Welcome to WeirFoulds' 2022 Municipal Infrastructure Projects Update

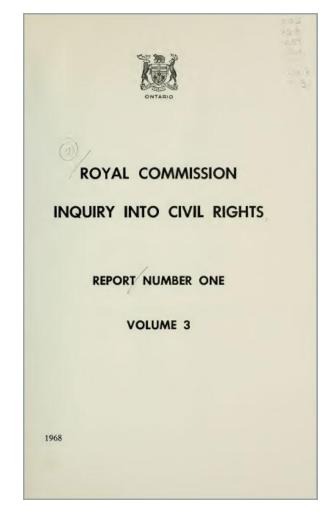
New Legislation and Provincial Initiatives Impacting Projects

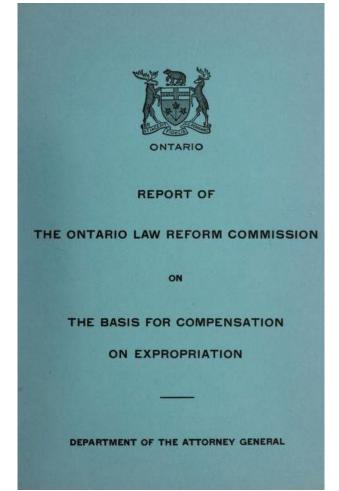
April 25, 2022

The information and comments herein are for general information and are not intended as advice or opinion to be relied upon in relation to any circumstances. For application of the law to specific situations, you are encouraged to seek legal advice.

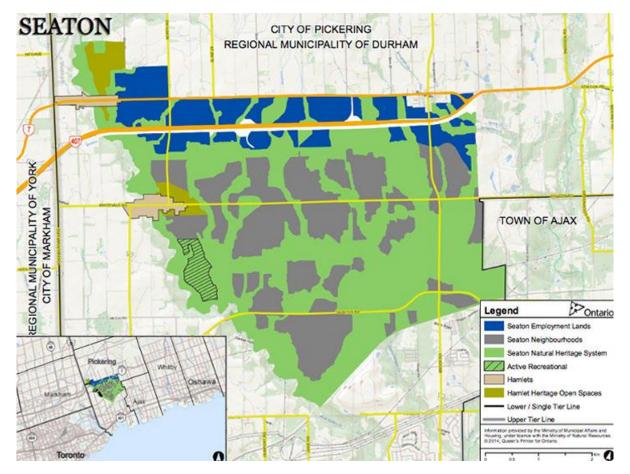
Chris Tzekas WeirFoulds LLP 416.947.5039 ctzekas@weirfoulds.com Abbey Sinclair
WeirFoulds LLP
647.715.7065
asinclair@weirfoulds.com

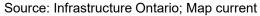










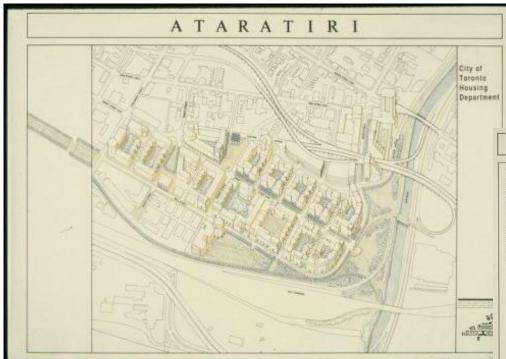




Parkway Belt West Plan







ATARATIRI

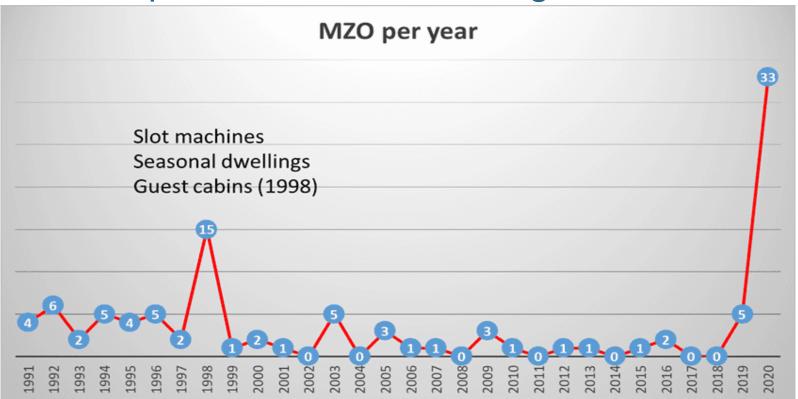
City of Toronto Housing Department

The state of the stat

City of Toronto Archives.

Source: Ataratiri drawings City of Toronto Housing Department, Brown & Storey, Architects ca. 1988 City of Toronto Archives Series 1465, File 698, Item 23; Series 1465, File 698, Item 4

Spike in Minister's Zoning Orders



Source: Environmental Defence



Building Transit Faster Act, 2020

- Elimination of 'Hearings of Necessity' for priority projects
- Designation of 'Transit Corridor Lands'
- Corridor control / 'Corridor Development Permits'
- Access for 'Preview Inspections' and Obstruction Removals
- Utility Relocation Timelines
- Municipal Service and Right of Way Access





COVID-19 Economic Recovery Act, 2020

Omnibus legislation amended 20 statutes, including:

- Environmental Assessment Act to introduce a new expedited environmental assessment process
- Planning Act to among other things provide the Minister with enhanced order making power under section 47, for projects and lands that are not in the Greenbelt Area as defined in the Greenbelt Act, 2005 (now referred to as "enhanced MZOs")
- Building Code Act, 1992 to simplify the regulation-making process and transfer regulation making authority from the provincial Cabinet to the Minister of Municipal Affairs and Housing
- Public Transportation and Highway Improvement Act to simplify the expropriation process; and enact the Transit-Oriented Communities Act, 2020



Transit-Oriented Communities Act, 2020



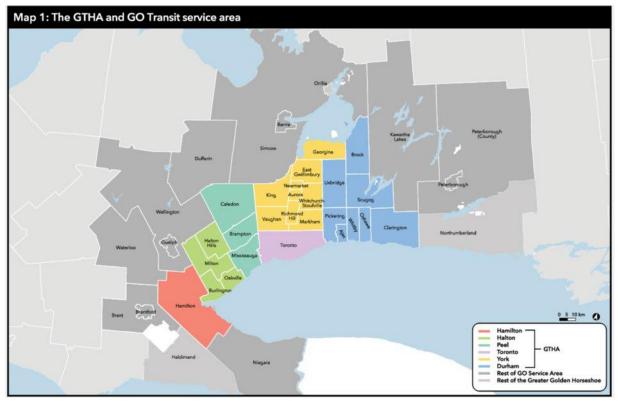
Source: Infrastructure Ontario

Section 1(e) defines a "transitoriented community project" to mean:

"... a development project of any nature or kind and for any usage in connection with the construction or operation of a station that is part of a priority transit project, and includes a development project located on transit corridor land within the meaning of the *Building Transit Faster Act*, 2020..."



