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Niagara Escarpment Commission
An agency of the Government of Ontario

May 16, 2019

STAFF REPORT

RE: Modernizing Ontario's Environmental Assessment Program
Niagara Escarpment Commission Comments on Discussion Paper by
Ministry of the Environment, Conservation and Parks

RECOMMENDATION:

- 1) That the Niagara Escarpment Commission (NEC) endorse this staff report and submit comments to the Ministry of the Environment, Conservation and Parks (MECP) via the Environmental Registry; and,
- 2) That a copy of this report be sent to the Ministry of Natural Resources and Forestry for its information.

BACKGROUND:

The NEC has been invited to provide comments and suggestions with respect to a Discussion Paper prepared by MECP that proposes changes to the Environmental Assessment (EA) Program (see Appendix 1). NEC staff will also be participating in an upcoming webinar which will further clarify the possible changes to the EA process. The Discussion Paper, "Modernizing Ontario's Environmental Assessment Program" seeks input to achieve the following objectives:

- Ensure better alignment between the level of assessment and the level of risk associated with a project;
- Eliminate duplication between environmental assessments (EA's) and other planning and approval processes;
- Find efficiencies in the EA process and related planning and approval processes to shorten timelines;
- Go digital by permitting online submissions.

The deadline for comments is May 25. NEC staff have prepared this report to explain the NEC's current role in EAs, provide recommendations on how the NEC program could be harmonized with EA approvals and to seek the NEC's endorsement of the recommendations.

DISCUSSION:

What is an Environmental Assessment?

The *Environmental Assessment Act* establishes “an environmental planning and decision-making process that studies and documents the potential environmental effects of a project and allows interested persons to comment on projects that may affect them”.¹ There are different EA processes at the federal, provincial and municipal levels of government.

What is the role of the NEC?

- Federal EAs relate to significant projects such as railways. The NEC is not currently involved in commenting on any federal EA's.
- Provincial Class EAs involve matters such as sales of provincial property, provincial highway or transit projects or other utilities. The NEC has provided input on the sale of land (e.g. sale of former hospital lands in Hamilton) and a proposed road crossing of a hydro corridor (e.g. Eagle Heights development in Burlington). Projects initiated by the Ministry of Transportation or Metrolinx and other crown agencies, are exempt from the requirement for a Development Permit. However, NEC staff will provide policy comments regarding a proposed provincial undertaking.
- More commonly the NEC is provided notice of a Class EA initiated by a municipality. This type of EA involves infrastructure such as road or utility improvements including new and existing infrastructure.
- There are different Classes of EAs. The municipality chooses the Class for the project. For example, a road improvement that involves re-paving a road could be a Class A project, whereas a road project where a road is to be widened or a new road proposed is usually a Class C project which involves full public consultation and consideration of alternatives to the undertaking, ranging from “do nothing” to choosing the preferred type and location of the road from several alternatives based on environmental, economic, policy and social considerations.
- NEC staff will confirm whether the proposed undertaking is within the Niagara Escarpment Plan (NEP) Area and/or Development Control Area and will advise the proponent of the EA, usually the municipality or consultants retained by them, that the NEC has an interest.
- Staff will indicate whether it is the NEC's intention to be involved in the EA process and will identify relevant NEP policies that must be considered. Staff may also indicate what types of studies that need to be reviewed as part of the

¹ Discussion Paper, p.2

EA process such as natural heritage, water resources, archaeology, visual impact, among others.

- If staff have indicated that the NEC does wish to be consulted during the EA process, the municipality will then provide copies of the technical studies prepared and advise whether those studies have adequately addressed whether the proposed project is in conflict with the NEP.
- Once the EA technical review is complete, the proponent will prepare a draft Environmental Study Report (ESR) and NEC staff will review that report. If the report has adequately addressed NEP policy and NEC issues, then staff advise the proponent that the NEC is satisfied and agrees with the preferred alternative. A final ESR is prepared.
- Anyone who has outstanding environmental issues that have not been addressed through the Class Environmental Assessment process can request the Minister of the Environment, Conservation and Parks to make an order under Part II of the Environmental Assessment Act. This is known as requesting a Part II Order for re-consideration of whether the project should be approved. To NEC staff's knowledge, the NEC has never requested a Part II order.
- During the consultation process on an EA, NEC staff will advise the proponent whether the proposed use is permitted (and does not require a Plan Amendment) and whether a Development Permit will be required for the project after the EA is completed.
- NEC staff may continue to be involved after the EA in the next stage of the project, known as detailed design, if the proposed development involves significant infrastructure. The purpose of staff's involvement in detailed design is to address any issues that may arise during this phase of the project and ensure that Development Criteria in Part 2 of the NEP are addressed. There can be a considerable lag in time between completion of the EA and the detailed design and new issues can arise at the design stage. Issues could include endangered species, archaeological or cultural heritage, property owners, Bruce Trail crossings, impact on key natural heritage features, among others.
- Once the detailed design has reached 90% completion, NEC staff will suggest that the proponent submit a Development Permit application. Allowing the submission of the application at an earlier stage of design could result in discrepancies between the Development Permit and the approved Environmental Assessment.

Issues identified regarding current EA process

The Discussion Paper prepared by MECP identifies several concerns with respect to the current EA process. These issues include:

- 1) Requiring an EA for a simple, low risk project (e.g. bicycle lanes);
- 2) Delays in dealing with Part II orders;
- 3) Basis for Part II order requests is not limited;
- 4) Overlap between the EA process and other land use approvals;
- 5) Need for guidance material to add clarity to the documentation required as part of an EA (e.g. terms of reference for technical studies);
- 6) Need for time limits on submitting comments regarding an EA;
- 7) Need for an electronic registry to provide access to information regarding an EA.

The Discussion Paper seeks input on different approaches relating to the concerns listed above. NEC staff have the following comments from the perspective of the NEC role as an agency of the Government and as a commenting agency on EAs. It is noted however that the Niagara Escarpment Commission and the NEPDA are not identified in the Discussion Paper as a land use approval authority involved in the EA process. Notwithstanding this, an undertaking subject to an EA may require a Development Permit, and in rare cases, an amendment to the NEP. Further, an EA cannot be approved that conflicts with the NEPDA. For these reasons, it is important to provide input to the MECP before any changes to legislation are enacted.

