

## What is Next?<sup>1</sup>

***Thursday, November 19, 2020 at 12:00 pm to 2:00 pm EST***

***Facilitators: Sandy Nairn and Anneliese Grieve***

***Panelists: Paul Norris, Ken Dion, Katherine Kung, Ian Dobrindt***

***Rapporteur: Peter Brown***

### ***Webinar Highlights:***

Anneliese introduced the webinar by reviewing that the first in the series of three was reflective, the second was aspirational and this, the third webinar in the series is pragmatic – looking at what’s next. This webinar considered elements of EA modernization (Comprehensive Project List Regulation, Streamlined/Class and Sectoral EAs) through panel presentations and discussion. The presentations focused on what the changes to the EA Act and the Streamlined/Class EAs mean to these sectors.

The panel consisted of:

- Paul Norris, Ontario Waterpower Association (OWA) - Energy/Power
- Katherine Kung, WSP - Transportation/Roads
- Ian Dobrindt, GHD - Water/Wastewater
- Ken Dion, Waterfront Toronto - City Building

### **Energy/Power Sector**

Paul provided context about why the EA Act is important to OWA and the history of the Waterpower Class EA. He pointed out that a number of different EA regulations and/or Class EAs may apply to electricity projects. He raised the idea of applying strategic EA to energy system planning.

All Class EA holders are currently reviewing their Class EAs, mainly around streamlining and the categorization of projects related to risk. Adding clarity to how projects are screened, which ones are exempt, etc. is the only aspect of the Waterpower Class EA being proposed for changes. The proposed changes to the Hydro One Minor Transmissions Facilities Class EA are largely administrative.

Generally, Class EA holders and proponents are supportive of EA modernization, and are also interested in responsible resource management and public accountability.

Paul pointed out that current and proposed EA thresholds in Ontario do not necessary align with federal thresholds, and that generally Ontario is maintaining the same thresholds as in Ontario Regulation 116/01.

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<sup>1</sup> <https://oaia.on.ca/what-is-next/>

The waterpower industry perspective on proposed changes to Waterpower Class EA can be summarized as:

#### Pros

- Creates efficiencies and reduce fixed costs
- Builds on Ontario Regulation 116/01
- Builds on about 20 years of EA experience (including private sector)

#### Cons

- Different lists/thresholds than Canada (e.g., renewables)
- Raises questions about federal substitution
- Uncertainty about future of Class EAs in general

***Question: How might a Strategic Environmental Assessment (SEA) for climate change and the role of coal for example emerge without language in the EA Act that enables SEA. Are there examples where this has happened without requiring amendments to the EA Act?***

Paul noted that electricity system planning doesn't always go through EA. Policy direction has not been subject to EA in the past. Reliability and cost-effectiveness tend to drive electricity system planning. Perhaps a SEA would have led to a different outcome that could have included eliminating coal, but perhaps not. Ontario's long-term energy planning has considered sustainability, environmental cost accounting, etc., but was not labelled an EA.

***Question: How are cumulative effects assessed in both existing hydro projects and in expansion or renewal projects? How would you respond to potential concerns of project splitting to avoid triggering the project list?***

Paul responded that they would not split a hydro project to avoid regulatory thresholds. Generally, the project is sited where the resource is and it is difficult to piecemeal hydro projects.

#### **Transportation/Roads**

Katherine provided an overview of the proposed changes to how transportation/roads projects will be considered under the EA Act, including changes to MTO's Class EA and the Municipal Class EA.

Katherine pointed out that very few road projects will require a Comprehensive EA. She also noted that while there is some language related to cumulative effects, climate change and sustainability, these issues are largely omitted from the proposed changes. The changes are largely focused on re-classifying projects based on environmental risk.

***Question: What is considered by a "significant change" to the previously approved project?***

Katherine responded that this still seems vague and poorly-defined in the proposed changes to the Class EA.

#### **Water/Wastewater**

Ian provided an overview of the water and wastewater sector, including how they Municipal Class EA applies to these projects. He then provided a summary of the proposed changes related to water and wastewater. He pointed out that the structure and requirements in the Class EA remain unchanged, the focus of the update is on the categorization of projects and thresholds. Generally, the changes will require

less assessment for some project types. He also noted a potential increased reliance on downstream permits/approvals (e.g., environmental compliance approvals) and construction notices. The water/wastewater industry perspective of the proposed changes to the Municipal Class EA could be summarized as:

#### Pros

- Re-categorizations generally make sense
- Additional notification requirements for projects going from A to A+
- Simplified thresholds/classifications

#### Cons

- Concerns about 'increase in rated capacity' as a threshold
- Over-reliance on construction notices instead of consultation

Ian suggested that more relevant criteria could be considered for thresholds such as sensitive land uses and adverse effects such as odor.