Ontario Rebuilding and Recovery Act, 2020

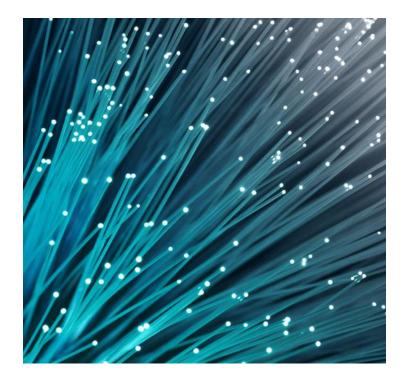






Supporting Broadband and Infrastructure Expansion Act, 2021

- Expanded municipal service and right of way access
- MZOs not required and are deemed to never have been required to be consistent with the Provincial Policy Statement (unless in Greenbelt Area).





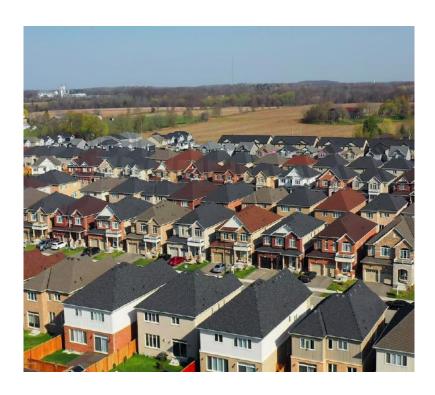
Accelerating Access to Justice Act, 2021

Significant amendments to the expropriation and dispute resolution process, including:

- Expanded exemption for 'Hearings of Necessity' for additional projects
- Creation of the Ontario Land Tribunal ("OLT")
- Elimination / amalgamation of the Board of Negotiation
- Costs under s. 32 of the Expropriations Act
- Statutory interest under s. 33 of the *Expropriations Act*



More Homes for Everyone Act, 2022



- Amendments to ss. 42 and 51.1 of the Planning Act to provide alternative parkland dedication requirements for land designated as 'transit-oriented community land' under the Transit-Oriented Communities Act, 2020.
- Ability of the Province to declare land in a transit-oriented community that has easements or below-grade infrastructure as being "encumbered", with the effect that the land must be conveyed for parkland or other public recreational purposes.
- Introduction of the 'Community Infrastructure and Housing Accelerator'



New Legislative Landscape

Expedited process for access and property acquisitions/expropriations

Broadened purpose for property acquisitions/expropriations

Ability to capture enhanced value of private property to fund projects

New utility relocation timelines and municipal obligations regarding municipal service and right of way access

Increased provincial role with respect to land use planning for developments related to projects

Amended dispute resolution process and statutory requirements for the determination of compensation



Q & A



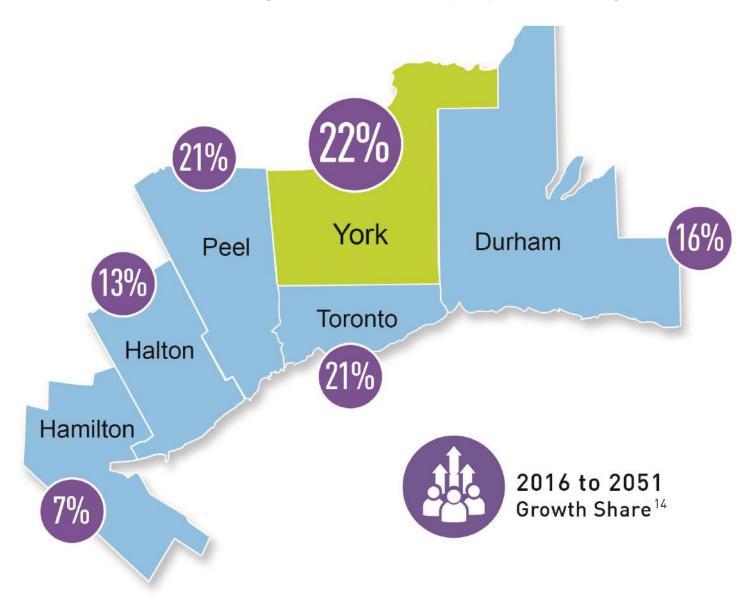
Building a Subway Under the New Provincial Framework

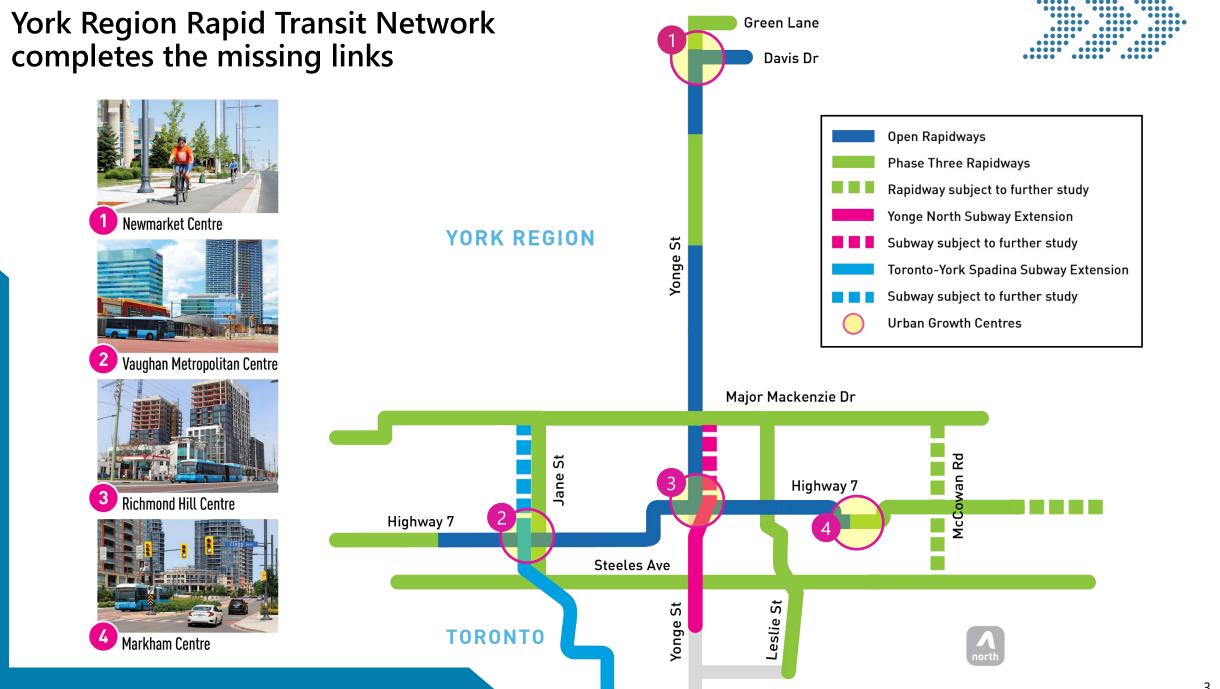
WeirFoulds LLP Webinar Municipal Infrastructure Projects Update Paul May, EVP, Project Implementation (retd.) Rose Suppa, VP, Project Implementation

