



Proposed Changes to Municipal Class Environmental Assessment Document EBR Registry - Instrument # 011-1391

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Introduction

The Ontario Bar Association (“**OBA**”) appreciates the opportunity to make a submission on the proposed changes to the Municipal Class Environmental Assessment process as outlined in the December 23, 2010 letter by the Municipal Engineers' Association (“**MEA**”) to the Minister of Environment.

The OBA

As the largest voluntary legal organization in the province, the OBA represents 18,000 lawyers, judges, law professors and students in Ontario. OBA members practice law in no fewer than 36 different sectors. In addition to providing legal education for its members, the OBA has assisted government with many legislative and policy initiatives - both in the interest of the profession and in the interest of the public.

More than 1,000 OBA lawyers belong to our very active Municipal Law, Environmental Law and Public-Sector Lawyers sections. Our members are leading experts in environmental and land use planning matters.

Comments

The MEA’s proposed changes are divided into two principal issues:

- a) Recognition of *Planning Act* public and stakeholder consultations within the Municipal Class Environmental Assessment process; and
- b) Clarification and Amendment of Municipal Class Schedule Criteria for Schedule A, A+, B and C Municipal Class Environmental Assessment projects.

The following are the OBA's comments on each of those principal issues.



Integration of Planning Act and Municipal Class Environmental Assessment Consultations and Documents

Studies and consultations related to proposals by private developers and municipalities under the *Planning Act* often overlap with elements of the stakeholder consultation and documentation required to satisfy Municipal Class Environmental Assessments.

To the extent there is duplication, integrating the *Planning Act* and Class Environmental Assessment process can reduce time, costs and certain other administrative burdens where proposed developments trigger the need for additional municipal infrastructure such as water or wastewater systems, intersection improvements or new or expanded access roads. An integrated approach may save time and costs in many instances, without damaging environmental interests, for projects with limited environmental impact. An integrated approach also has the potential to bring environmental issues to the table at the outset and avoid inconsistent consultation results in which a *Planning Act* approval is issued without regard to environmental concerns and a subsequent environmental assessment opposes the project based on environmental concerns (e.g. a roadway through a sensitive habitat area).

However, there can also be significant disadvantages to universal mandatory application of the integrated approach. For example, an appeal to the Ontario Municipal Board on a purely *Planning Act* issue would delay any associated infrastructure that might otherwise be permitted to proceed under a separate Municipal Class Environmental Assessment. The OBA, therefore, supports the MEA's position that use of the integrated approach should be an option and not compulsory.

As the Ontario Municipal Board will have significant involvement in an integrated process, it is crucial that it has sufficient resources and knowledge to understand and deal with environmental issues and protect the environment. This should particularly be the case if any person has requested a Part II application under the *Environmental Assessment Act*.

The MEA is recommending that after proponents have completed a project using the integrated approach, those proponents should briefly summarize how a project has met the relevant Environmental Assessment conditions and copy this to Ministry of the Environment (the "Ministry"), Director, EAAB, including copies of the mandatory public and review agency notices. The OBA submits that if such a summary is prepared, the host municipality should make a copy of the summary publicly available on its website for a significant period of time, so as to enhance the transparency and results of the full approval process.



Clarification and Amendment of Municipal Class Schedule Criteria

The OBA endorses the annual indexing of threshold values that are otherwise used to distinguish Schedule C projects, Schedule B projects and Schedule A+ projects from each other, provided that the index is sufficiently broad and objective and that such changes are implemented in a consistent and timely manner.

The OBA is satisfied that the schedule reclassification changes proposed by the MEA are reasonably clear.

Overall the MEA's proposed changes to the municipal class environmental review process are likely to reduce some costs and administrative burdens and the OBA encourages the Ministry and MEA to continue to explore other potential improvements to the Municipal Class Environmental Assessment system in Ontario.

We thank you for considering our input and we would be pleased to provide comments on any additional changes that might be considered for any of the class environmental assessment processes.



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