

Understanding the Reasons for Part II Order Requests in Municipal Class Environmental Assessments

by

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## Author's Declaration

I hereby declare that I am the sole author of this thesis. This is a true copy of the thesis, including any required final revisions, as accepted by my examiners.

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## Abstract

The practice of environmental assessment (EA) in Ontario, Canada and elsewhere has been criticized for resulting in projects that are not necessarily “good” for the environment or society, but simply “less bad.” In Ontario, the ongoing erosion over time of meaningful public involvement in the EA process is seen as a major reason for the degradation of EA practice from something closer to its idealistic purpose of creating “sustainable” development down to its current state, as many have suggested, as an administrative process to ensure legislated minimum requirements (for action or outcome) are met. Nonetheless, the EA process in Ontario continues to offer one of the best legislated processes available for addressing the potential negative impacts associated with public projects in the province.

Ontario’s streamlined Class EA process allows for routine, low-impact public projects to proceed without ministerial review so long as certain minimum standards for technical review and public consultation are met. It also includes a mechanism for stakeholders to request ministerial review should a stakeholder believe a substantive or procedural error or oversight has occurred during the study. This mechanism, called a Part II Order request, has been invoked in recent years for multiple reasons in addition to correcting substantive or procedural errors or oversights. This research asks why stakeholders request Part II Orders. Through review and coding of Part II Order request letters from various projects across Ontario, and conducting detailed case studies of projects for which Part II Order requests were made in the Greater Toronto Area, it was determined that the two most commonly-found issues in the Part II Order letters were related to stakeholders feeling distrustful of the proponent or the EA process, and stakeholders feeling as though they were not adequately engaged in public consultation activities for the EA study. The case studies examined these themes in greater detail, and found that these two issues were intertwined with issues of stakeholder power and control. The research findings suggest that EA outcomes can be improved by altering public consultation activities to provide stakeholders with greater control over the decision-making process in a transparent manner so that stakeholders are aware not only of the perspectives of the proponent, but also those of other stakeholders.

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# 1 Developing the Research Question

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*“It would not be too forceful to say that Ontario’s EA process is broken.” – ECO, 2008*

The practice of environmental assessment (EA) in Ontario, and around the world, has been subject to substantial criticism for the past two decades. That is not to say that the practice of EA has not resulted in improvements to environmental conditions in notable instances (see, for example, Gibson, 2002), but that environmental assessment, as a general practice and as a legislated process in Ontario, has not yet reached a level of sophistication that typically results in projects that consistently make a positive contribution to sustainability (Gibson, 2006; Levy, 2002; Lindgren & Dunn, 2010). Examining the failings of the entire EA system in Canada is beyond the scope of this paper; however in examining the public opposition to EA outcomes in Ontario it is possible to get a sense of where some important improvements can be made to better integrate environmental, social and economic impact analyses, including through better incorporation of public participation, to improve the sustainability contributions of new projects.

In this chapter the background and context of the research is outlined and the research question, which seeks to ascertain the reasons for public opposition to EA study results by looking at the use of an appeal mechanism built into the Ontario EA process, is posed. An overview of the proposed methods for answering the research question is provided, along with an outline for the content of the following chapters.

## 1.1 The Purpose, Theory and Evolution of Environmental Assessments

The World Bank (1999, p. 1) broadly defines an environmental assessment (EA) as a process that

evaluates a project's potential environmental risks and impacts in its area of influence; examines project alternatives; identifies ways of improving project selection, siting, planning, design, and implementation by preventing, minimizing, mitigating or compensating for adverse environmental impacts and enhancing positive impacts; and includes the process of mitigating and managing adverse environmental impacts throughout project implementation.

Similarly, Jain, Urban, Stacey, and Balbach (1993, p. 5) define EA as the “study of the changes in the various socioeconomic and biophysical characteristics of the environment which may result from a proposed or impending action.” As noted by Jain, et al. (1993, p. 1), EAs allow for the consideration, in decision-making, of “the effects of actions that are not otherwise accounted for in the normal market exchange of goods and services.” The United Nations Environment Programme ([UNEP], n.d.) notes that

“environmental assessments are key vehicles for promoting the interaction between science processes and the various stages of the policy and decision-making cycle.”

The Canadian Environmental Assessment Agency ([CEAA], 2011) identifies two purposes for conducting EAs prior to project implementation:

- To minimize or avoid adverse environmental effects before they occur; and
- To incorporate environmental factors into decision making, including the use of precaution in decision-making, the promotion of sustainable development, the inter-jurisdictional coordination of government authorities, the reduction of externalities, and the inclusion of timely and meaningful public participation.