- 1) Low-risk projects: NEC staff support changes that would allow certain low-risk projects to proceed without an EA but would want to be consulted on the proposed list of projects that might be exempt before the changes to the EA Act are approved.
- 2) As the NEC has never filed a Part II order request, which relates to the MECP internal process, staff have no comments on this issue.
- 3) NEC staff agrees that the opportunity to file a Part II order request should be scoped to ensure that the objection is submitted for valid environmental reasons related to the potential or actual impact of proposed infrastructure on the natural environment and conflict with provincial policy.
- 4) NEC staff has been advised by staff in different municipalities that they exempt any project approved through a Class EA from further planning approvals under the *Planning Act*. The NEC cannot use this approach as any development² as defined under the *Niagara Escarpment Planning and Development Act*, (NEPDA) within the Area of Development Control must receive a Development Permit before construction can commence. Currently, there is no exemption in Regulation 828, “Development within the Development Control Area”, for development approved through an EA process.

² Development is defined in the NEPDA as including any change in the use of any land, building or structure.

- a) The Development Permit process is similar to the EA process in that it involves consultation with agencies and the public, submission of technical reports and provides the opportunity for appeals if the NEC chooses to approve the project. This creates a potential situation where someone who was not satisfied with the EA process and did not seek a Part II order could still object to a project, resulting in delays for the municipality in proceeding with necessary infrastructure.
- b) NEC staff is of the opinion that if an EA properly assesses the environmental impact of a project by providing the technical reports, consults with the NEC during the EA process and the NEC is satisfied that there is no conflict with the NEP, then there may be an opportunity for an exemption from applying for a Development Permit after the EA process, subject to meeting certain exemption criteria. If the Minister of Natural Resources and Forestry chose to amend R.R.O. Regulation 828, NEC staff would have to bring a report to the Commission to seek their endorsement before NEC staff signed off on an ESR for a Class EA. This approach would be similar to the approach used for development in parks in the Niagara Escarpment Parks and Open Space System (NEPOSS). Ontario Regulation 828 exempts certain forms of development including development within a NEPOSS park, if a Master Plan has been approved within the last 5 years.
- c) Regulation 828 would have to be amended to exempt development approved through a Class EA process and consultation on the Regulation change would have to involve consultation with stakeholders, but it would provide an opportunity for a streamlined approach and could shorten the EA process. There could still be certain classes of projects where an exemption from Development Permit approval is not desirable, such as:
 - development within an Escarpment Natural Area;
 - development where the NEC was not consulted on the EA
 - development where the proposed use is not permitted and requires a Plan Amendment (e.g. infrastructure outside an Urban boundary);
 - a project where the EA was completed more than 5 years ago.
- 5) As NEC staff currently provide input with respect to the content and type of technical study required to assess a project in the context of NEP policy, staff agree with the recommendation in the Discussion Paper that the development of guidance material would be of assistance in ensuring that adequate information is available to assess the impact and potential for mitigating the impact of a project.
- 6) While NEC staff supports the need to have reasonable timelines for providing comments regarding an EA, there should be adequate time provided to allow sufficient review of complex technical reports. As a small Crown agency with

other responsibilities and limited resources, expectations regarding timelines would need to consider these variables.

- 7) Having an electronic registry with all the information regarding an EA in one place would be helpful. If it provided a place to submit comments, similar to the Environmental Registry, that would also be of assistance provided that the comments are shared with the proponent and their consultants and any other affected stakeholders.

Further consultation with the MNRF and the MECP could refine the conditions for the exemption that might apply.

CONCLUSION:

NEC staff support changes to the EA process and believe there might be an opportunity to better align the EA process with the Development Permit process provided that the NEC is appropriately consulted during the EA. NEC staff's proposal to streamline the process to allow a joint EA and Development Permit exemption includes a proposal to amend Regulation 828. The limitations on, or criteria for, the proposed exemption would need to be discussed with the MECP and the MNRF and public consultation on any proposed Regulation change would be required. NEC staff concludes that the NEC should support the staff recommendation in this Staff Report and that it should be provided to the MECP as the comments on the Discussion Paper.

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Modernizing Ontario's Environmental Assessment Program

Discussion Paper

Introduction

The Environmental Assessment Act was first enacted in 1975 and sets out the framework for Ontario's environmental assessment program. The Environmental Assessment Act was the first of its kind in Canada, but after almost 50 years it largely remains the same. Efforts to update the environmental assessment program over the years have been sporadic and the program has become overly complex and burdensome, discouraging job-creators from coming to Ontario to do business.

In the **Made-in-Ontario Environment Plan – Preserving and Protecting our Environment for Future Generations**, the government committed to modernize 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.

We recognize that this will require a transformational shift in the program and the government's role in these assessments. The government will move swiftly with initial actions that will provide immediate relief to the environmental assessment program. While we take those steps, we will also consult broadly on how to reduce red tape and burden while still protecting our environment.

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.

Throughout the paper, we ask questions for your consideration and input, that will help us:

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

What is an Environmental Assessment?

An environmental assessment is an environmental planning and decision-making process that studies and documents the potential environmental effects of a project and allows interested persons to comment on projects that may affect them. Once an environmental assessment is complete, the applicant uses this information to make decisions on the project and moves on to any subsequent environmental permits or approvals required. Over time, the process has become more complex, requiring analysis of social, economic, cultural, health and environmental factors.

The Environmental Assessment Act provides for the protection, conservation and wise management of Ontario's environment and generally applies to projects by provincial ministries, municipalities, and public bodies. Some private sector applicants may be required by regulation to complete an environmental assessment or they may voluntarily do so. Alternatively, the government can also exempt applicants or specific projects from having to complete an environmental assessment where it is determined to be in the public interest because, for example no significant environmental effects are expected.

What do we mean by?

Project

An activity, proposal, plan or program that an applicant proposes to start. Examples can include projects such as a landfill or a sewage treatment plant, but it can also refer to a plan to manage a forest or streetscaping activities.

Risk

Throughout this document, we make references to low, medium, and high-risk projects. These categories of risk refer to the likelihood that a project will have negative environmental effects.

Applicant

A person, agency, group or organization that proposes to carry out a project.

Why is Environmental Assessment Important?