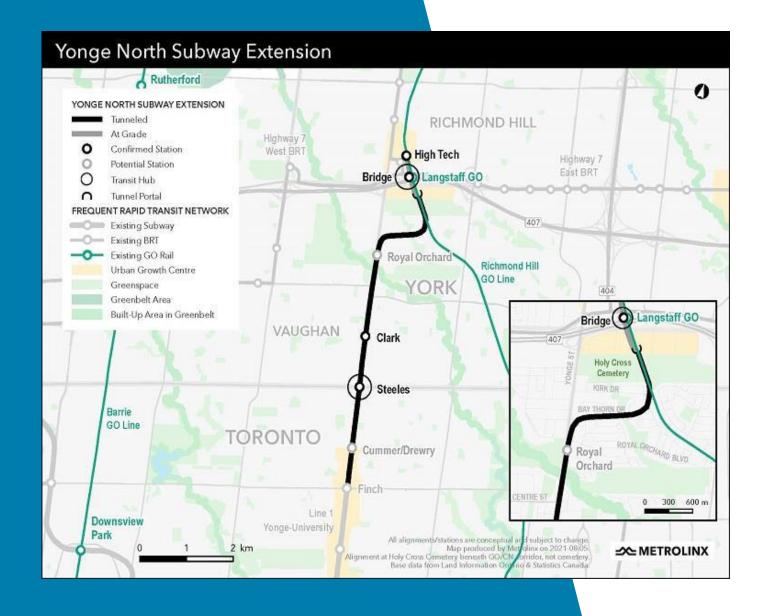


York Region will experience the largest share of population growth





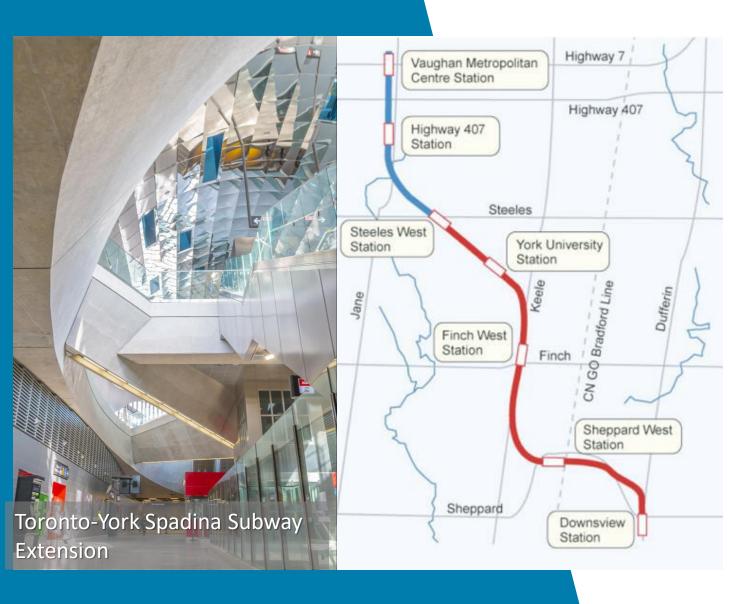




Yonge North Subway Extension is Council's #1 Priority

- 8 km extension
- > 4 new stations
- Bridge and High-Tech stations at grade
- Potential for 2 additional stations
- Maintenance and storage facility north of High Tech Station
- To be built by Metrolinx





Toronto York Spadina Subway Extension

- Opened in December 2017
- > 7.6 km in length
- All underground
- ▶ 6 new stations
- 2 stations in York Region and one on the border
- ➤ Built by the TTC



BILL 171

AN ACT TO ENACT THE
BUILDING TRANSIT FASTER
ACT, 2020.



The purpose of the Act is to expedite the delivery of the four priority transit projects for the Greater Toronto Area.

Building Transit Faster Act, 2020

Five main parts to the Act:

- 1. Corridor Development Permits
 - ➤ Similar to authority granted to TTC for TYSSE
- 2. Ability to Enter Lands
 - ➤ Helps to Streamline Process
- 3. Land Assembly
 - Removes Hearing of Necessity
- 4. Utility Company Cooperation
 - Obligating utility companies to certain timelines
- 5. Municipal Service and ROW Access
 - > Focus of Presentation





BTFA: Benefits

- Streamline and expedite project implementation
- > Reduces risk of delay
- Provides certainty to potential project bidders
- Helps to remove conflicts from other developments
- > Stronger coordination with utility companies

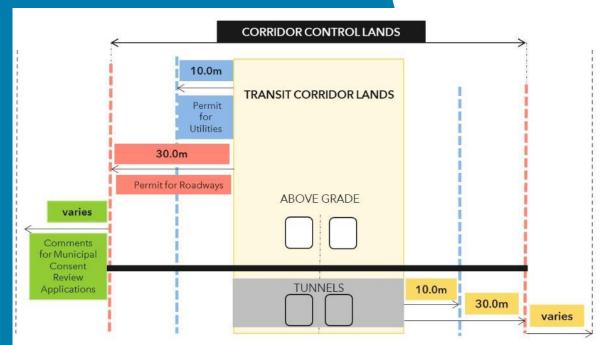


Scarborough Subway Extension tunnel boring machine

(Source: Ground Engineering)

BTFA: Potential Implications

- Province has acknowledged that the usual processes generally work well
- Province will only exercise authority if necessary to mitigate potential delay
- Act provides broad authority to temporarily close roadways or use, access or modify municipal services
- Final decisions rest with Province/Metrolinx
- Process is evolving full implications may not be known for some time
- Project delivery agreements between York and Province still under negotiation





