




CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
And
PUBLIC WORKS DEPARTMENT

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	September 4, 2024
SUBJECT/REPORT NO:	Ministry of the Environment, Conservation and Parks Proposed Changes to the Municipal Class Environmental Assessment Process (PED24098/PW24029) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Margaret Fazio (905) 546-2424 Ext. 2218 Megan Salvucci (905) 546-2424 Ext. 2732 Patrick Yip (905) 546-2424 Ext. 6412
SUBMITTED BY:	Ashraf Hanna Director, Growth Management and Chief Development Engineer Planning and Economic Development Department
SIGNATURE:	
SUBMITTED BY:	Jackie Kennedy Director, Engineering Services Public Works Department
SIGNATURE:	

RECOMMENDATION

- (a) That Council endorses Staff comments provided in a letter to the Ministry of Environment, Conservation and Parks on March 15, 2024 (included as Appendix “A” to report PED24098/PW24029), in response to proposed regulation ERO-019-7891 intended to modernize the Municipal Class Environmental Assessment Process;
- (b) That General Managers of Planning and Economic Development and Public Works Departments be authorized and directed to initiate the development of the appropriate internal process for the consistent and transparent planning of infrastructure projects to replace the Municipal Class Environmental Assessment

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process, should the Municipal Project Assessment Process be enacted by the Province of Ontario;

- (c) That staff report back to Council on any required staffing and process changes necessary should the proposed regulation ERO-019-7891 be enacted.

EXECUTIVE SUMMARY

On February 16, 2024, the Ministry of Environment, Conservation and Parks (Ministry) proposed a new regulation ERO-019-7891 with the intent to modernize how municipalities plan for infrastructure by revoking the Municipal Class Environmental Assessment and creating a new Environmental Assessment regulation called the Municipal Project Assessment Process.

Of significant importance, the proposed regulation includes changes to the types of projects subject to a formal assessment and to the assessment process itself. For example, road projects would no longer be subject to the new regulation. While this proposed change introduces opportunities to streamline the work entailed in planning for road infrastructure, it will leave a gap as staff will no longer be able to rely on the current Municipal Class Environmental Assessment Process for transparent decision-making nor will stakeholders be able to appeal road projects based on Indigenous Rights and Treaties. In addition, the proposed Municipal Project Assessment Process intends to streamline the process for several water, wastewater and stormwater projects, but staff note that the proposed re-ordering of tasks in the process will not likely result in any material time and cost savings. Finally, several Official Plan policies would need to be amended through a future update to the Official Plans to refer to the new Municipal Project Assessment Process.

In response to the ERO-017-7891 posting the City of Hamilton's Environmental Assessment Working Group submitted feedback in the form of a letter comprised of staff input gathered from subject matter experts across the organization within the province-prescribed deadline. The letter is included as Appendix "A" to this report.

While there has been no final decision from the Ministry yet, the City of Hamilton's Environmental Assessment Staff Working Group will continue to engage with the Ministry concerning the proposed changes.

If the new regulation is enacted, staff is recommending the City establish its own infrastructure planning document that provides guidance for a process to ensure that all legislative requirements continue to be met and to maintain consistency and transparency in decision-making.

Alternatives for Consideration – See Page 9

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: At this time there are no immediate financial implications associated with the proposed Municipal Project Assessment Process regulation ERO-019-7891 intended to modernize the Municipal Class Environmental Assessment Process. However, if the proposed Municipal Project Assessment Process regulation is enacted by the Ministry of Environment, Conservation and Parks, there may be financial implications that will have to be assessed in more detail.

Staffing: At this time there are no immediate staffing implications associated with the recommendations contained in this Report. However, if the proposed Municipal Project Assessment Process regulation is enacted by the Ministry of Environment, Conservation and Parks, there may be staffing implications that must be assessed in more detail.

Legal: At this time there are no immediate legal implications associated with the recommendations contained in this Report. However, if the proposed Municipal Project Assessment Process regulation is enacted by the Ministry of Environment, Conservation and Parks, any legal implications will have to be assessed in more detail.

HISTORICAL BACKGROUND

In 2000, the Ministry of Environment (now the Ministry of Environment, Conservation and Parks) approved the Municipal Class Environmental Assessment for Municipal projects including Road Projects and Water/Wastewater Projects through the *Environmental Assessment Act* of Ontario.

The Municipal Engineers Association (a volunteer body of Ontario’s professional engineers), on behalf of the Ministry, authored the approved guideline document and remained responsible for updates since its inception (2007, 2011, 2015, 2019, 2023 & 2024). In addition The Municipal Engineering Association has been responsible for auditing the Municipal Class Environmental Assessment process and reporting on its use, as well as lobbying the Ministry on behalf of Ontario’s project proponents (e.g. Municipalities and private developers) since its inception.