Environmental assessments are a valuable tool to inform decision-makers about the potential environmental effects of a project before a decision is made. This is done by systematically gathering, considering and evaluating information that is based on technical studies, science, and input from the community. This information then provides applicants with the knowledge, support and ability to make a sound environmental planning decision with several benefits. Some examples of these benefits include:

- Ability to decide on an alternative that has the least overall impact/greatest overall benefit, allowing for decisions to be made that promote environmental compatibility and sustainability.
- Potential adverse impacts can be reasonably anticipated and managed before any harm is done, reducing the risk of environmental damage, violations of legislation, or clean up costs.
- Ability to identify concerns of interested persons, municipalities, government agencies, and First Nations and Métis communities early in the planning process. This allows for decisions that incorporate community input leading to improved public support and reduced potential for delays.

Ontario's environmental assessment program is based on core principles that seek to maximize the benefits of environmental assessment as a decision-making tool.

- **Consultation** to involve interested persons, municipalities, government agencies, First Nations and Métis communities in the planning and implementation of a proposed project. Consultation is intended to identify concerns, ensure the sharing of relevant information about the proposed project and enable fair and balanced decision-making.
- Considering a reasonable range of **alternatives** that includes both alternatives to a proposed project (functionally different ways of approaching and dealing with a problem or opportunity) and alternative methods (different ways of doing the same activity). See Figure 1: Example of Alternatives.
- Considering **all aspects of the environment**, including natural, social, economic, cultural, and built conditions.
- **Systematically evaluating net environmental effects** of alternatives (i.e., the advantages and disadvantages of the alternatives) to find a preferred solution. This is done by assessing the environmental effects after impact management measures (measures to lessen potential negative

environmental effects or enhance positive environmental effects) have been applied.

- Providing **clear complete documentation** that explains the environmental planning and decision-making process followed to reach the conclusion of the preferred alternative and its potential environmental effects.

We recognize the value of environmental assessment in Ontario’s framework for sound environmental planning and development as we continue to build our communities and economy. We know that the process is overly complex and we want to ensure that it is focussed on what Ontarians care about most. This is why it is important to modernize the program to ensure it remains responsive, effective and efficient.

What do we mean by environmental effect?

An environmental effect is the positive or negative effect that a proposed project or its alternatives may have on the environment.

For example, cutting down trees for the construction and subsequent use of a new road could cause positive effects such as reducing accidents in the region, but may also cause negative environmental effects to bird species nesting in those trees. To mitigate impacts to these bird species, an applicant could plan for winter construction when the birds have migrated away from the site. This is an example of a mitigation or impact management measure.

What are some examples of “all aspects of the environment”?

Natural – watercourses, woodlands, wildlife and habitat

Social – existing communities, recreational areas, air quality, human health

Economic – commercial/industrial activities, financial costs of project

Cultural – archaeological sites, heritage buildings

Built – existing infrastructure such as roads, transmission lines etc.

Alternatives To:



Alternative Methods:

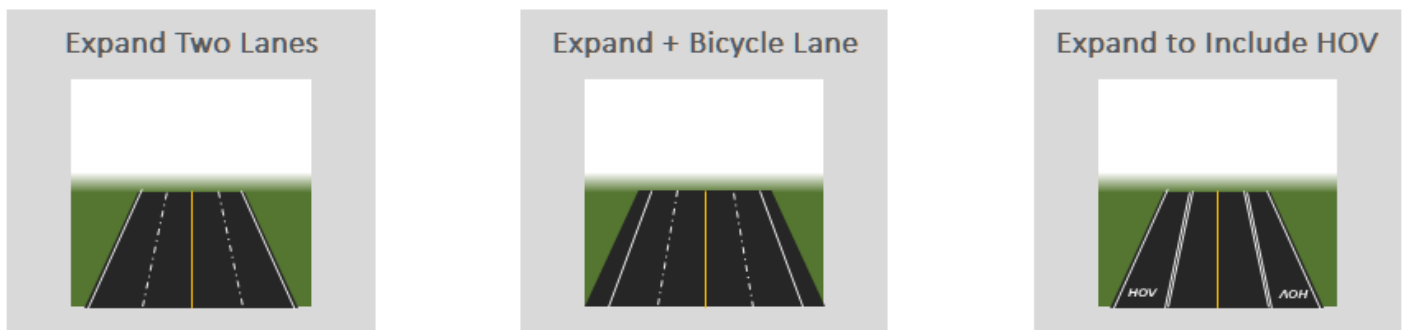


Figure 1: Example of Alternatives

What do we mean by alternatives?

This is an example of where increased road capacity is required to accommodate growth in the area. Alternatives to the project could be to do nothing, widen the existing road, or build a new road. If widening the existing road is preferred, alternative methods could be widening for two additional lanes, widening for two additional lanes with bicycle lanes or widening to include high occupancy vehicle (HOV) lanes only.

Consultation in the Environmental Assessment Process

One element of responsible environmental assessment planning is ensuring that those with a potential interest in a proposed project are provided with opportunities to comment and inform decision-making. This may include community members, municipalities, First Nations and Métis communities, government agencies or environmental organizations. Consultation is a two-way exchange of information between applicants and interested parties and is a key component of the environmental assessment process. Public consultation helps ensure that concerns are identified early, considered and addressed where appropriate.

Indigenous Consultation

Ontario, as the Crown, has a legal obligation to consult with Aboriginal peoples where it contemplates decisions or actions that may adversely impact asserted or established Aboriginal or treaty rights. Projects that follow an environmental assessment process may adversely impact these rights and may trigger this obligation which is often referred to as the duty to consult.

Consultation with First Nations and Métis communities through the environmental assessment process provides an early and ongoing opportunity for these communities to provide input about adverse impacts to their rights. This input also allows applicants to identify, consider and respond to any concerns that were raised by these communities. The ministry uses the information gathered from First Nations and Métis communities as part of the environmental assessment process to determine if the duty to consult has been met, or whether further consultation or accommodation is required before a decision is made.

Consultation with government agencies is a key component of the environmental assessment process, as the broad planning framework allows for the consideration of various municipal, provincial and federal mandates. Government agencies can identify any concerns with a project with respect to their areas of interest, and work with applicants to resolve these concerns early in the planning process.

Consultation also allows government agencies to identify the information and level of detail for the studies required to be done in the environmental assessment. Agencies review, verify, and comment on the applicant's analyses on environmental effects, evaluation of alternatives, and selection of preferred solution from the perspective of their agency. This means that the environmental assessment process can be considered a 'one-window' into Ontario's system of project planning and permitting.