BTFA: Potential Challenges

- Coordination across multiple municipal & Provincial jurisdictions
 - Toronto, Markham, Vaughan Richmond Hill and York Region
 - MTO, MOI, Metrolinx, IO
- Need for enhanced level of municipal coordination
- Multiple "step-by-step" agreements vs. one "allencompassing" agreement
- ➤ Balance Province's need to implement project while recognizing municipal responsibility for infrastructure







BTFA: Potential Challenges (cont'd)

- Defining future operating responsibilities and potential impact on design
- Responsibility for longer term implications of temporary access authority
- Ensuring coordination of utility relocations with municipal consent process



Transit-Oriented Communities Act, 2020

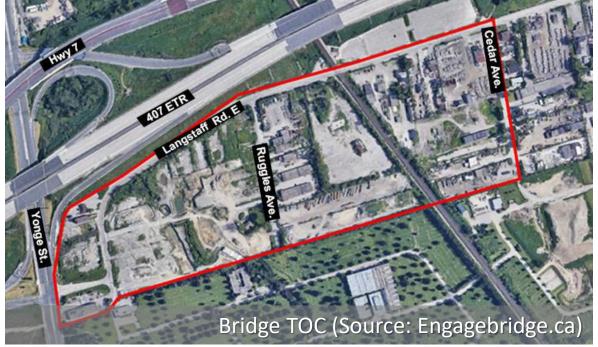
Three main parts to the Act:

- Province can designate TOC sites with broad authority
 - Minister's Zoning Order
- > Provincial authority to enter into 3rd party agreements
 - Developers / Private Landowners
- Development process led by the Province
 - Removes Regional and local planning approval process

Bridge Station TOC



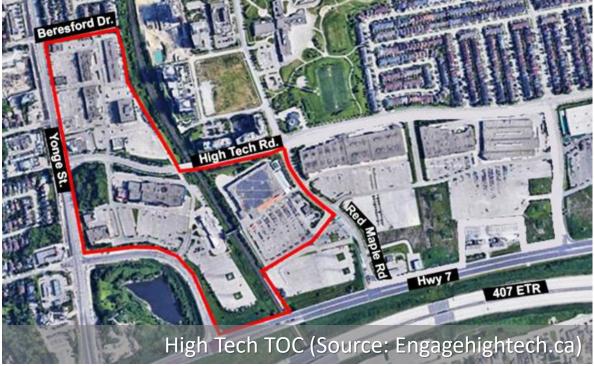




High Tech Station TOC









Transit Oriented Communities: Goals

- ➤ Many TOC goals are consistent between the Province, Region and local municipalities:
 - Higher density around stations
 - Developing complete vibrant communities
 - Increase transit ridership and reduce traffic congestion
 - Increase housing supply and jobs with access to transit
 - Positive value capture for the Province to maximize transit investment while reducing taxpayer burden



TOC: Potential Implications

1. Mis-alignment with secondary plan visions

- Magnitude of proposed population and densities
- Alignment with Regional/local plans need for additional infrastructure
- Ratio and mix of uses to ensure live/work balance and create a destination
- Adequate parks and community services/amenities
- Fine-grained street network
- Affordable housing

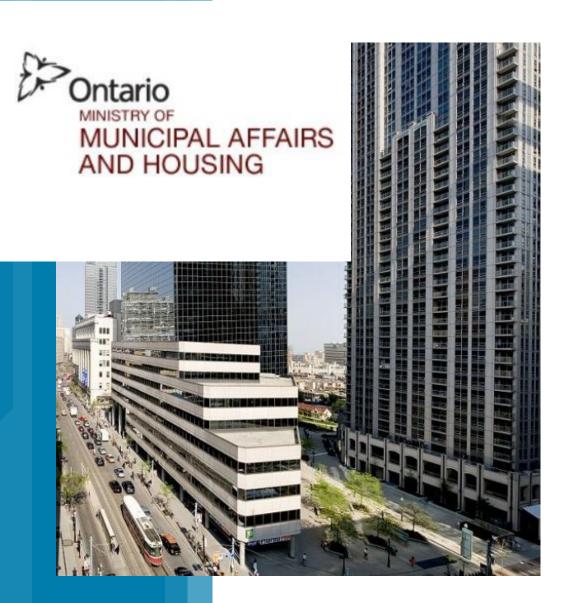
2. Provincial TOC process

- Engagement with Councils and the public
- Minister Zoning Orders
- Agreements

3. Financial implications and framework

- Development charges / community benefits
- Implementation of TOC and cost overruns





MZO: Potential Implications

1. MZOs:

- Permitted through Section 47 of the Planning Act
- Issued by the Minister of Municipal Affairs and Housing
- Includes permitted uses, zoning requirements, terms of use, etc.
- No public notice or hearing required
- Not subject to appeal before the LPAT

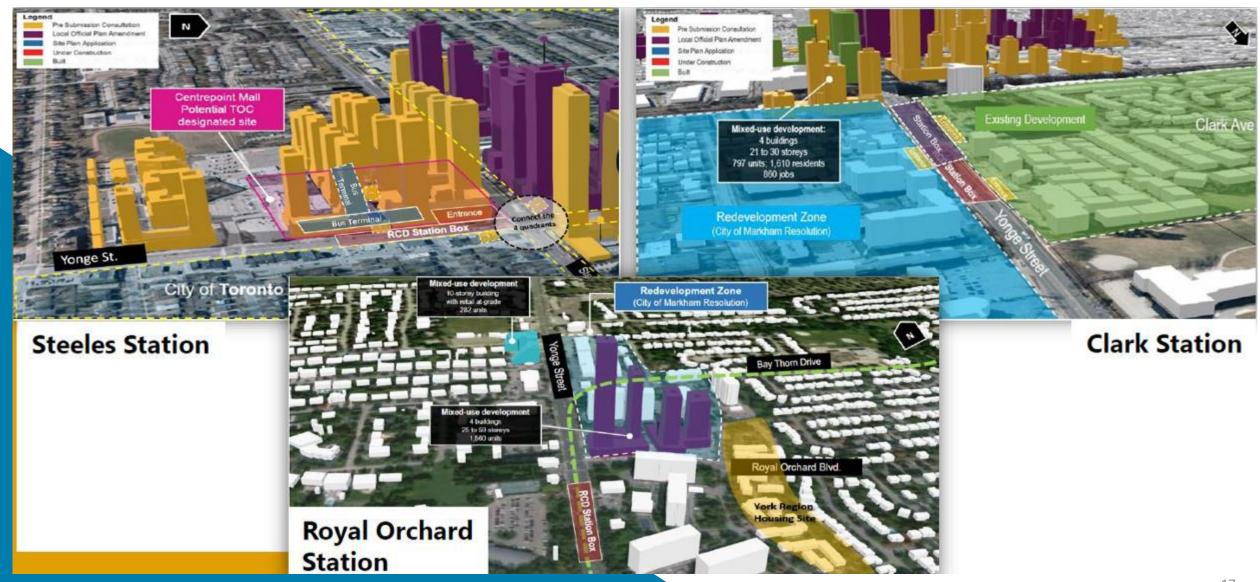
2. Enhanced MZOs:

Bill 197 – COVID-19 Economic Recovery Act, 2020 allows the Minister to make "Enhanced MZOs" to "specified land"

- May override municipal Planning Act authority for site plan approval
- Requires various potential downstream agreements/MOUs between the landowner and the municipality concerning certain site plan matters

Potential for Other TOC Sites





thank you

Paul May

paulmay.yr@gmail.com

Rose Suppa

rose.suppa@york.ca













@VivaNext

Climate Resilient Infrastructure

How Can Municipalities Protect Their Infrastructure and Communities From Climate-Related Disruptions?

April 25, 2022

The information and comments herein are for general information and are not intended as advice or opinion to be relied upon in relation to any circumstances. For application of the law to specific situations, you are encouraged to seek legal advice.

Janet Bobechko, Certified Specialist Environmental Law WeirFoulds LLP 416.947.5073 jbobechko@weirfoulds.com



What are the impacts of climate change today?

Severe Flooding

Canada: extreme floods show climate threat as experts warn of further tumult

Thousands evacuated from eastern Canada as Justin Trudeau admits urgent action necessary to improve climate preparedness



B.C. floods caused at least \$450M in damage, insurance bureau says









Overall costs expected to be higher because many owners don't have flood insurance

Brieanna Charlebois - The Canadian Press -Posted: Dec 09, 2021 3:57 PM PT | Last Updated: December 9, 2021





Increasing Wildfires

A look back at the 2021 B.C. wildfire season











Though only the third worst wildfire season on record, many fires burned dangerously close to communities

Akshay Kulkarni · CBC News · Posted: Oct 04, 2021 5:00 AM PT | Last Updated: October 4, 2021



Second western Canada town destroyed by 'exceedingly aggressive' wildfire

- Residents of Monte Lake, British Columbia, told to evacuate
- Village of Lytton devastated by wildfire last month



■ The charred remnants of homes and buildings in Lytton last month. Two people were killed in the Lytton blaze and most of the town destroyed. Photograph: Jennifer Gauthier/Reuters

Leyland Cecco in Toronto

Fri 6 Aug 2021 20.14 BST



Extreme Cold and Snowstorms

B.C. braces for more snow, extreme cold

By The Canadian Press I News I January 4th 2022





Manitoba storm could be 'worst blizzard in decades,' Environment Canada says











Stock up on needed supplies and medications now and don't plan to travel, alert says



Darren Bernhardt · CBC News · Posted: Apr 11, 2022 8:13 AM CT | Last Updated: April 11





Council of Canadian Academies "Canada's Top Climate Change Risks" (2019)

12 Major Risks

- 1. Agriculture and food
- 2. Coastal communities
- 3. Ecosystems
- 4. Fisheries
- 5. Forestry
- 6. Geopolitical dynamics
- 7. Governance and capacity
- 8. Human health and wellness
- 9. Indigenous ways of life
- 10. Northern communities
- 11. Physical infrastructure
- 12. Water

Most Acute Risks

- 1. Physical infrastructure
- 2. Coastal communities
- 3. Northern communities
- 4. Human health and wellness
- 5. Ecosystems
- 6. Fisheries



Now or Never: UN IPCC Mitigation of Climate Change Report (2022)



Key Findings:

- Global GHG emissions continue to rise, but in pathways that limit warming to 1.5 degrees C, they peak before 2025
- No room for building new fossil fuel infrastructure
- 3. Rapid transformations across all systems required to avoid worst climate impacts
- 4. Changes in lifestyle/behaviours can significantly mitigate climate change
- 5. Limiting global temperature rise to 1.5 degrees C impossible without carbon removal
- 6. Climate finance for mitigation must be 3-6x higher by 2030 to limit warming to below 2 degrees C



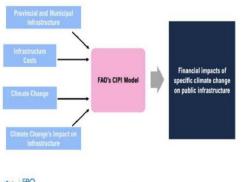
Over 516 Canadian Municipalities Declared Climate Emergencies (2019)

1.	Kingston (March 6)	20.	Peterborough (September 23)
2.	Hamilton (March 27)	21.	Woolwich (September 24)
	,	22.	Wilmot Town Council (September 24)
3.	London (April 23)	23.	Kenora (September 17)
4.	Burlington (April 23)	24.	Toronto (October 2)
5.	West Nipissing (April 23)	25.	Wellesley Town Council (October 8)
6.	Ottawa (April 24)	26.	Barrie (October 7)
7.	St. Catharine's (April 29)	27.	Waterloo (October 9)
8.	Halton Hills (May 6)	28.	Peel Regional Council (October 24)
9.	Greater Sudbury (May 28)	29.	Brantford (November 13)
10.	Prince Edward County (May 28)	30.	Collingwood (October 28)
11.	Vaughan (June 4)	30. 31.	Central Elgin (October 28)
12.	Brampton (June 5)		9 (
13.	Sarnia (June 17)	32.	Windsor (November 18)
14.	Mississauga (June 19)	33.	Meaford (November 18)
15.	Kitchener (June 24)	34.	Cobourg (November 25)
16.	Oakville (June 24)	35.	Brant County (November 26)
10. 17.	,	36.	Tecumseh Town Council (December 10)
	Chatham-Kent (July 15)	37.	Amherstburg Town Council (December 11)
18.	King Township (July 8)	38.	Pickering (December 16)
19.	Milton Town Council (July 22)		3 (



Financial Accounting Office, Costing Climate Change Impacts to Public Infrastructure Report (2019)

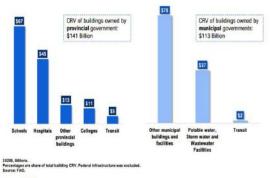
The FAO's modelling framework



Scope of Public Infrastructure Examined in the CIPI Project



Provincial and municipal governments manage \$254 billion in buildings and facilities