On February 16, 2024, the Ministry proposed a new regulation ERO-019-7891 with the intent to modernize the Municipal Class Environmental Assessment Process and sought feedback from municipalities and other stakeholders.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Exact requirements of the proposed Municipal Project Assessment Process will be dependent on final provincial legislation. However, existing policies and legislation will remain in effect and would need to be adhered to regardless of the removal, or changes to, the existing Municipal Class Environmental Assessment process, as follows:

1. Federal Legislation: *Environmental Assessment Act, Fisheries Act, Migratory Birds Convention Act, Species at Risk Act, and Impact Assessment Act.*
2. Provincial Legislation: *Environmental Assessment Act, Environmental Protection Act, Clean Water Act, Endangered Species Act, Conservation Authorities Act, Expropriations Act, Fish and Wildlife Conservation Act, Ontario Water Resources Act, and Ontario Heritage Act.*
3. City Policies: The following City policies must be considered for municipal infrastructure planning projects. Further, many of the listed policy documents have been developed using the Municipal Class Environmental Assessment process as a reliable transparent decision-making process. Changes to the Municipal Class Environmental Assessment document may also change how some of the below policies are updated in the future.
 - a. Official Plans (Urban and Rural);
 - b. Archaeology Management Plan;
 - c. Complete Streets Design Guidelines ;
 - d. Cycling Master Plan;
 - e. Accelerated Active Transportation Plan;
 - f. Pedestrian Mobility Plan ;
 - g. Heritage Bridge Conservation Guidelines;
 - h. Indigenous Archaeological Monitoring Policy;
 - i. City-Wide Water and Wastewater Master Plan;
 - j. Stormwater Management Master Plan;
 - k. Public Engagement Policy;
 - l. Recreational Trails Master Plan;
 - m. Sidewalk and Roadway Lighting Policy;
 - n. Storm Drainage Policy;
 - o. Transportation Master Plan;
 - p. Truck Route Master Plan;
 - q. Vision Zero Hamilton;

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- r. Urban Forest Strategy;
- s. Climate Action Strategy;
- t. Biodiversity Action Plan; and,
- u. Area-specific master and servicing plans e.g.: Airport Employment Growth District Transportation Master Plan Update, Blocks 1, 2 and 3 Servicing Strategies in Fruitland-Winona Secondary Plan, etc.

RELEVANT CONSULTATION

The Environmental Assessment Staff Working Group consulted with internal stakeholders during the commenting period on proposed regulation ERO-019-7891 and on the development of this report. The letter to the Ministry included as Appendix “A” to report PED24098/PW940299 reflects the comments received from stakeholders. Below is a list of stakeholders engaged in providing feedback to the Province.

- Healthy and Safe Communities
 - Indigenous Relations
- Planning and Economic Development
 - Transportation Planning;
 - The Office of Climate Change Initiatives;
 - Growth Management;
 - Planning; and,
 - Economic Development.
- Public Works
 - Hamilton Water;
 - Engineering Services;
 - Corporate Asset Management;
 - Hamilton Street Railway;
 - Environmental Services; and,
 - Transportation.

In addition to internal stakeholders, the Environmental Assessment Staff Working Group also consulted with the Municipal Engineers Association. This has entailed coordinating initial comments to the Ministry to ensure alignment with other industry experts (other municipalities in Ontario).

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Note: The Municipal Engineering Association is a volunteer body of Ontario's Engineers, responsible for amending the Municipal Class Environmental Assessment guiding document, auditing the Municipal Class Environmental Assessment process, and reporting on its use, as well as lobbying the Province on behalf of Ontario's of Environmental Assessment project proponents (i.e., municipalities and private developers).

The City's Environmental Assessment Staff Working Group intends to work with the Municipal Engineers Association's Environmental Assessment Reform Working Group in the development of a new process to be used by Ontario municipalities for those projects that will not be subject to the proposed regulation (Municipal Project Assessment Process), should the regulation be enacted.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

The City of Hamilton has been applying the Municipal Class Environmental Process since its inception in 2000.

The Municipal Class Environmental Assessment was created to ensure environmentally sound planning for municipal infrastructure, which has been proven effective over twenty years of complying with the *Environmental Assessment Act*. It provides:

- A practical mechanism for proponents to deliver municipal services efficiently, economically, transparently, and responsibly;
- A consistent, streamlined and easily understood process for planning and implementing infrastructure project;
- The flexibility to tailor the planning process to a specific project taking into account the environmental setting, local public interests, and unique project requirements; and,
- Process maps outlining clear expectations of the planning process including point of public engagement at key decision-making steps etc.

The Environmental Assessment Staff Working Group is generally supportive of the proposal to modernize the Municipal Class Environmental Assessment process. Efforts to improve process efficiency are encouraged and supported; however, there are concerns with certain aspects of the proposed regulation should the Ministry's proposal be enacted as currently written as follows:

1. *Exclusion of Roads and some Water / Wastewater / Stormwater Projects from the proposed Municipal Project Assessment Process*

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Exclusion of projects from the proposed regulation has both negative and positive implications. The following is a list of negative implications if projects are excluded from the infrastructure planning process:

- Inability for the City to rely on the currently approved provincial planning process to ensure the City can maintain a high level of consistency and transparency in decision making;
- Inability to rely on the current approved provincial process used for justification in defending land acquisitions through expropriation and dedications through the land development process. At present, a robust consultation and evaluation of alternatives process is used to support these sometimes-controversial requirements;
- Potential project delays, increases in scope and cost throughout the project cycle due to varying approaches to infrastructure planning amongst consultants and municipalities; and,
- Inability for stakeholders to appeal projects based on impacts to Indigenous Rights and Treaties which does not align with City's reconciliation efforts and relationship building with Indigenous Nations.