The stated purpose of the Ontario Environmental Assessment Act (EA Act), 1990, in its current form, is slightly different from its federal counterpart, and does not echo the federal legislation. Rather than minimizing direct impacts of undertakings on the natural and social environment, the stated purpose of the EA Act, is the betterment of conditions for the people of Ontario through the wise management of development within the province. This subtle, but important difference speaks to the focus of the EA Act, in that its purpose is betterment, rather than the federal legislation which aims only to minimize impacts. Thus, the Ontario Environmental Assessment Act, defines the environment not just as air, land, water, plant, animal and human life, but also as the social, economic and cultural conditions that influence the lives of humans, as well as the things that people make, such as buildings and machines and the emissions created by human activities or creations (be they air, liquid, odour, heat, sound, etc.). In both acts it is made clear that assessing the effects of projects or programs on “the environment” includes an assessment of effects on human environments. The Ontario government’s definition of “environment” is broad enough that it covers effects best described in qualitative terms as well as effects that may be quantifiable with reasonable confidence.

The impacts of a project on wildlife habitat, water quality, or the availability of renewable energy, for example, can be at least roughly predicted using sophisticated modeling tools. The impacts of, for example, a changed landscape on the social structures or cultural practices of those who live in the vicinity of a project, however, are much more difficult to measure and predict. Predicting impacts on these qualitative elements is especially difficult because even sophisticated modeling is built on assumptions that simplify reality and involve debatable judgments related to justifiable generalizations in the face of complexity, diversity and uncertainty. And although EA deliberations generally follow an agreed-upon or legislated process that centres on well-informed choices about acceptable risks and to whom those risks are posed, preferred anticipated benefits, favoured options, and tolerable trade-offs, these choices nonetheless require value-laden judgments. To practice EA in an ethical manner, such judgments ought not to be left to proponents (or others) with particular interests that are unlikely to align

well with the public interest, begging the question: who should determine what is in the public interest? And further still, how is the public defined and is it separate from a proponent acting on its behalf? While environmental assessment purports to address these concerns through mandates for consultation with the public, as is outlined below, public consultation does not necessarily lead to an EA outcome that is supported by the public.

### **1.1.1 Evolution of Environmental Assessment in Canada**

According to Glenn (1995), initial environmental legislation was enacted in Canadian provinces in the first half of the 20th century, and represented the enshrinement in provincial law of a larger trend across the country towards removing the rights of property owners affected by the environmental impacts of projects. This, Glenn (1995) explains, was done through the implementation of Canadian laws and policies that moved the scope of environmental requirements from the realm of the judicial (through common law property and riparian rights) to the executive (through environmental protection legislation) branches of government.

The effect of these early environmental protection policies across Canada, as described by Edmond (1982), was to expand the participation in environmental decision-making from the propertied classes to industrialists, while still excluding the general public<sup>1</sup>. In 1969, the National Environmental Policy Act (NEPA) was enshrined into US law, and court rulings that resulted from this legislation raised the public profile of environmental assessment on an international level, providing new openings for public engagement. As Gibson (2002) describes it, EA legislation and policy in Canada and Ontario followed suit from the early 1970s onward in response to a growing public distrust of government and corporate environmental stewardship.

Environmental assessments EAs, in various formats, have been legislated requirements for new development projects in the United States since the early 1970's (Hyman, Stiftel, Moreau & Nichols, 1988). The need for EA in development projects was acknowledged internationally when the General Assembly of the United Nations (UN) adopted the World Charter of Nature, which outlines "principles of conservation by which all human conduct affecting nature is to be guided and judged" (UN Resolution 37/7, October 28, 1982). Included in Resolution 37/7 is the requirement to assess the environmental impacts of development and activities prior to implementation, such that impact mitigation measures can be put in place. The resolution also includes the requirement for public consultation and transparency.

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<sup>1</sup> It must be noted, importantly, that neither before nor after the enactment of environmental laws, did non-propertied individuals or communities have the ability, by law, to protect themselves or their milieu from the negative environmental effects of government projects or programs (Edmond, 1982).