***Question: What does the 50% threshold come from? Is it an ecological, social or economic based threshold? Is there any scientific basis for this?***

Ian responded that the number refers to the rated technical capacity of the infrastructure and is arbitrary as a threshold for environmental effects.

#### **City Building**

Ken summarized some objectives-based city-building Individual and Class EA projects. He pointed out that Conservation Authorities have their own Class EA, and they often partner (e.g., with municipalities) and participate in Municipal Class EAs, Individual EAs, etc.

The proposed changes to the Conservation Authority Class EA comprise minor changes to classifications, including pre-approved activities, and other clarifications.

The Municipal Class EA (MCEA) changes make the schedules, exemptions, etc. clearer (e.g., Master Plans). Some climate change 'weighting' considerations were added.

Ken offered some recommendations for different project types:

- Major flood control – Opportunities for implementation of major flood protection projects should continue to be considered by Project proponents using the Conservation Ontario (CO) and MCEA Class EA procedures, with the option to consider Comprehensive EA if it is deemed appropriate (e.g., Don Mouth Naturalization and Port Lands Flood Protection)
- Lake fill – the reason and existing conditions should dictate EA approach for use of lake fill. Projects involving lake fill for conservation, environmental or mitigation of risk, or limited scope filling in highly degraded habitats (combined with substantial habitat compensation) should continue to be implemented under the Conservation Ontario and MCEA procedures. Large-scale lake fill areas for the advancement of industrial or infrastructure uses, particularly where the ecological and physical lacustrine processes are well-functioning and would be faced with negative impacts, should be conducted under the Comprehensive EA process.

- Integrate Master Plan EAs with Planning Act – it seems like the changes to the MCEA raise the possibility of a project Class EA being caught in a Local Planning Appeal Tribunal (LPAT) process even after approval. This suggests that the Planning Act may take a primary role over the EA Act. Is this an intended outcome?

***Question: Can you give us a sense of how consultation and engagement with Indigenous communities occurs in the project examples you provided?***

Ken responded that proponents identify Indigenous communities based on the geography and potential impacts of a project, and work with MECP to develop a list of communities to be consulted for EA purposes. The Crown may have a duty to consult and typically delegates procedural aspects of that to proponents. Proponents also have statutory consultation requirements as part of an EA. With respect to these project examples in the Greater Toronto Area, there was significant consultation with the Mississaugas of the Credit First Nation, as well as with First Nations signatories to the Williams Treaties and the Huron Wendat. There has also been engagement with urban Indigenous service providers. For these projects we typically provide notification, offer meetings with staff and/or chief and council, participate in committees, provide tours for awareness and offer participation in some field programs (e.g., archaeology).

## ***Question and Answer Session***

***Question: What was the rationale behind removing cost thresholds? What was the original logic for including cost to begin with?***

It was likely included as a simple threshold, but is being removed because it is not necessarily indicative of environmental risk.

***Question: Do you feel as though the Issues Resolution Process is an adequate replacement to bump-up?***

It makes sense to avoid frivolous requests, but the changes may seem too limited (requests will only be considered if related to impacts on Aboriginal or treaty rights or provincial interest). An issues resolution process sounds good in theory, but we would have to see how it works. The Waterpower Class EA has an embedded issues resolution process. It is up to proponents and practitioners to make it work.

A participant in the webinar commented that having been involved in both an issue resolution process as well as a Part II order process, they agreed that the dispute resolution process was more effective and time and cost efficient.

***Question: Can you expand on the shift of schedules for river/creek crossings?***

Generally, the shift is downwards (fewer requirements for some project types), with some new project types being exempt. Open-cutting of water crossings requires more study than trenchless, but this is somewhat moot as most watercourse crossings are trenchless these days anyway.

***Question: Any word on the proposed replacement of the class EAs with another process?***

No official word, but we are starting to think about what the future holds. For example, should an integrated streamlined EA process treat private and public-sector proponents the same? From the OWA's perspective, they have been involved in private sector EA for 20 years. It makes sense to have a uniform and comprehensive approach to assessments, regardless of proponent, with consistent thresholds. Elements of what has learned to work or not could be built into a new process. The playing field should be

level for private and public sector proponents. Perhaps in some scenarios public sector proponents should be required to consider more alternatives than the private sector.