Various government agencies may be involved in the environmental assessment process. For example, the Ministry of Natural Resources and Forestry should be consulted if a project may potentially affect a provincially significant wetland. Effective and early consultation with government agencies facilitates a successful review of environmental assessment documentation and helps identify any subsequent permits that may be required. There are opportunities for changing this 'one-window process' to make it more efficient and reduce timelines.

The two types of environmental assessments in Ontario are:

1. Individual environmental assessments

Individual environmental assessments are prepared for large-scale, complex projects with the potential for **significant** environmental effects. This is the highest level of assessment and involves a two-step process: the terms of reference (the work plan for the environmental assessment), and the environmental assessment. Usually both require the approval of the Minister. The Minister may also refer all or part of the application to the Environmental Review Tribunal for a hearing and a decision. This process is detailed in Appendix A.

Examples of recent individual environmental assessments include:

- A large waste management facility in eastern Ontario;
- A 300-kilometre long transmission line in northwestern Ontario;
- A combination of an open pit and underground gold mine with a surface area of 200 hectares in northwestern Ontario; and
- Removal and reconstruction of a new expressway in central Ontario.

2. Streamlined environmental assessments

The majority of environmental assessment projects follow a streamlined process.

Streamlined environmental assessments are standardized self-assessment processes for defined categories of projects that are **routine** in nature with **predictable** and **readily managed** environmental effects. Ontario's streamlined assessments (See Figure 2: Types and Examples of Processes Under the Environmental Assessment Act), includes 13 different processes.

Each streamlined process outlines which projects must follow it and categorizes them based on their potential for environmental effects (e.g., low, medium, or high). The level of assessment required for these projects corresponds with the category; the greater the potential for environmental risk, the higher the level of assessment. Although these processes are already streamlined, many feel that they are still overly onerous and complex.

Examples of the range of projects that fall under streamlined environmental assessments include:

- Expansion of a sewage treatment plant;
- A new subway line;
- Construction of a municipal road or bridge;
- Fish stocking and construction of a fish way; and
- Re-paving a road.

Any person may request a higher level of assessment (e.g. individual environmental assessment) if they have outstanding environmental concerns that were not addressed through the streamlined process. These requests (e.g. Part II Order requests for class environmental assessment processes) do not stop a project from proceeding. Rather they allow a requester to identify environmental issues that were not addressed during the streamlined process, and request a decision on whether a higher level of assessment is necessary.

For more background information on Ontario's environmental assessment program, please visit our website at:

<https://www.ontario.ca/page/preparing-environmental-assessments>.

How do class environmental assessments work?

- A class environmental assessment is a document that sets out a standardized planning process for specific classes or groups of activities.
- Class environmental assessment “holders” are the parties responsible for the class environmental assessment document. This includes seeking approval on any subsequent updates to the document.
- Projects that follow the process outlined in the class environmental assessment document do not require further approval from the Minister unless ordered to carry out an individual environmental assessment.

How do regulated processes work?

- Ontario regulations 101/07, 231/08 and 116/01 set out standardized planning processes for waste management, transit and electricity projects respectively.
- The ministry is responsible for the regulation processes and any subsequent updates (i.e., there are no “holders”).
- Projects that follow the regulation do not require further approval from the Minister unless elevated to an individual environmental assessment.

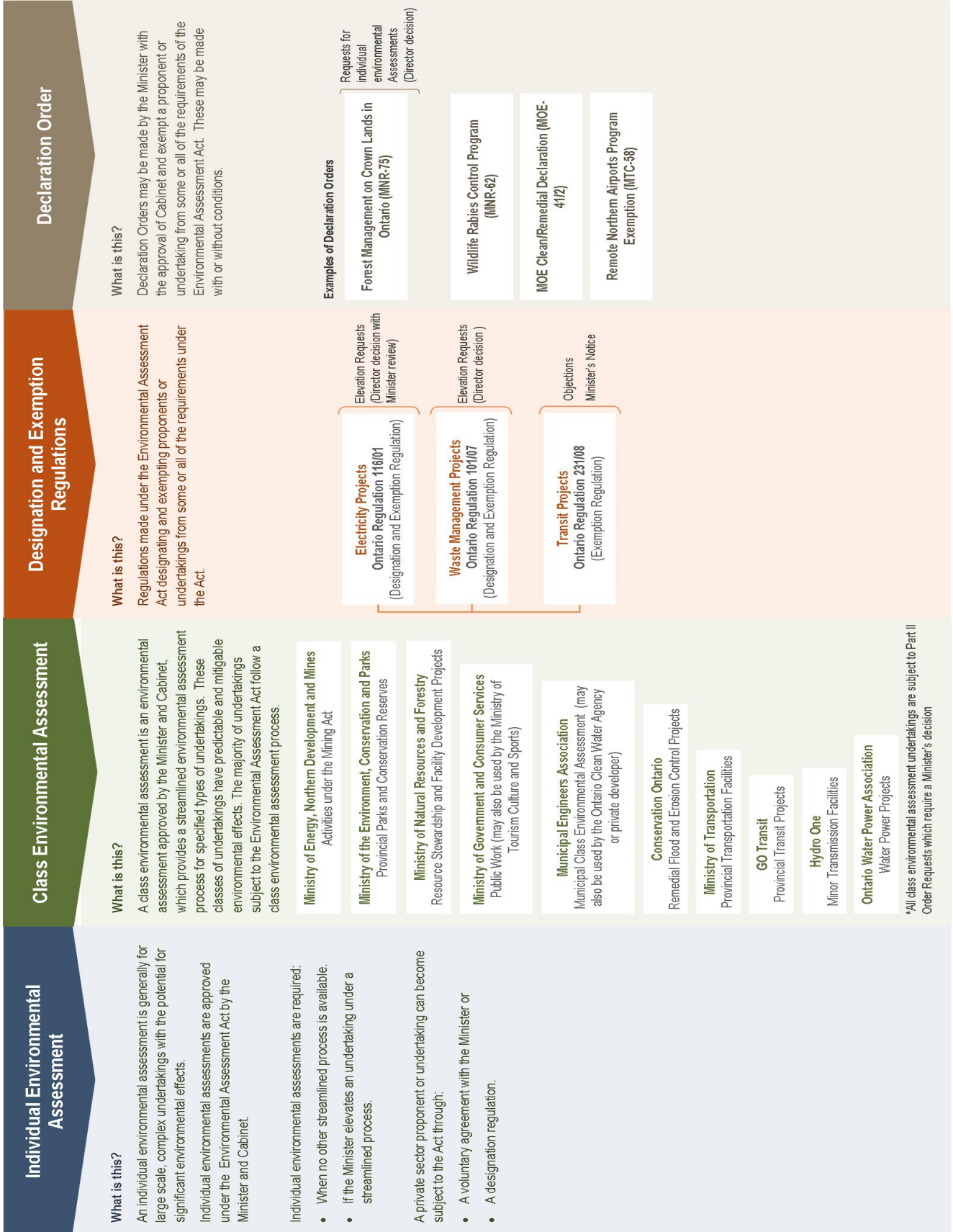


Figure 2: Types and examples of processes in Ontario's environmental assessment program