## **1.1.2 History of the Canadian Environmental Assessment Act**

According to a report commissioned by the Canadian Environmental Assessment Agency (CEAA; Hegmann, Cocklin, Creasey, Dupuis, et. al, 1999) Canada's first federal and provincial environmental assessment requirements were introduced in the 1970s with the Canadian Environmental Assessment and Review Process (EARP) policy guideline and Ontario's Environmental Assessment Act, respectively. The exercise of discretionary authority by members of the executive branch of government in environmental decision-making under the EARP allowed for a lack of transparency in environmental assessment of projects (Glenn, 1995). Gibson (2002) describes the ongoing public criticism of the EARP throughout the 1970s and 1980s. By the 1980s, a number of public interest groups were successful in challenging government decisions and projects in Canadian courts, and public criticism of bad EA practice eventually lead to the reduction of discretionary executive powers through revisions to the EARP, registering it as a formal Guidelines Order in 1984 (Glenn, 1995). The 1984 Order in Council set clearer guidelines for the implementation of the federal EA process (Fenge & Smith, 1986). Although the newly registered guidelines seated the EARP under a federal statute, and introduced the idea of examining both social and physical impacts of projects, the process itself remained weak in terms of the rigour of application to relevant projects and proponents, and in terms of the requirements for implementing recommendations that arose from the review process (Fenge & Smith, 1986).

In 1989 the legal underpinning of the EARP was redefined when, in response to a federal court case examining the application of the guidelines to a water management project in Saskatchewan, the Federal Court of Canada ruled that the guidelines order was, in fact, legally binding (Gibson, 2002). This ruling was upheld on appeal in 1990, and confirmed by a different Supreme Court case in 1992 (Gibson, 2002). In response to the 1990 court ruling, the federal government introduced the Canadian EA Act in 1992, and after key regulations were prepared, the law came into force in 1995, with a limited definition of “environment” that excluded direct socio-economic and cultural aspects (Gibson, 2002). This act was modified in 2001 to increase public consultation requirements while streamlining decision-making and introducing follow-up monitoring requirements (Gibson, 2002). Incorporating streamlining components into the act marked beginning of a larger trend towards decreasing government-imposed obligations on project proponents, and was seen in revisions to both the federal and Ontario EA acts. In 2012, the Canadian EA Act was rewritten to vastly decrease the scope, jurisdiction, and powers of government oversight for federal EAs, undermining the process so significantly that most remaining federal EAs moving forward will amount to little more than administrative permitting exercises (Gibson, 2012).

## **1.1.3 History of the Ontario Environmental Assessment Act**

In 1975, the Government of Ontario passed the Environmental Assessment Act, which came into force in 1976, mandating consideration of the purposes, alternatives and environmental effects of projects and

plans (referred to as “undertakings” in the legislation) prior to approval and implementation (Levy, 2002). When Ontario’s environmental assessment process was first implemented in 1976, a full 19 years prior to the formal coming into force of the Canadian EA Act, it was considered groundbreaking (Lindgren & Dunn, 2010). Many aspects of Ontario’s EA Act were pioneering (Levy, 2002), and despite recent setbacks to the legislation and regulations that have weakened the Act (Lindgren & Dunn, 2010), it is still a sound piece of environmental legislation in Canada (Minister’s Environmental Assessment Advisory Panel – Executive Group [MEAAP – Executive Group], 2005), and indeed, in North America.

The Ontario EA Act was initially designed to apply only to undertakings specifically designated; however this was changed during passage of the bill to require assessments of all public sector undertakings not expressly exempted. Private sector projects did not require EAs unless designated by the legislation (Gibson, 2002). The full process for environmental assessments (called an “Individual EA”) was cumbersome for proponents with typically low-impact projects (Lindgren & Dunn, 2010), and as the Environmental Commissioner of Ontario (ECO) noted (ECO, 2008, p. 30), upon enactment of the EA Act, “the government moved immediately to limit the application of the new law and to exempt whole categories of activities from its requirements.” By 1978, only one EA had been submitted to the province for review (Levy, 2002). In addition, within the first few years of being enacted, streamlined, pre-approved EA processes were developed for undertakings to which the Ontario EA Act applied that were considered to be routine. By 1993, 90% of EAs in Ontario followed these streamlined “Class EA” processes (ECO, 2008), even though Class EAs were not anticipated in the initial law and were not fully entrenched in the Act until 1996 (Lindgren & Dunn, 2010). The overall result is that the vast majority of EAs are for public sector undertakings, with very few private sector undertakings captured by the EA Act, and most of these are completed through a pre-approved Class EA process (Lindgren & Dunn, 2010).

Between 1988 and 1996 the province provided intervenor funding for parties wanting to participate in public consultation or hearing opportunities but not having the means to do so; this was allowed to expire in 1996 under a newly-elected conservative provincial government (Levy, 2002).

