a clear and shared understanding of their rights and obligations. This will ensure that Indigenous communities have a clear understanding of when the Minister's Order process is available to protect Section 35 and treaty rights, and municipalities are able to consistently meet a well-understood set of consultation obligations, fostering improved relationships and reducing project delays.

Finally, the City requests that the province consider providing capacity funding to support consultation on environmental assessments. We recognize the resource constraints being faced by many First Nations, and as municipalities are ultimately fulfilling the Crown's Duty to Consult, we encourage the province to provide funding either to municipalities or directly to First Nations to enable sufficient resourcing to engage in consultation activities.

Conclusion:

The City of Guelph appreciates the opportunity to provide input on this proposal. As stated before, we support the goals of the province to provide a more streamlined environmental assessment process, however, remain concerned that the proposed MPAP/AAP framework does not align with the on-the-ground realities faced by municipalities, and risks introducing further challenges with respect to project delivery and ensuring meaningful consultation with Indigenous communities. The City would be happy to participate in further discussions with the Municipal Engineers Association, other industry associations, representative municipalities and key stakeholders to assist the Ministry in refining and implementing a new streamlined environmental assessment regulation.

Sincerely,

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