Modernizing Environmental Assessment: Early Actions

We recognize 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 by numerous stakeholders.

Ontario is the only province in Canada that requires low-risk projects to complete an environmental assessment. For the most part these projects are led by either a local municipality or the province. These projects include routine activities such as snow-plowing and de-icing operations 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.

Also, some projects that are currently considered as medium-risk could more appropriately be considered as low-risk. For example, disposition of lands by the province under the Public Works Class Environmental Assessment are considered medium risk. These dispositions are not likely to result in negative environmental effects, so we are

moving to exempt these dispositions from environmental assessment requirements.

For more information on the proposal to exempt these dispositions visit the Environmental Registry:

<https://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTM3NDg1&statusId=MjA5NTE0&language=en>

Sometimes 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. The Veterans' War Memorial is an example of a project for which an exemption was granted (see pg. 11). We are moving forward to create further opportunities to remove environmental assessment requirements from projects that do not pose a significant environmental risk.

Did you know?

Ontario is the only jurisdiction in Canada to require low-risk projects to complete an environmental assessment.



In 2005, the Ontario government and the Legislative Assembly of Ontario were proposing to establish a Veterans' War Memorial on the south lawn of Queen's Park. This involved the construction of a granite wall and was subject to environmental assessment requirements. The applicant requested the Minister to exempt the project from the requirements of the Environmental Assessment Act. The Minister and Cabinet granted the exemption because the project was determined to be in the interest of the public and to not have any significant environmental effects.

TIMELINESS OF PART II ORDER DECISIONS

Between 2012 and 2017, it took on average 266 days for the ministry to make a decision on a Part II Order request.

There are many factors that contribute to lengthy decision timelines. The Minister must consider a request from anyone on any issue for any project before construction begins. Many Part II Order requests submitted to the Minister are denied without conditions. This means that the Minister determined that the concerns raised in the requests did not warrant further environmental assessment work.

In many cases, the concerns raised in Part II Order requests are not related to significant impacts on the environment and could be resolved through other processes. Examples include concerns about expropriations, increases to property taxes or property values, and visual appeal of projects.

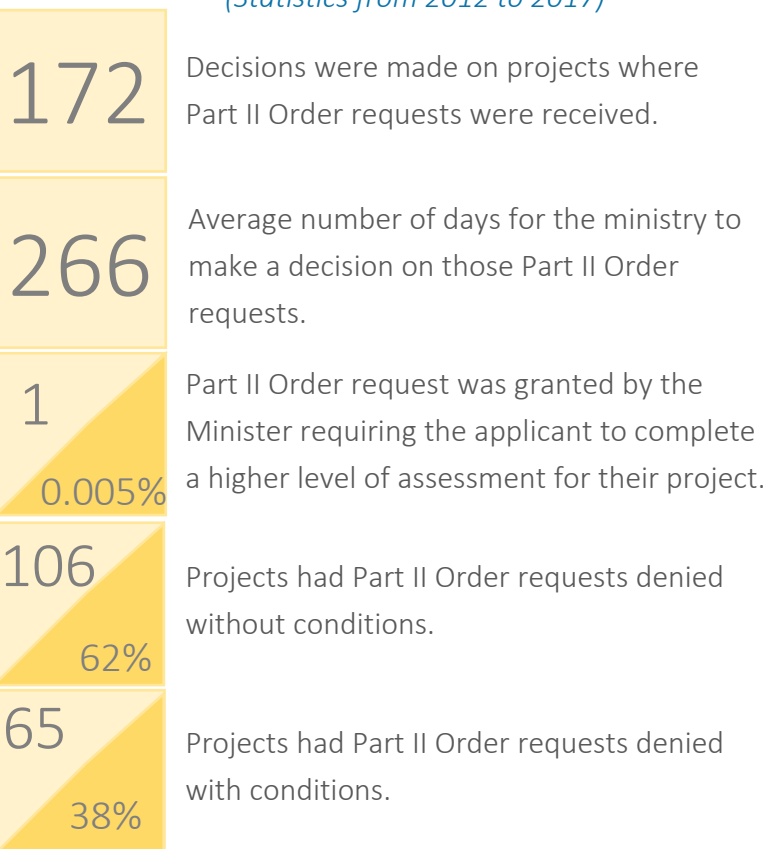
We think that Ontarians impacted by the proposed project should have their voices heard. But at the same time, projects should not be delayed when concerns are raised that are not related to matters of provincial importance or a constitutionally protected Aboriginal or treaty right. For example, in the Transit Project Assessment Process, the Minister may only take action if there is a

potential for a negative impact on a matter of provincial importance that relates to the natural environment or has cultural heritage value or interest, or on a constitutionally protected Aboriginal or treaty right.

For more information on the Transit Project Assessment Process, please visit our website at <https://www.ontario.ca/page/guide-environmental-assessment-requirements-transit-projects>.

Part II Orders by the numbers

(Statistics from 2012 to 2017)



We will be moving to modernize the environmental assessment program to address these concerns. Specifically, we 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.
- ensure timeliness and certainty for the review of requests to the Minister asking for a higher level of assessment on a project (i.e. “bump-up”), by:
 1. 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.
 2. 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.
 3. 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.

Actions to improve these elements will support our efforts to create the best balance between a healthy environment and a healthy economy. The ministry will move ahead with these actions while we are consulting on and building a modernized framework for environmental assessment in Ontario.

There will be opportunities for you to have your say on these early actions.

Did you know?