In 1996 sweeping reforms were enacted to the EAA to address some criticisms of the process; however, a more recent review panel still found major flaws in the Act (Lindgren & Dunn, 2010). The 1996 reforms included the formal addition of Class EA processes within the Act (Levy, 2002).

#### **1.1.4 Modern Environmental Assessments**

As a result of its (relatively) long history, malleability, and applicability to a broad range of developments, the EA process has become the foremost planning tool for proponents, and review and decision making tool for governments concerning projects that are either complex, publicly funded, have the potential to impact a large number of people, are located in sensitive natural or social environments,

or any combination thereof. In some circles the EA approach is assumed to be a technocratic, science-based approach to decision-making, and thus is widely accepted due to the ease with which its recommendations are justifiable and replicable (Ortolano & Shepherd, 1995).

Although the legislated and recommended processes for performing EAs vary widely depending on jurisdiction, type of project, and potential impacts, EAs generally require the collection and assessment of information on the existing environment such that the impacts of proposed actions on the environment can be predicted and decisions made on a preferred course of action (Ortolano & Shepherd, 1995). To do so, four types of information are collected and analyzed: the results of modeling and monitoring studies, risk assessments, cost or cost-benefit analyses, and stakeholder preferences (Kiker, Bridges, Varghese, Seager & Linkov, 2005). These four types of information are studied in order to provide an understanding of the potential changes in the environment that may arise as a result of a project, policy, or program (although typically EA studies are performed for projects only) in comparison with the alternatives. And although the definition of “environment” has varied depending on jurisdiction, increasingly it is being defined more or less to include the physical, chemical, biological, economic, political, social and cultural systems and the factors that influence each other within these systems (André, Delisle, & Revéret, 2004).

In Canada the modern federal EA framework requires federal departments, agencies, and Crown corporations to conduct EAs for prescribed undertakings where the federal government is the proponent, based on a specific inclusion list of projects, depending on project type and size. In Ontario, the EA framework is more inclusive than the federal EA framework in that it covers a broader range of public sector undertakings, and a broader scope of environmental factors, but does not apply automatically to most private sector undertakings.; however it includes a streamlined EA mechanism, called the Class EA (Ontario EA Act, s. 2.1) which allows routine projects with few or well-understood environmental impacts to be implemented without ministerial oversight, so long as the EA study follows a pre-determined Class EA process. Larger projects with potentially greater impacts are required to undergo an Individual EA (Ontario EA Act, s. 2), requiring governmental oversight and ministerial approval. These two process streams are outlined in more detail, below.

Almost as soon as government agencies began to assess the environmental impacts of their projects, public outcry against the potential environmental impacts of projects began to result in changes to projects, or even project cancellation. The results of public opposition to government projects have been mixed. In some instances, risky projects or undesirable land uses have been moved to less populated

areas; in others, public opponents have been labeled (epithetically) as NIMBYs – for Not In My Backyard<sup>2</sup>,—and projects have proceeded without acknowledging public concerns.

## 1.2 The Shortcomings of Environmental Assessment

### 1.2.1 In General

EAs in Canada predict, to varying degrees of detail, the foreseeable human-induced impacts to natural resources or ecological functions associated with proposed projects, propose mitigation measures, and evaluate project design options (and in more advanced processes, alternatives to the project) based on environmental (often including social and economic) effect considerations. Final decisions may also be heavily influenced by political factors. As early as 1993, commentators and researchers were noting that, while there is a general consensus that the widespread practice of EA has allowed for enhanced consideration of environmental factors in decision-making, the achievements of EA activities appear most favourable when compared with past environmental failings, rather than when measured against sustainable development goals (Caldwell, 1993). Many others have criticized various EA processes in Canada, the US and overseas for not accounting well for the influence of politics and power, while following a purportedly technocratic process that is blind to social reality (see, for example, Hyman, et al., 1988; Cashmore, 2004; ECO, 2008; Lindgren & Dunn, 2010).