FAO FAO

Costing Climate Change Impacts to Public Infrastructure | fao-on.org | 8

FAO

Costing Climate Change Impacts to Public Infrastructure | fao-on.org 29



Ontario's Climate Change Impact Assessment (2020)

- First ever multi-sector climate change impact assessment
- Strengthen Ontario's resilience to climate change impacts
- Aim to understand how climate change will affect:

Communities

Critical infrastructure

Economies

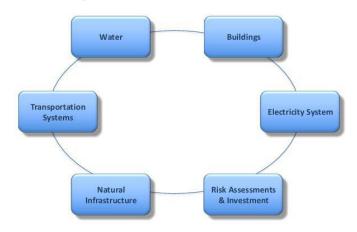
Natural environment



ONEIA Resilient Infrastructure Report (2021)

Exploring the opportunities of climate resilient infrastructure

The ONEIA Working Group on Climate Resilient Infrastructure examined six (6) key areas in which climate change will present both challenges and opportunities for Ontario's society, communities and industry. It outlined the types of impacts these factors are likely to produce and made specific recommendations for consideration as we mitigate them.



Key Recommendations:

- Align National Building Code and provincial codes to changing reality
- 2. Develop new programs to support whole building energy consumption and peak demand improvements
- Create Ontario Digitization policy supporting a decentralization policy for small, rural and northern communities
- 4. Changes to the *Planning Act* and other legislation
- Incorporate international guidance into the Climate Risk Assessment for Ontario



What Can/Should Municipalities do?

Adaptation and mitigation

PRIME STRATEGY & PLANNING

Two integrated approaches to climate change

Energy Systems Mitigation Disaster Management Transportation & Business Continuity Actions to reduce GHG emissions that cause Energy Efficiency climate change Education Infrastructure Conservation Upgrades Natural Environment Flood Protection

Adaptation

Actions to manage the risks of climate change

SOURCE: HURON COUNTY CLIMATE CHANGE ACTION PLAN



Municipal Responses to Climate Change

Growth management	Increase intensification and density, mixed-use communities, support transit systems		
Transportation	Promote carpooling, transit, walking, cycling		
Energy	Conservation, renewable and district energy sources, use waste before final disposal		
Natural hazards	Resilience to surface water, groundwater, stormwater, flooding		
Heritage	Protect/restore and improve diversity/connectivity of natural features,		
Agriculture	Improve economic viability of farming and protect land suitable for agriculture		
Water	Use watershed/sub-watershed planning, analyze risk of public infrastructure to water resources		



Tools for Local Climate Action

Municipal Tools for Climate Change Adaptation and Mitigation:

- Official planning documents
- Strategic plans
- Zoning
- Project-based development management
- Guidelines for design
- Integrated asset management
- Environmental assessments
- Ensuring investment in infrastructure aligned with growth, inclusion and equity



Integrate Climate Considerations Into Day-to-Day Municipal Governance and Operations

Build awareness among elected officials, staff, and community:

- Better understand and respond to localized impacts
- 2. Leverage ongoing decisions and processes
- Identify the need for other planning

Access the Canadian Centre for Climate Services (CCCS) for climate data and integration resources:

- Development applications
- Infrastructure capacity and design standards
- Restoring natural assets
- Public tenders



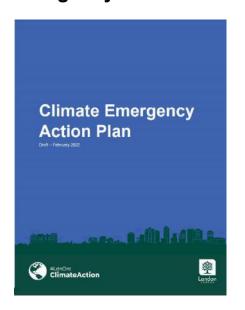


Municipalities Committed to Net-Zero

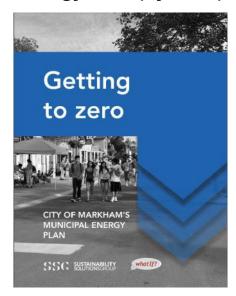
City of Toronto's Net Zero Existing Buildings Strategy



London Climate Emergency Action Plan



Markham Municipal Energy Plan (by 2050)





AMO Climate Change Series: Municipal Role in Environment Protection



Five Papers to Date:

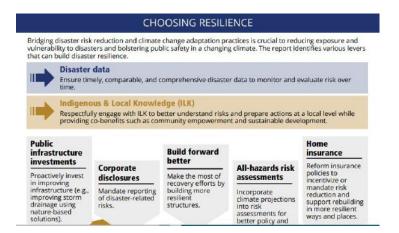
- Flooding, Climate Change and Municipal Response (October 2020)
- 2. The Environmental Footprint of Telecommunications (February 2021)
- Building Retrofits and Deeper Energy Savings (April 2021)
- Recommendations for the Diversion of Food and Organic Waste in Ontario (August 2021)
- 5. Using Distributed Energy Resources to Fight Climate Change (September 2021)



Council of Canadian Academies, "Building a Resilient Canada" (2022)

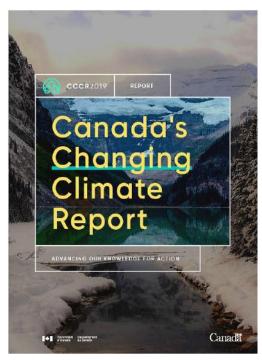
Key Findings:

- Climate change adaptation must be fully integrated into disaster risk reduction (DRR) activities, policies and tools to optimize the efficiency of public investments in disaster resilience
- Must overcome barriers like disciplinary and departmental silos, conceptual and terminological differences, and jurisdictional misalignments, while accounting for cognitive biases
- 3. Must adapt information systems to the needs of decision makers and flexible funding, financing and insurance arrangements to support proactive investment
- 4. Whole society collaboration and government mandates are necessary





Recent Reports / Future Resources











Opportunities to Build Forward Better

Assess infrastructure priorities

Understand risks in relation to priorities

Consult resources to proactively address risks

Q & A

References

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"Canada in a Changing Climate: Advancing our Knowledge for Action" *Government of Canada*: https://www.nrcan.gc.ca/climate-change-adapting-impacts-and-reducing-emissions/canada-changing-climate-advancing-our-knowledge-for-action/19918

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https://www.markham.ca/wps/wcm/connect/markham/0e5eb0e0-a46e-4560-8fa8-6c49f68581cc/MEP-CoverTOC.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ROOTWORKSPACE.Z18_2QD4H901OGV160QC8BLCRJ1001-0e5eb0e0-a46e-4560-8fa8-6c49f68581cc-msYzq6X

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Clea Schumer et al, "Key Takeaways from the 2022 IPCC Climate Change Mitigation Report" (4 April 2022) World Resources Institute: https://www.wri.org/insights/ipcc-report-2022-mitigation-climate-change