Conversely, not including certain project types in the proposed regulation provides an opportunity to streamline the infrastructure planning process for these project types by:

- Removing duplication of technical studies over the course of a project from the planning stages to its implementation;
- Removing duplication of process where higher order roadways (e.g., collector and arterial) are planned as part of the Planning Act application process; and,
- Providing appeal rights for road projects when they are planned as part of a Planning Act application (note this would offset the proposed removal of appeal rights related to Indigenous Rights and Treaties noted above)

2. *Other Considerations*

The following highlights other considerations for Council if the proposed changes are enacted as currently written:

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- Without an alternative process for projects not included in the Municipal Planning Assessment Process, the proposed regulation as currently drafted does not align with the following Council priorities:
 - Priority #1 - Sustainable Economic and Ecological Development – the proposed regulation would diminish the ability to assure consideration of climate change mitigation / adaptation without legislative support or adequate internal policies; and,
 - Priority #3 - Responsiveness and Transparency – the proposed regulation would diminish the ability to assure meaningful and transparent public participation without legislative support or adequate internal policies.

- To ensure consistency in the approach for infrastructure projects excluded from the proposed Municipal Project Assessment Process regulation (e.g., road projects), the City would need to develop a new process for staff to use (and in some cases for developers). Despite this concern, there is an opportunity for the City to tailor a new process specific to City needs when planning for infrastructure, based on the anticipated new guidance document currently being developed by the Municipal Engineers Association. While the framework will be determined by the Municipal Engineers Association’s guidance document, additional City staff time and resources will be required to ensure that City of Hamilton specific needs are addressed in our own policy.

- The following Official Plan policies would need to be amended through a future update to the City’s Official Plans to refer to the new Municipal Planning Assessment Process. The impacted Policies include:

Urban Hamilton Official Plan	Rural Hamilton Official Plan
Volume 1 Chapter A Section 1.6 Volume 1 Chapter E Section 5.3 Volume 1 Chapter F Section 12.5 Volume 2 Chapter B-6 Section 6.5 Volume 2 Chapter B-7 Section 7.4.13.6 i), 7.4.14.1 j), iii), 7.5.110.13, 7.5.12.1, 7.5.13.2, and 7.5.13.3	Volume 1 Chapter C Section 5.2.4

- Some water / wastewater / stormwater projects included in the new Municipal Project Assessment Process regulation would result in an expedited review by the Ministry; however, the field work, and key public, stakeholder and Indigenous Nations engagement and decision-making would need to take place prior to contact with the Ministry. This is not anticipated to result in a shorter overall project schedule or decrease of project cost.

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- The proposed regulation includes a transition provision for on-going projects to either continue as planned or transition to follow the new Municipal Project Assessment Process; however, it does not provide any transition mechanisms to ensure that the City will receive adequate amount of time to develop a new process if the proposed Municipal Project Assessment Process regulation is enacted and the Municipal Class Environmental Assessment is revoked.

Based on the foregoing, staff recommend that the City establish its own infrastructure planning document that provides guidance for a process to ensure that all legislative requirements continue to be met, and to maintain consistency and transparency in decision-making, should changes to the Municipal Class Environmental Assessment be enacted as proposed.

While there has been no final decision from the Ministry yet, the Environmental Assessment Staff Working Group will continue to engage with the Ministry concerning the proposed changes. The Working Group also intends to work with the Municipal Engineers Association's Environmental Assessment Reform Working Group in the development of a new process to be used by Ontario municipalities for those projects that will not be subject to the proposed regulation, should the regulation be enacted. Once final changes are announced, Staff will report back to the General Issues Committee with a Recommendation Report on next steps, if the development of a City policy/process is required.

ALTERNATIVES FOR CONSIDERATION

1. Council may amend the staff-level comments attached as Appendix "A" to Report PED24098/PW24029 that were provided to the Ministry or supplement the staff-level comments with additional comments. It should be noted that it is unknown if the Ministry will accept additional comments outside of the commenting period.
2. Council may direct staff not to initiate the development of the appropriate internal process and policies for transparent planning of infrastructure projects subject to the current Municipal Class Environmental Assessment process, should the Municipal Project Assessment Process be enacted by the Province of Ontario. Staff advise against this option to ensure consistent and transparent decision-making and that requirements set through federal, provincial, and municipal policies are clearly captured and met during project development.

Council may direct staff to not assess the staffing or process changes that may result from the proposed regulation ERO-019-7891. Staff advise against this option to ensure the City will be able to implement the proposed changes through

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the Municipal Project Assessment Process and ensure compliance with other relevant pieces of legislation.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" to Report PED24098/PW24029 - Letter from City of Hamilton to Ministry of the Environment, Conservation and Parks on Proposed Changes to Municipal Class Environmental Assessment, March 15, 2024.