In Alberta, only concerns submitted by ‘directly affected persons’ are considered by the Minister in making a decision on an environmental assessment.

A Vision for a Modern Environmental Assessment Program

Ensure better alignment between the level of assessment and the level of environmental risk associated with a project

We are committed to protecting the environment in Ontario. Under the current program, not all projects that pose significant environmental risk are required to complete an environmental assessment.

Environmental assessment programs in other Canadian provinces and territories, including the Federal Government, are focused on major projects that have the potential to cause significant harm to the environment and do not distinguish between public or private sector projects.

Most jurisdictions in Canada (except Ontario, Saskatchewan and the Northwest Territories) have a clearly defined list of the types of projects (both public and private sector), that must complete an environmental assessment.

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 is considering moving to a project list, identifying which projects are subject to an environmental assessment, as is used in other jurisdictions within Canada. The process of developing such a list will allow for additional analysis on the projects that should be required to complete an environmental assessment based on type, size and location. In some cases, this analysis may help us to identify additional projects that should be required to complete an environmental assessment, but it may also identify projects that should be excluded from the program, based on their associated level of risk.

We recognize that not all projects require the same level of assessment. In other jurisdictions in Canada, a tiered project list approach is taken. For example, Nova Scotia and Manitoba have developed classes of project types with different study/documentation requirements based on the possible environmental effects of the project.

We think that its important to tailor assessment requirements to projects, ensuring that lower-risk projects can move forward efficiently, and higher-risk projects are required to complete an appropriate

amount of analysis throughout the decision-making process.

We could consider how to incorporate streamlined processes into a project list to ensure that we focus the appropriate amount of time and effort on the projects that matter to Ontarians.

Give us your ideas

What kind of projects should require environmental assessment in Ontario?

Are there some types of projects where a streamlined assessment process is appropriate?

Eliminate duplication between environmental assessments and other planning and approvals processes

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

ONE-PROJECT-ONE-REVIEW FOR FEDERAL AND PROVINCIAL ENVIRONMENTAL ASSESSMENT PROCESSES

In some cases, projects may be required to complete both provincial and federal environmental assessments. While efforts are made to coordinate the two planning

processes, there can sometimes be duplication between them.

The provincial and federal governments have the Canada-Ontario Agreement on Environmental Assessment Cooperation (2004) to guide cooperation on projects subject to both federal and provincial environmental assessment legislation. While the requirements must be met for both processes, the agreement allows for one set of documentation and aims to better attempt to align key milestones such as consultation and decision-making. This approach is referred to as harmonization. Despite efforts to harmonize the two processes, some duplication or redundancy may still exist.

From 2012 to 2017, two of 18 individual environmental assessments have used this agreement for cooperation on federal and provincial decisions. Five are currently in the process for a federal and provincial environmental assessment decision. Mines are an example of a project that may use this agreement (See page 21).

The Government of Canada has undertaken a review of the existing federal environmental assessment framework and is proposing to replace the Canadian Environmental Assessment Act, 2012 with the Impact Assessment Act (Bill C-69). It is Ontario's position that Bill C-69, if implemented, could result in a more complex, costly and time-consuming federal environmental assessment process (particularly in mining, pipelines,

electricity transmission and forestry), while creating uncertainty that could ultimately erode Canada's economic competitiveness. The proposed Impact Assessment Act is undergoing review by parliament, and the Canadian Environmental Assessment Agency is currently working on developing policy, guidance, and regulations for the proposed new system.

While the federal government has not yet implemented a new federal system, Ontario is committed to ensuring that projects within the province are not forced to complete duplicative environmental assessments. Ontario will work with the federal government to ensure one-project, one review, in order to eliminate duplication and provide applicants with more predictable and consistent timelines.

Give us your ideas

What could a one-project-one-review process look like for projects in Ontario subject to both provincial and federal requirements?

REDUNDANCY WITH PROVINCIAL PROCESSES

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. Some examples are described below.

Forest Management

[Declaration Order MNR-75: Environmental Assessment Requirements for Forest Management on Crown Lands in Ontario](#)

outlines the environmental assessment process that must be followed to conduct forest management activities on Crown Land.

Since the declaration order was created, the Ministry of Natural Resources and Forestry has developed policies, procedures, directives and programs to help protect Crown land. Some of these policies and procedures may now be duplicative with what is required under the declaration order.

Dispositions

The requirements related to the disposition of Crown land or resources by the Ministry of Natural Resources and Forestry are another area where there is potential duplication with the environmental assessment process. The disposition of the Crown lands or resources refers to the act of granting an applicant the right to use Crown resources such as: land, trees, animals, and mineral aggregate through

such means as permits, land sales, licences, approvals, or authorizations.

The Ministry of Natural Resources and Forestry follows a streamlined process to determine if there are environmental effects related to the disposition of Crown resources. In some cases, the Ministry of Natural Resources and Forestry has existing policies which contain direction on resource management, allocation, protection and conservation. In both cases, potential effects of a project are identified and minimized. These requirements may be duplicative.

Municipal Planning

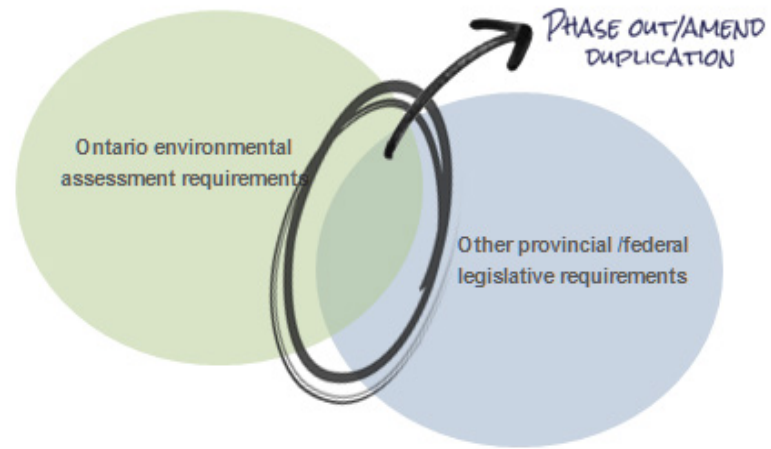
While the Municipal Class Environmental Assessment process includes provisions for integration with the Planning Act, there may still be some duplication for municipal infrastructure projects. For example, in some cases, projects may be subject to both an appeal under the Planning Act and a Part II Order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

While the municipal planning process and the environmental assessment process have different purposes, and are reviewed by different agencies with different mandates, concerns raised by interested parties may be duplicative. We have identified projects where the same concern has been raised in both processes.