Climate Change 2022: Mitigation of Climate Change. Working Group III Contribution to the IPCC Sixth Assessment Report: https://www.ipcc.ch/report/ar6/wg3/

Cloe Logan, "How a small Ontario Township is taking climate action – one building at a time" (15 July 2021) *National Observer:* https://www.nationalobserver.com/2021/07/15/news/small-ontario-township-climate-action-low-carbon-building



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Council of Canadian Academies (CCA), "Building a Resilient Canada" (13 January 2022): https://cca-reports.ca/reports/disaster-resilience/

Council of Canadian Academies (CCA), "Canada's Top Climate Change Risks" (4 July 2019): https://cca-reports.ca/reports/prioritizing-climate-change-risks/

Institute for Catastrophic Loss Reduction et al, "The Protocol" (2020): https://pievc.ca/protocol/

"Integrating Climate Considerations: Governance and Operations" *Federation of Canadian Municipalities* (2022): https://fcm.ca/en/resources/mamp/integrating-climate-considerations-governance-and-operations

Peel 2041 Regional Official Plan Review, *Growth Management Focus Area: Policy Directions Report* (May 2020): https://www.peelregion.ca/officialplan/review/pdf/growth-management-policy-directions-report.pdf

Prime Strategy & Planning presentation at the Urban Land Institute (April 2022)

"Resilient infrastructure. Resilient economy. Resilient future. Exploring Ontario's climate vulnerability and the case for resilience" (January 2022), ONEI: https://www.oneia.ca/resources/Documents/media%20release%20re%20climate%20change%20report%20FINAL.pdf



Health Break

Municipal Infrastructure Projects Update Challenges in Municipal Construction Projects

April 25, 2022

The information and comments herein are for general information and are not intended as advice or opinion to be relied upon in relation to any circumstances. For application of the law to specific situations, you are encouraged to seek legal advice.

Jeff Scorgie WeirFoulds LLP 416.619.6288 jscorgie@weirfoulds.com Jennifer Charles Legal, Realty and Court Services | City of Guelph 519.822.1260 Ext. 2452 jennifer.charles@guelph.ca



Introduction

Background:

- Municipal construction projects vary significantly in size, scope, complexity.
- Prevailing challenges: fiscal constraints, staff capacity, unpredictable market conditions, inflexibility.

Overview:

- Common risks and challenges in municipal construction projects.
- Tools/strategies available at various stages in project delivery.
- Timely things to consider in the current economic climate.



Risk Analysis

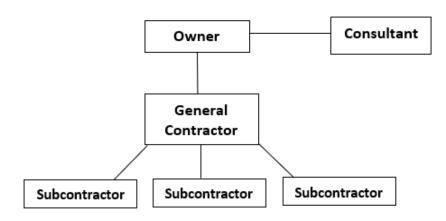
- First step in managing risk is identifying risk.
- Benefits and challenges of standardized processes.
- Disconnect between risk identification as a procedural step and risk allocation in contract.
- Project delivery method is a fundamental decision for risk allocation framework.



Common Project Delivery Methods

Design-Bid-Build

- Owner retains design consultant to prepare drawings and specifications.
- Construction contractors bid on pre-designed project.
- Typically awarded on a low-bid basis. May be combined with pre-qualification process.
- Standard form available CCDC 2 Stipulated Price Contract.
- Ability to modify standard form through supplementary conditions.





Common Project Delivery Methods (Cont.)

Design-Bid-Build

Benefits:

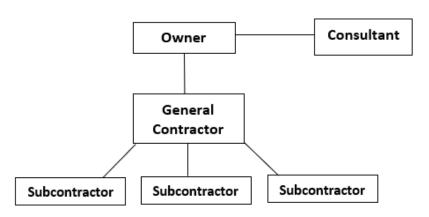
- Familiar to both municipalities and contractors, and widely used.
- Stipulated price provides a degree of up-front cost certainty.
- Good choice for relatively simple projects, where design completed prior to tender.

Drawbacks:

- Contractor prices in risk premium. In current economic climate, contractors and subcontractors unwilling/unable to commit to pricing.
- Contractor not involved in design, which can result in costly changes and delays.

Consider:

Cost escalation clauses.

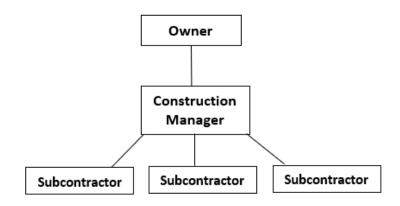




Common Project Delivery Methods (Cont.)

Construction Management

- Owner retains construction manager (CM) to provide pre-construction advisory services and carry out the construction.
- During construction, CM retains subcontractors similar to the role of general contractor under traditional model.
- Cost-plus pricing structure. Ability to convert to guaranteed maximum price.
- Standard form available CCDC 5B Construction Management Contract for Services and Construction. Can modify with supplementary conditions.





Common Project Delivery Methods (Cont.)

Construction Management

Benefits:

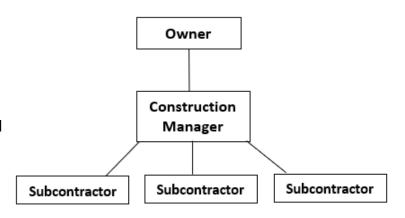
- More collaborative relationship between owner and CM.
- Beneficial for complex projects with greater risk of dispute between designer and builder.
- Potential for innovation/cost-savings by having contractor involved during design.
- Construction can proceed in stages prior to completion of all designs.

Drawbacks:

- Less up-front cost certainty. Can be difficult to implement conversion to GMP or fixed price.
- CM fee as a percentage of construction cost does not incentivize cost savings.

Consider:

 Ways to incentivize cost-savings or provide greater cost certainty (fixed CM fee, fixed general conditions, alternative contract structuring that allows for GMP from outset)





Supply and Novation for Long-lead Items

- Owner can enter into supply agreement for long-lead items such as materials and major equipment.
- Owner, supplier and general contractor enter into a novation agreement.
- Supplier becomes a subcontractor of general contractor for the construction project into which the materials/equipment will be incorporated.
- Benefits:
 - Mitigate supply risk.
 - Mitigate anticipated delays on construction project.
 - Ability to lock-in pricing.
- Drawbacks:
 - Coordination challenge in procuring equipment prior to tendering construction project.
 - Owner bears risk under the supply agreement until it is successfully novated.



Challenges During Construction

Site Conditions

- Unforeseen or materially different site conditions can result is significant costs and delays.
- Challenges inherent in designing based on background reports (i.e. geotechnical) with limitations and disclaimers.
- Allocation of risk of unforeseen or materially different site conditions.