**Question: Are the changes to the Class/Streamlined EAs considering the kinds of projects we will likely be seeing in 15 or 20 years?**

- Water/wastewater projects likely will not change substantially. Transportation/roads may need to consider automated vehicles, for example. The electricity sector continues to trend towards market-based approaches. In the renewable energy approval and procurement program, there was a trend towards Indigenous community participation, including equity. Projects in the north are increasingly Indigenous-led.
- There will at least continue to be increased expectation for Indigenous participation, which often starts at the EA phase of project development. Examples of increasing participation by Indigenous communities in EA and post-EA processes have been increasing in the Greater Toronto Area, particularly with some of our larger projects involving habitat enhancement and public realm such as the Don Mouth Naturalization and Port Lands Flood Protection Project, and the Jim Tovey Waterfront Conservation Project.
- Extensive efforts were made to encourage Indigenous communities to provide input regarding issues related to Indigenous Knowledge, culture, history and interests moving forward. Waterfront Toronto, for example, has:
  - entered an agreement with the Mississaugas of the Credit First Nation to more fully participate in planning efforts along the Toronto Waterfront, and
  - retained an Indigenous consultancy (MinoKamik) to assist their designers to lead expansive Indigenous engagement efforts with a number of Indigenous communities and urban Indigenous service and community groups, to inform the Port Lands Public Realm design.
- While the incorporation of Indigenous Knowledge may generally remain a piece missing from EA in Ontario, there are growing examples that this is changing.

**Question: Looking to the future and COVID-19, could there be further changes to EA to facilitate active transportation and recreation?**

It should be helpful that thresholds are going to be more related to environmental impacts rather than project costs. It would be helpful to have more integration of active transportation, e.g., ‘complete streets’ in urban planning, also seems to be a trend.

**Question: Should thresholds for the Comprehensive Project List be the same or lower than the federal thresholds?**

From the water/wastewater perspective, having the same thresholds as Canada suggests that requirements under Ontario’s EA Act may be duplicative, so we should consider assessing impacts that may not covered by the federal process. The waterpower sector has successfully coordinated federal and provincial requirements.

For water/wastewater and transportation/roads the provincial and federal thresholds are not well aligned and it can be difficult to harmonize the processes.

It was noted that *substitution* seems more likely if the thresholds and requirements are aligned. It was also noted that using an objectives-based EA approach can help align federal and provincial requirements,

although the MTO Class EA, which was principles-based, is being replaced by something likely more prescriptive.

## **Conclusions**

### **General Comments on Class EAs**

- Across all sectors discussed (waterpower, transportation/roads, water/wastewater, city-building) proposed changes to Class EAs are generally related to reclassifying project types according to environmental risk, with a general trend of less requirement for projects with lower risks.
- Generally, it was felt that some reclassifications and efficiencies make sense, and that generally clarification to the categorization of project types, is an improvement in the proposed Class EA changes.
- Concerns were related to making sure the thresholds and requirements are clear, based on likely impacts to the environment, and consistent across sectors and with other jurisdictions (e.g., with Canada, as applicable).
- Concerns were also noted about a potential increased reliance on downstream permits/approvals (e.g., environmental compliance approvals) and construction notices.
- Frivolous bump-up requests should be discouraged, but the changes to the Class EA Part II Order process (requests will only be considered if related to impacts on Aboriginal or treaty rights or provincial interest) may be too limited.
- An issues resolution process sounds good in theory, but it is largely up to proponents and practitioners to make it work.
- A dispute resolution process could be more effective and time/cost efficient than a Part II Order or Bump Up Request.

### **Sector-based Recommendations for Comprehensive Project List**

#### **Electricity**

Both the Class EA Amendments and the proposed Project List build on the foundation of Ontario Regulation 116/01. The electricity industry has 20 years of provincial EA application to the private sector. However, it remains unclear from MECP proposals how the new streamlined process will handle private sector projects, assuming MECP will replace the Guide to EA Requirements for Electricity Sector Projects. The eventual elimination of Class EAs will reduce a proponent's (e.g. OWA) "ownership" of continuous improvement in EA practice.

- Generation projects are missing from the provincial list, if "harmonization" with the federal process is an objective of the MECP Project List approach.
- There are projects (e.g. waterpower) for which "substitution" will be required, if efficiency and effectiveness is an objective of the current MECP proposal.

