

GOING AROUND IN CIRCLES ON ENVIRONMENTAL ASSESSMENT REFORM

BY ANDY MANAHAN

When a colleague recently said to me, “You’ve really been around the mulberry bush on this issue,” my immediate response was: “It’s more like a thorn bush.”

Ten years ago, the Residential and Civil Construction Alliance of Ontario (RCCAO), a labour-management coalition that commissions solutions-based reports to help inform decision-makers, decided to embark on this journey to reform the Municipal Class Environmental Assessment (MCEA) process. In February 2009, RCCAO released a report called “Environmental Assessment Reform – A Tool for Economic Recovery.” At that time, prolonged delays in the MCEA process were preventing municipalities from putting forward shovel-worthy projects, as the federal government insisted that local projects be “shovel ready” in order to receive stimulus funding.

Research by environmental lawyer Frank Zechner, commissioned by RCCAO in 2010, showed that on average, the MCEA process took almost 20 months, with MCEA study costs being \$113,300. Zechner’s follow-up study in 2014 revealed that the process was

taking longer and costing more, at over 26.5 months and \$386,500 on average. With all the talk by Queen’s Park decision-makers about streamlining or modernizing various government processes, it turns out that the MCEA process is taking longer and costing more. Urban areas such as the GTA tend to have the most expensive MCEAs.

Every time the MCEA process is triggered, any person can request to the Minister that the project be taken to another level through an appeal – these are known as Part II Order or bump-up requests. This means that projects falling within a certain Class (A, B or C) can be “bumped up” to a very detailed individual environmental assessment. When a bump-up request is filed, the review process stalls for seven months, but longer for most municipal infrastructure projects.

In about 95 per cent of the cases, the bump-up request is denied by the Minister. In her 2016 annual report, Ontario’s Auditor General noted that the “reviews generally resulted in grammatical wording changes or merely restated existing commitments in the assessments.” The AG’s office further found that of 116 municipal infrastructure projects reviewed by the

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RCCAO AND MEA HAVE HAD DIFFICULTY IN GETTING SUCCESSIVE MINISTERS TO ACKNOWLEDGE THE IMPORTANCE OF REFORMING THE PROCESS

Minister over a six-year period, only three were decided within the targeted 66-day period, with the average time for a decision being an unacceptable 240 days.

As background, MCEAs apply to the construction, improvement, replacement, operation, maintenance and repairs to a broad range of municipal works such as bridges, roads, water and wastewater systems, flood control works and recreational paths. Impact studies, along with public meetings, often take two years or more to complete before construction can commence.

JOINT APPLICATION ACCEPTED

Over the past several years, RCCAO has been working closely with Ontario's Municipal Engineers Association (MEA). MEA has charge of the MCEA process, but has had difficulty in getting successive Ministers to acknowledge the importance of reforming the process. As a last resort, RCCAO and MEA submitted a joint application to the Environmental Commissioner of Ontario on February 3, 2017 pursuant to section 61 of

the Environmental Bill of Rights. That application was enthusiastically endorsed by 13 separate industry and professional associations, including the OSWCA, OGRA, ORBA and OGCA.

Among the requests in the application:

- Expediting the response process for Part II Order requests, including delegation of authority to the director of the EA branch.
- Supporting changes to better integrate and harmonize the MCEA process with processes under the *Planning Act*, including public consultation meetings.
- Reducing the scope of MCEA reports and studies to reduce duplication with existing public processes and decisions which are part of municipal Official Plans and compliance with other provincial legislation.

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MINISTRY REVIEW TIME FOR BUMP-UP REQUESTS, APRIL 2010 TO JANUARY 2016

Types of projects	# of projects with bump-up requests	All Reviews		
		Target (Days)	# of Reviews Completed within target	Average Review Time (Days)
Public Works	3	66	0	149
Forest Management Class EA	14	45	2	94
Minor Transmission Facilities	6	66	0	196
Municipal Infrastructure Projects	116	66	3	240
Provincial Parks & Conservation Reserves	4	66	1	297
Provincial Transportation Facilities	16	45	1	192
Remedial Flood & Erosion Control Projects	1	66	0	67
Resource Stewardship & Facility Development Projects	16	66	1	152
Waterpower Projects	1	45	0	215
Total	177	—	8	213

For further information please visit http://www.auditor.on.ca/en/content/annualreports/arreports/en16/v1_306en16.pdf and www.rccao.com

The good news is that the Environmental Commissioner accepted our 1,064-page application and forwarded it to the Ministry of the Environment and Climate Change (MOECC) as being worthy of review. In mid-April, MOECC sent a letter to notify us that the Ministry would be undertaking a review of MCEAs as part of the overall review of the EA program. The Ministry added that the AG's Value for Money audit on environmental assessments was also a factor.

Due in part to the resignation of former minister Glen Murray, there was no movement by the Ministry over the summer to start a consultation process. In

late September, RCCAO representatives and MEA president Paul Knowles met with new Environment and Climate Change Minister Chris Ballard to discuss the importance of initiating the review soon; otherwise, it would be difficult to complete the review by December 2018, a deadline voluntarily set by the Ministry.

In a follow-up letter to Minister Ballard, nine case studies were provided where MCEA projects were subject to long delays due to bump-up requests. One project involved roadway, watermain, storm and sanitary sewer measures in an established area of east Toronto. Although the project could have been classified as Schedule A+, or pre-approved with only

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public notification, City staff voluntarily classified the project as Schedule B to allow for public consultation. Many residents wanted to maintain the rural character of the street as there were no sidewalks. After a fatality involving a girl walking to school, tension emerged in the community about whether a sidewalk would be installed or not. Another resident with no children filed a bump-up request, objecting that the sidewalk would negate the rural look. Essentially, the debate revolved around safety and aesthetics and had nothing to do with the intent to replace and upgrade infrastructure.

In a case of *déjà-vu*, Ottawa will be providing billions of infrastructure dollars in 2018 but if local projects are not EA ready, these funds for water, sewer and other projects might be forfeited by Ontario. Other provinces do not have restrictive systems like Ontario's MCEA. Ontarians will be very upset if we do not get our fair share of infrastructure funds from Ottawa, while the municipal and construction sectors do not want to be hamstrung in building modern communities. Indeed, approvals for aging infrastructure need to be made faster so systems are more resilient to withstand both higher demand and extreme events such as flooding and ice storms.

While legislative reform will take longer to implement, there are changes which can be made in the short term such as revamping the bump-up request process to help avoid the abuses where just one or two individuals can delay a project for the sake of delay. Because the MOECC did not initiate a consultation process in a timely fashion, RCCAO and MEA hosted a workshop in late November to discuss strategies and priorities for reform. While it has felt that we are still going in circles around the old mulberry bush (or thorn bush), the chorus is getting louder for Queen's Park to take big steps to improve the MCEA process. 💧

Andy Manahan is the Executive Director of the Residential and Civil Construction Alliance of Ontario, which advocates for infrastructure investment (manahan@rccao.com).

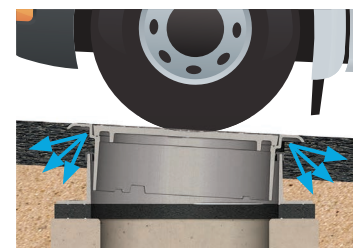


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