Challenges During Construction (Cont.)

Force Majeure – Excusable Delays

- Scope
- Notice requirements
- Current trends/considerations

Supply Chain Disruptions

- Material price escalations
- Challenges for fixed price contracts
- Potential solutions? (alternative contracting models, price escalation clauses)





Challenges During Construction (Cont.)

Liquidated Damages

- Genuine pre-estimate of damages owner will likely incur if scheduled date is not met.
- How to determine the amount? How to apply them?
- · Benefits:
 - Compensate owner for impact of delays.
- · Drawbacks:
 - Contractors make allowances for liquidated damages in bid price.
 - Subject to challenge.
- Consider:
 - Limitation of liability
 - When and why to consider it.
 - How to determine reasonable cap.
 - Exclusions.





Dispute Resolution

Key considerations for project contracts:

- Consider interaction between Consultant findings and claim submissions
- Consider using a staged DRP (e.g. negotiation, mediation, arbitration/litigation)
- Consider pros and cons of arbitration versus litigation
- If the DRP contemplates arbitration, various issues to consider including: number of arbitrators, appointment, seat, joinder of third parties, staying of lien proceedings, etc.
- Consider interaction with statutory adjudication process



Closing Comments

- Risk analysis early and ongoing.
- Risk distribution through project delivery model and contract terms.
- Uncertain times test established practices.
- Importance of project governance.



Q & A



Unlawful Bonusing

April 25, 2022

The information and comments herein are for general information and are not intended as advice or opinion to be relied upon in relation to any circumstances. For application of the law to specific situations, you are encouraged to seek legal advice.

Bradley McLellan
WeirFoulds LLP
416.947.5017
bmclellan@weirfoulds.com



Section 106 of the Municipal Act, 2001

The Anti-Bonusing Provision

Article

• Kussner, Barnett H. "The Anti-Bonusing Provision of the Municipal Act in the Context of Complex Commercial Transactions" in Ontario Bar Association, Annual Institute, Municipal Law I - Cool Topics in Municipal and Planning Law, February 9-11, 2012



Cases under Section 106

- <u>Friends of Lansdowne Inc.</u> v. <u>Ottawa (City)</u> 2012 ONCA 273, 110 O.R. (3d)
 I, 349 D.L.R. (4th) 41 (affirming <u>Friends of Lansdowne Inc.</u> v. <u>Ottawa (City)</u>
 2011 ONSC 4402, 17 O.R. (3d) 104)
- <u>Vincorp Financial Ltd.</u> v. <u>Oxford (County)</u> 2014 ONSC 2580 (affirmed,
 <u>Vincorp Financial Ltd.</u> v. <u>Oxford (County)</u> 2014 ONCA 876) (leave to appeal to the Supreme Court of Canada dismissed, May 21, 2015)
- 1085459 Ontario Ltd. v. Prince Edward (County) (2005), 77 O.R. (3d) 114



Municipal Capital Facilities Agreements

April 25, 2022

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Heather Douglas
WeirFoulds LLP
416.947.5064
hdouglas@weirfoulds.com



Section 110 of the *Municipal Act, 2001/*Section 252 of the *City of Toronto Act, 2006*

- Expressly authorizes financial and other assistance that is otherwise prohibited
- Technical requirements apply to all Section 110/252 agreements
- Authorizes exemptions from taxation for municipal and school purposes and from development charges – special technical requirements apply



Municipal and School Capital Facilities-Agreements and Tax Exemptions, O. Reg. 603/06 made under the Municipal Act, 2001 and O. Reg. 598/06 made under the City of Toronto Act, 2006

Prescribes 19 classes of eligible facilities

Special technical requirements apply to specific classes of facilities



Municipal Services Corporations

April 25, 2022

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Daniel P. Ferguson WeirFoulds LLP 416.947.5029 ferguson@weirfoulds.com



Municipal Services Corporations

- Section 203 of the Municipal Act
 - O.Reg 599/06

- Section 148 of the City of Toronto Act
 - O.Reg 609/06 and 295/09



Benefits of MSC

- Independent person at law
- Board Management and Business Expertise
- Recognized Business Vehicle
- Efficient Business and Corporate Procedures
- Natural Person Powers/Expanded Financing Authorities



Restrictions and Conditions

 Numerous restrictions and conditions that must be adhered to that are set out in the Acts and Regulations



Other Procedures that Must Be Followed

Business Case

Public Consultation

- Asset Transfer Policy
- Municipal Capital Facility Agreement and By-Law



Governance, Governance

- Appropriate allocation of oversight/control, authority and responsibility
- Restrictions on Board Authority/requirement of Shareholder Approval
- Reporting structures to Shareholder
- Councillors and the Board
- Unanimous Shareholder Declaration



Infrastructure Ontario Loan Program

April 25, 2022

Bernadette Chung
Infrastructure Ontario
647.264.2000
bernadette.chung@infrastructureontario.ca





IO Municipal Loan Facilities of Note in a Rising Interest Rate Environment

- Floating Rate Capital Loan:
 - Pay interest only for up to 5 years
 - Use revenue generated by project to pay down principal amount prior to converting to debenture
- Straight to Debenture By-Law:
 - Can be used to issue debenture(s) faster with less documentation





Municipalities, Long-Term Care Facilities, and Affordable Housing

- IO loan program offers low interest rates, long amortization period
- Municipal borrowing on behalf of municipal LTCs and affordable housing
- Municipal support for stand-alone LTCs and affordable housing





Contact Us

Miriam Bernardo, Client Relationship Officer - Northern Region miriam.bernardo@infrastructureontario.ca Office: 647-264-0835

Nofel Alam, Senior Relationship Manager – Eastern Ontario nofel.alam@infrastructureontario.ca Mobile: 647-523-4192

Michael Dorman, Senior Relationship Manager – Central Region <u>Michael.Dorman@infrastructureontario.ca</u> Mobile: 416-997-7144 | Office: 647-264-9743

Anthony J. Pizans, B.Sc. Senior Relationship Manager - Southwest Region anthony.pizans@infrastructureontario.ca 647-264-4685

Jennifer Hutcheon (she, her) Vice President – Loan Operations & Customer Relations <u>jennifer.hutcheon@infrastructureontario.ca</u> Mobile: 647-236-2760 | Office: 647-264-3654

Bernadette Chung (she, her) Director, Legal Services bernadette.chung@infrastructureontario.ca 647-264-2000

www.infrastructureontario.ca





Q&A



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