

# Memorandum

Date: May 21, 2019

To: Members of Council

From: Kant Chawla, Senior Policy Planner, Community Services

Subject: Modernizing Ontario's Environmental Assessment Program - Environmental Assessment Act

The purpose of this memorandum is to provide Council with an update regarding various provincial materials released to stakeholders for feedback and comment.

## ENVIRONMENTAL ASSESSMENT PROGRAM

The Province of Ontario has released a discussion paper for consultation on a modern vision for the Environmental Assessment (EA) program. The paper explains the key features of the proposed program, communicates some proposed immediate actions and sets out a vision to modernize the almost 50-year old environmental assessment program.

The Provincial Ministry of the Environment, Conservation and Parks (MECP) is seeking comments/input from affected municipalities, public and stakeholders that will help to inform a modern framework for environmental assessment by May 25, 2019.

## BACKGROUND

The Province of Ontario *Environmental Assessment Act* was enacted in 1975 and sets out the framework for Ontario's environmental assessment program which is critical to environmental planning decisions-making. It requires the study and documentation of potential effects of a project.

The EA Act was the first of its kind in Canada, but after almost 50 years it largely remains the same. It is believed that over the years the EA program has become complex and discouraging job-creators to conduct business in Ontario.

Ensuring to preserve and protect the environment for future generations, the government committed to modernizing the Ontario's environmental assessment process, to eliminate duplication, streamline processes, provide clarity to applicants, improve service standards to reduce delays, and better recognize other planning processes.

## MODERN ENVIRONMENTAL ASSESSMENT PROGRAM DISCUSSION PAPER - HIGHLIGHTS

MECP released the discussion paper for modernizing the EA program on April 25, 2019.

This discussion paper outlines some key features of the environmental assessment process, identifies the initial actions to provide immediate relief, and sets out a vision to bring the environmental assessment program into the 21st century.

The government will soon implement initial actions to provide immediate relief to the environmental assessment program besides giving an opportunity to the public and stakeholders to provide their comments/input on the proposed vision.

## **1. Proposed Early Actions**

It is recognized that there are some elements of the current class environmental assessment process in critical need of attention. Issues related to the level of assessment for low-risk projects, and timeliness for Part II Order request decisions, have been identified for early actions.

### Low Risk Projects

Many of the projects include routine activities such as snow-plowing and de-icing operations, and adding bike lanes where risks to the environment or health are very low. In order to focus on higher risk activities, the province is proposing to modernize the environmental assessment program to immediately exempt these low risk projects. Additionally, some projects that are currently considered as medium-risk could more appropriately be considered as low-risk.

The province is moving to exempt these dispositions from environmental assessment requirements. It is also thought that specific projects are exempted from environmental assessment requirements given the low-level of environmental risk and the high level of social or economic benefit associated with them.

### Timelines - Part II Order Decisions (Bump-Up Requests)

The province also intends to address the long timelines for Part II order decisions. It was noted that between 2012 and 2017, it took an average of 266 days for the ministry to decide on a Part II Order request. Presently, it is stipulated that the Minister must consider a request from anyone on any issue for any project before construction begins. In many requests, the Minister determined that the concerns raised in the requests did not warrant further environmental assessment work and the concerns were not related to significant impacts on the environment and could be resolved through other processes (examples included expropriations, property taxes or values)

The province proposes to ensure timeliness and certainty for requests to the Minister asking for a higher level of assessment on a project (i.e. “bump-up”), by: Clearly defining which matters bump-ups can be requested on, including matters related to Aboriginal or treaty rights and other matters of provincial importance as prescribed.

Specifically, the Province will be taking action to:

- focus on higher-risk projects by exempting very low-risk activities from Class Environmental Assessments under the Environmental Assessment Act
- Authorizing the creation of a regulation that would prescribe limits on when the Minister must make decisions on requests, and deadlines for requesting a bump-up to provide transparency for all involved in the process.
- Ensuring that Ontarians are given priority over other interests by limiting bump-up requests to only those that live in Ontario.
- Clarify the Minister's authority to reconsider an approval of a project and ask for additional information on an individual environmental assessment, if deemed appropriate.

It is believed that improving the fore-going elements will support to create the best balance between a healthy environment and a healthy economy. The ministry will move ahead with these actions while consultations are ongoing to build the modern framework for environmental assessment in Ontario.

It is noted that there will be opportunities for further consultation on these early actions.

## **2. Vision**

Broadly, the vision comprehends to:

- A. Ensure better alignment between the level of assessment and level of environmental risk associated with a project;
- B. Eliminate duplication between environmental assessments and other planning and approvals processes;
- C. Find efficiencies in the environmental assessment process and related planning and approvals processes to shorten the timelines from start to finish; and;
- D. Go digital by permitting online submissions.