#### **Transportation**

Rather than aligning linear thresholds with the IAA (e.g., 50 km in length), the requirement for Comprehensive EAs should be lower than the federal limits because there is potential for significant impacts and new highway or expressways are typically < 75 km.

- MECP's current proposal needs to include triggers and thresholds for proposed roads that are not freeways/expressways (e.g. all-season roads in the far north) which are more common in northern Ontario and also addressed under the federal Impact Assessment Act (IAA).
- MECP should consider other kinds of triggers as a length-based trigger does not allow for unique geographic contexts, particularly where shorter highways generate higher risk of impacts and public

concern because of the environment they are travelling through. For example, the Teston Road extension between Keele Street and Dufferin Street is approximately 2 km in length, but was recommended by MECP to proceed under an Individual Environmental assessment given the potential impact on the environmentally-sensitive East Don River Valley as well as cost implications with potential impacts to the former Keele Valley landfill.

- OAIA recommends a lower threshold if linear thresholds are determined to be required. Objective criteria and evidence for the threshold or trigger values must be provided.
- The proposed 75 km threshold for municipal expressways is moot as there are currently no municipal expressways of that length. Objective criteria and evidence must be provided to support threshold or trigger values for municipal expressways.

### **Conservation**

- MECP should clarify changes to Ontario Regulation 334 as the limits set out in this regulation capture most complex waterfront projects such as the Don Mouth Naturalization Project (DMNP), the Lakeview Waterfront Connection and the Scarborough Waterfront Project.
- Complex flood control projects should continue to be considered using the MCEA procedures (such as the Broadview Eastern Flood Protection or Downtown Brampton Flood Protection Projects). However, proponents should continue to have the option to choose to incorporate the Comprehensive EA procedures, if it is deemed appropriate for any given Conservation Project.
- Amend the Conservation Ontario (CO) Class EA to specifically include Lake Fill alternatives that have the dual objectives of “remedial erosion and flood control” and “providing for passive public use of riverine or shoreline areas”. For example, projects including the Lakeview Waterfront Connection, Scarborough Waterfront, Port Union and Mimico Waterfront Linear Park included shoreline and slope stability considerations, but also greatly improved local natural ecosystems and provided public access to the waterfront, contributing to public health and wellbeing. These projects could have been conducted under the CO Class EA.
- MECP should continue to allow limited Lake Fill in heavily degraded aquatic habitats (due to past industrialization and/or urbanization), for purposes of Municipal Infrastructure retrofits/upgrades under the Municipal Class EA (MCEA), subject to EA commitments for aquatic habitat enhancements as compensation for disturbance of existing highly degraded habitat conditions.
- Projects that involve Lake Fill in expansive, relatively undisturbed areas for new industrial, commercial, or urban uses should be subject to Comprehensive EA.

OAIA agrees with the MECP suggestion that Conservation Projects garner public interest, but this interest is often one of public support (i.e., Don Mouth Naturalization and Port Lands Flood Protection Project). Public opposition is typically less than that expressed for a waste or power generation project.

OAIA supports the inclusion of Conservation Projects involving Major Flood Control Projects (such as the Don Mouth Naturalization and Port Lands Flood Protection Project) be included on the Projects List for Comprehensive EA. Individual EA (Comprehensive EA) procedures provided some additional flexibility in defining an innovative “Objectives-Based” evaluation of alternatives process and provided the added surety of an approved EA Terms of Reference to better withstand changes in political climate for the DMNP EA, during longer-term planning processes.

## **2020 Webinar Series**

The 2020 Ontario Association for Impact Assessment (OAIA) conference was being replaced with a series of webinars on **Modernizing Ontario's Environmental Assessment Legislation – The Past, Present and Future**. The webinar series is in response to Ontario's recent proposals to modernize its *Environmental Assessment Act* (EAA). The series examined Ontario's assessment laws and policies through time, lessons learned, and recommendations for the future. Expert panelists focussed on EAA, specifically, history and trends, what is enacted, what is missing and needed, and what is next.

Webinars were held from **noon to 2 pm on November 5, 12, and 19, 2020**

For more information visit the OAIA website at <https://oia.on.ca>. If you have any suggestions for next year's conference theme, please contact us at [info@oia.on.ca](mailto:info@oia.on.ca).

We look forward to welcoming your participation in this year's OAIA webinar series.