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.

We could also consider opportunities to coordinate the reviews of concerns raised in development appeals and Part II Order requests.



Give us your ideas

Can you identify any other examples of provincial processes that could be better integrated?

What other actions can the ministry take to eliminate duplicative or redundant processes or approvals?



Mines are an example of a project that may have both federal and provincial environmental assessment requirements. While mining projects are not automatically subject to Ontario's environmental assessment process*, the infrastructure related to mines, such as transmission lines, and the disposition of Crown land, may trigger environmental assessment requirements under streamlined processes. In these cases, some applicants have entered into voluntary agreements to complete the individual environmental assessment process to ensure coordination with the federal process and to avoid the separate requirements under streamlined environmental assessment processes.

For a recent mine project, the ministry worked with the Canadian Environmental Assessment Agency to coordinate the provincial and federal environmental assessment processes to create a streamlined, efficient process for the applicant and the public. The applicant produced one environmental assessment report to satisfy both provincial and federal requirements. Key milestones, for the public review periods and decisions on the project, were also aligned to the extent possible to create an efficient and coordinated process.

*Note that mines are subject to requirements under Ontario's Mining Act



Find efficiencies in the environmental assessment process and related planning, and approvals processes to shorten the timelines from start to finish

We have heard that environmental assessments can be lengthy and frustrating processes to navigate. Coordination of multiple provincial planning and approvals; complex processes; and delays can create confusion and uncertain timelines.

We want to ensure that a modern environmental assessment program moves projects efficiently and reliably through the planning, consultation, study and review processes.

CO-ORDINATING A ONE-WINDOW APPROACH

The environmental assessment process requires applicants to consider the mandates of other provincial and federal agencies, in addition to municipal policies and by-laws. Many review agencies rely on Ontario's environmental assessment process to determine whether subsequent permits/approvals are required from them, initiate and speed up future permits and approvals; ensure that what is being proposed is aligned with their policies, regulations and legislative requirements; and meet consultation requirements. In this way, the environmental assessment process could be considered a one-window into Ontario's system of project planning and permitting.

Currently, this system is complex and time-consuming. For example, if a municipality needs to construct a new storm water management pond at a new property, the class environmental assessment is completed as part of the planning and decision-making process. Various technical studies are required as part of this process to evaluate the net environmental effects of different alternatives to find a preferred solution. Once the environmental assessment process is complete, more detailed studies may be required to obtain subsequent approvals and permits for the preferred solution, such as: a permit to take water, an environmental compliance approval, a species at risk permit and/or a conservation authority permit. All of

these processes take time and resources and can be challenging for applicants and the public to navigate. Additionally, study and review times can vary for the different processes.

The one-window approach could be reformed to achieve greater coordination, providing an efficient working system that balances environmental protection with the need for projects to proceed in a timely manner.

The current system could be modernized in different ways to achieve the 'one-window' vision. Some ideas 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.
- Take action to better coordinate ongoing assessment requirements to allow similar work completed in one process to be used for other processes.

Did you know?

A project that completes an environmental assessment process may be subject to other approvals and permissions under 26 provincial and 11 federal statutes in addition to municipal policies and by-laws, involving 10 provincial ministries, municipalities, the federal government, and several agencies such as Hydro One, Canadian National, the Ontario Energy Board, and the Niagara Escarpment Commission.