The important features of the vision are briefly described below:

### **A. Better Alignment**

The province is committed to protecting the environment. In Ontario, environmental assessments are required for virtually all public-sector projects from very low-risk projects, such as putting in bicycle lanes on roads, to higher-risk projects like new 400 series highways. In contrast, many private sector projects (e.g., large industrial facilities) that could have more significant environmental effects are not required to complete an environmental assessment.

Ontario may consider formulating a project list, identifying which projects are subject to an environmental assessment. This approach is used in other jurisdictions within Canada. The process of developing such a list will provide further insight on the projects to be included/excluded from the list based on the associated level of risk.

The present streamlined processes may also be incorporated into a project list to ensure that appropriate amount of time and effort is expended on the projects that matter to Ontarians.

### **B. Eliminate Duplication**

The province wants to ensure that the environmental assessment program is efficient and effective. Eliminating duplication with other legislation, policies or processes can help to achieve these objectives. This duplication can be frustrating and time consuming for the public, government agencies and First Nations and Métis communities who may review duplicative documents for the same project.

### **C. Efficiencies for Shorter Timelines**

The Environmental Assessment Act is almost 50 years old, and since it was enacted, other processes have been put in place that may duplicate requirements for projects subject to the Act. Specifically,

while the Municipal Class Environmental Assessment process includes provisions for integration with the Planning Act, there may still be some duplication for municipal infrastructure projects. For example, in some cases, projects may be subject to both an appeal under the Planning Act and a Part II Order request under the Environmental Assessment Act.

The solutions for addressing these issues may vary from phasing out or amending streamlined assessment processes where similar requirements exist in other legislation, regulation or approvals processes to better integrating environmental assessment concepts and principles into existing protocols and policies. The province will also consider opportunities to coordinate the reviews of concerns raised in development appeals and Part II Order requests.

The province is also considering to reform **one-window approach** to achieve greater coordination, providing an efficient working system that balances environmental protection with the need for projects to proceed in a timely manner. One-window' vision ideas may include:

- Add timelines to reviews from all government agencies involved to ensure that they do not unnecessarily hold up projects.
- Allow applicants to initiate and streamline certain permit and approval applications during the environmental assessment process to speed up the overall timelines for projects.
- Act to better coordinate ongoing assessment requirements to allow similar work completed in one process to be used for other processes.

#### D. Digital - Online Submissions

Effective public consultation and participation in the environmental assessment process relies on access to timely, accurate and adequate information. Great advances in information technology point to the need to make environmental assessment information more accessible online. The province recognizes that given the paper-based nature of the program, there are challenges associated with managing information and documentation. There is a need to improve public access to environmental assessment information and to better manage and share project documentation.

Creating an electronic registry to support the submission and review of environmental assessment documents would provide several benefits to applicants, review agencies, the public, and First Nations and Métis communities in the consultation and review process.

Province is currently implementing a modern approach to other environmental approvals and permits through the creation of online registries and electronic submission processes. A similar process for the environmental assessment program would provide consistency across programs, and for applicants and interested stakeholders.

### **STAFF POSITION**

Based on the review of the Discussion Paper, staff is generally supportive of the provincial approach to modernize Ontario's environmental assessment (EA) program. It is noted that the present EA program is 50-year-old and is found to be complex.

The staff while conducting the class environmental assessment process has experienced redundancies in the process which makes it complex, cumbersome and time consuming. The process delays result in the spin-off delays in the overall planning and development review process. The recent work on environmental assessments in the Town's Secondary Plan Area of Mayfield West Phase 2 (MW-2) confirm the process complexities and the resultant delays emanating from matters which necessarily do

not add value to the EA works. The multitude of commenting agencies with wide timelines add to the delays as well.

Whilst participating in the provincial individual environment assessment process especially for new or extension of existing highways, staff has noted that the process is not only time costly but also jeopardize land use policy planning and a hindrance to development of approved lands. The provincial EA undertaking of the GTA West Transportation corridor is a prime example of holding many of the Town's approved development lands due to process delays and long periods of indecisiveness.

Streamlining and modernizing the EA program will help development, create infrastructure in a timely fashion, will make land use planning more efficient and cost effective, and keep the Town in better financial health.

## **NEXT STEPS**

The Ministry of Environment, Conservation and Parks (MECP) will receive comments until May 25, 2019 on the Discussion Paper. Upon receiving and reviewing input/comments will finalize the environmental assessment program. The timelines to finalize the document have not been specified.

The Ministry is planning to host webinars for Indigenous communities and organizations as well as stakeholder groups including the municipal jurisdictions.

Staff will be preparing a response by the required deadline which will include a copy of this memorandum along with any additional comments received.

Town staff will continue to monitor and attend the workshop/s as planned by MECP to understand more about the program. If needed, staff will report back as appropriate.