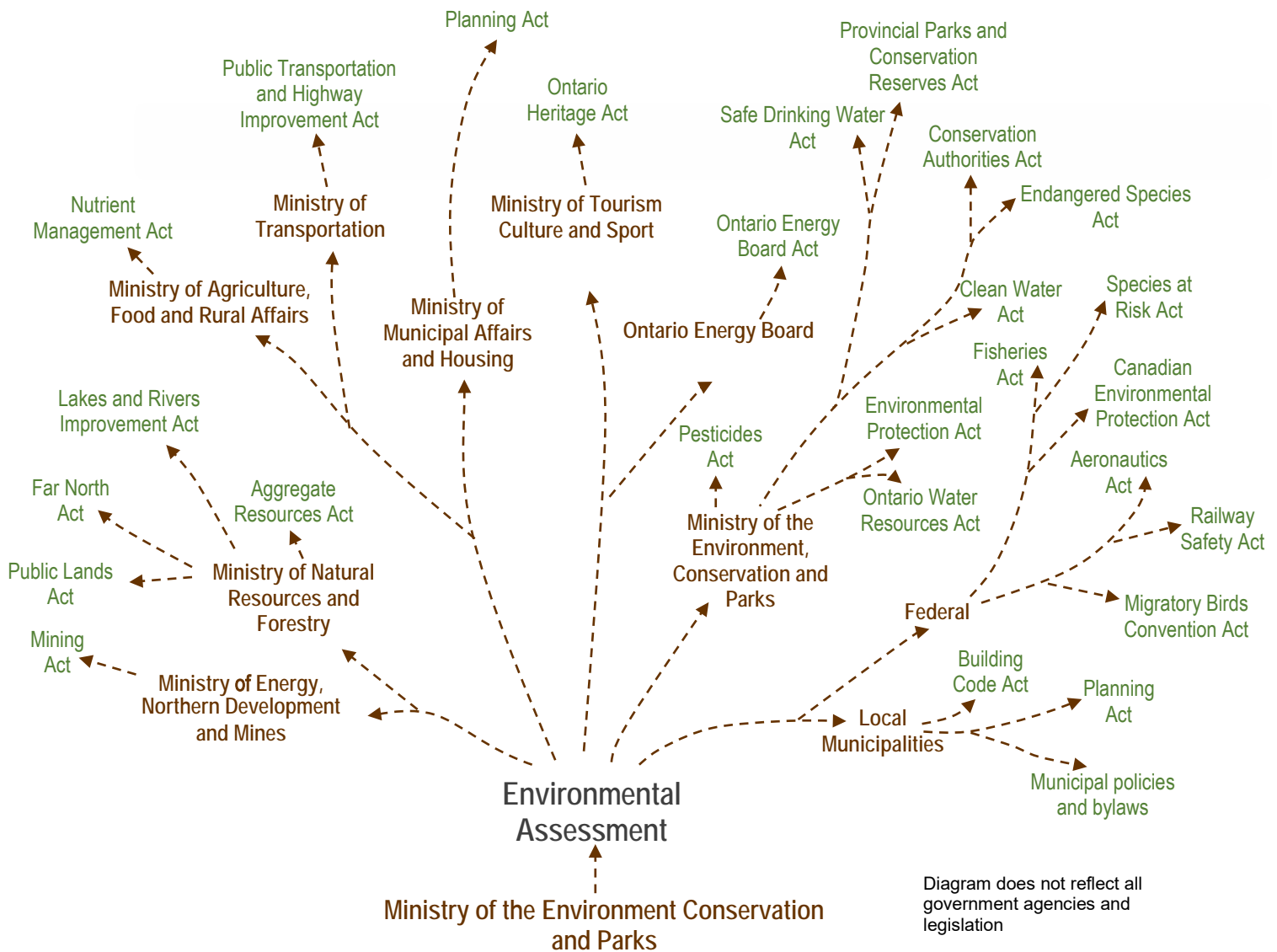


Figure 3 – Environmental Assessment and other approvals

Give us your ideas

What could a coordinated one-window approach look like for Ontario projects?

Can you identify any areas in the environmental assessment process that could be better streamlined with the municipal planning process or with other provincial processes?

What advantages and disadvantages do you see with the ministry’s environmental assessment process being the one-window for other approval/permit processes?

SETTING EXPECTATIONS

Delays in the environmental assessment process can occur when applicants do not have a clear understanding of the ministry's expectations for technical studies and consultation. Deficiencies in submitted environmental assessment documentation will pause the ministry's review process as applicants work to provide missing information or additional data, and in some cases may require the applicant to consider withdrawing the environmental assessment completely in order to address the matter.

Similarly, inadequate consultation activities may result in significant concerns being identified by interested parties at later stages in the process, triggering the need for further information/studies or changes to the proposal. Inadequate consideration of concerns raised through consultation may also increase the likelihood of a Part II Order request for a project. Both circumstances introduce uncertainty and delay project timelines.

To improve the timelines related to environmental assessment and reduce uncertainty, we could consider clarifying our expectations with respect to complete and accurate documentation through guidance. Additionally, clearer requirements around consultation may help to ensure that the public's voice is heard early and throughout

the planning process, reducing potential delays later in the process.

Did you know?

The Ministry of Environment, Conservation and Parks has guidance (<https://www.ontario.ca/page/considering-climate-change-environmental-assessment-process>) for considering climate change impacts in environmental assessments. The document details methods by which applicants can assess projects in the planning stage to ensure the project's long-term resilience to extreme weather and further protect public resources in the face of a changing climate.

Give us your ideas

What areas of the environmental assessment program could benefit from clearer guidance from the ministry?

What other actions can we take to reduce delays and provide certainty on timelines for environmental assessment?

USING SECTOR-BASED TERMS OF REFERENCES

A Terms of Reference outlines the work plan for an Individual environmental assessment, which is completed for large-scale, complex projects with the potential for significant environmental effects. Although environmental impacts may vary with project size and location, often projects of the same type will undertake the same analysis to assess these impacts.

Applicants have expressed frustration that the process of creating a work plan can be overly complex, time-consuming and costly, particularly, where the types of environmental effects may be similar to other projects of a similar nature.

Ontario could consider developing templated Terms of Reference for various sectors (e.g. transmission lines). By doing this, the ministry could establish clear and sector-relevant expectations, which may help reduce timelines.

Terms of References by the numbers *(Statistics from 2012 to 2017)*

23

Number of Minister's decisions on terms of references.

11

Number of applicants that submitted amended Terms of References to address comments received during the formal comment period.

272

Average number of days for a Minister's decision on the terms of reference.

Give us your ideas

What are the advantages and disadvantages of using a sector-based terms of reference?

REDUCING TIMELINES

We know that it is very important for projects to move forward in a timely way to better serve Ontarians. In addition to the efficiencies outlined above, we are considering steps that can help us further improve our review timelines. For example, we could consider implementing a review service standard, similar to the one that recently took effect for new higher-risk Environmental Compliance Approvals applications. We could also consider building on the Transit Project Regulation model to create new opportunities for other types of projects to receive priority reviews with strict timelines. For example, we could consider reducing timelines for municipal wastewater projects that are critically needed to serve population need or upgrade for resiliency.

Give us your ideas

Are there other ways we could improve our review timelines?



Go digital by permitting 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 ministry 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.

Did you know?

Ontario is the only provincial jurisdiction in Canada that does not accept electronic submissions for environmental assessment documents.

CREATING AN ELECTRONIC REGISTRY TO SUPPORT THE SUBMISSION AND REVIEW OF ENVIRONMENTAL ASSESSMENT DOCUMENTATION

A key challenge with Ontario's current system is that there is currently no centralized digital location for applicants and the ministry to provide interested persons with information about environmental assessments. While Ontario's website does include some information on individual environmental assessments, the information is fairly limited and does not include the applicant's project documentation. In most cases, interested persons are redirected to the applicant's project website, which has resulted in confusion as to where to obtain information about environmental assessment projects. Applicants have also expressed concerns over the challenges of submitting multiple copies of paper documentation to multiple interested parties for review.

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. These include: increasing transparency and access to environmental

assessment information; enabling effective data sharing to improve data-driven decisions; and speeding up decision making and improving process efficiency.

We are 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.

Potential opportunities involve creating a new electronic registry specific to the environmental assessment program or integrating environmental assessment into existing online platforms. Moving away from the paper-based process and enabling e-submission and review of environmental assessment documents is consistent with the goals of Ontario's Digital First Strategy. It will also result in cost savings for applicants and help to facilitate greater public participation in the process.

Give us your ideas

How would you like to be consulted on environmental assessment projects?

Would an online environmental assessment registry be helpful for you in submitting an environmental assessment or accessing environmental assessment information?

What type(s) of environmental assessment project information would you like to access online?

Are there any existing online tools that would be appropriate to use for environmental assessment information?

How to Participate

Let us know what you think! We welcome your suggestions and comments on the questions asked throughout the discussion paper. Your ideas will help inform the modernization of the environmental assessment program in Ontario.

As we move forward, there will be additional opportunities for you to participate on new initiatives.