EAs have been criticized for overreliance on process versus outcome, and for lacking in substantive purpose (Cashmore, 2004). These criticisms can be explained by Ortolano and Shepherd's 1995 (p. 4) assertion that EAs are prepared without accounting for the political context within which they are performed, despite the fact that “decisions are influenced by ‘non-scientific’ factors, such as agency and corporate power, and interest group politics.” In his critical review of the Strategic Environmental Assessment process employed at the regional and federal level in Canada, Noble (2009, p. 74) notes that in Canadian practice “environmental assessment has long been an add-on process or yardstick against which the acceptability of proposals is measured, rather than an integrated decision support tool to develop better ones.” EA practices have been criticized for failing to contribute to sustainable development goals, and instead simply producing development that is less bad than implementation would be without accounting for environmental impacts (Caldwell, 1993; ECO, 2008). Cashmore (2004) suggests the theoretical framework is inadequate for tying together the various components the various

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<sup>2</sup> Schively (2007) identifies a complex definition for NIMBYism, resulting from a plurality of contexts and actors involved in public opposition to a variety of different types of projects. Nonetheless, a broad picture of the motivations of NIMBYs emerges as a person or group of people who are generally opposed to a project that they perceive will affect them negatively in terms of their financial or physical health, regardless of the potential community benefits associated with the project.

components or disciplines that feed into the assessment of environmental impacts of a project, policy or program. These failings may contribute to implementation issues, resulting in further criticisms of the outcome of EA processes. In general, these criticisms tend to focus on the ways in which the human aspects of the environment (culture, politics, civil society, social justice, etc.) are inadequately addressed in EA and the absence or weakness of efforts to integrate findings into analyses of whether or not proposed undertakings and/or alternatives promise positive overall contributions to sustainability.

Hyman et. al (1988) reviewed the available literature and concluded that EAs do not adequately account for effects that are difficult to quantify, including social impacts and political implications of projects. They note the difficulty in identifying the full range of affected segments of the public, stating that “the choice of whose values are represented and how these values are combined is a key stumbling block in the development of more useful environmental assessment methods” (Hyman et. al, 1988, p. 42).

Cashmore (2004) noted that there is a need to incorporate more fully or at least more clearly often conflicting political and social priorities that the EA process generally does not address explicitly. The effects of a project on the communities participating in the decision-making process, or other stakeholders, are generally only included in the assessment insofar as they can be measured empirically (Cashmore, 2004). As a result, important impacts of projects may not be anticipated, or missed entirely, prompting the criticism that many EAs are more of an exercise in paperwork than they are an effective decision-making tool for reducing environmental impacts (Brown & Hill, 1995).

Ortolano and Shepherd (1995) state that EAs are often performed after a course of action has been selected in order to support political or economic decisions through *ex post facto* rationalization. They term this “the integration problem” (Ortolano & Shepherd, 1995, p. 14). Kiker, et. al (2005) examined the integration problem in a review of recent attempts at multi-criteria decision-making by governments and proponents for complex projects. In this review Kiker, et. al (2005, p. 97) note that a “systematic methodology to combine both quantitative and qualitative inputs from scientific or engineering studies of risk, cost, and benefit, as well as stakeholder views and values to rank project alternatives, has yet to be fully developed for environmental decision making. As a result, decision makers are prevented from identifying all plausible alternatives and from making full use of all available and necessary information in choosing between identified project alternatives.”

Despite the common requirement for public participation in EAs around the world, Ortolano and Shepherd (1995) deride the processes in the US and Canada specifically for inadequately involving the public in EA decision-making. In addition, the authors state that the social impacts of proposed projects are often entirely absent from analyses of impacts.

There has been a tendency amongst project proponents around the world to dismiss individuals or communities who opposed proposed projects as NIMBYs, and to take a patronizing view of those who



voice concerns about the impacts of projects on private land or on public amenity (Dear, 1992). Regardless of which side is “right” about the impacts of a project, the important consideration for EA practitioners is that the stakeholder perspective of the impacts of a project can be as important and as real as the project impacts anticipated by the proponent. The potential for multiple, discordant stakeholder concerns is outlined in the following passage from the widely cited 1993 text *Environmental Assessment* (Jain, et al.), used in university courses and government agencies alike to understand the EA process in the US under NEPA. Under the heading “Human Aspects,” the authors (1993, pp. 99-100) state:

People everywhere react to situations as they define them, and if one defines a problem as real, then that situation is real in its consequences. ... The fact that scientists and engineers think a solution of their own requirements is perfectly rational, economic, and altogether good may be beside the point. If that solution provokes a public controversy because numerous people and organizations believe it threatens a certain quality of life which they value, then the *consequences* will be real. The “facts” depend greatly upon who is perceiving them.

An illustrative example of the above statement comes from Cashmore, Bond & Cobb (2008), who show how environmental decision-making is often more reliant on politics and power than it is on environmental or social science. In their review of the decision-making process of three very high-profile EAs in the UK with significant public involvement, Cashmore, et al. (2008) find that political decision-making trumped scientific or rational-comprehensive decision-making in every instance. In addition, “choices were made before the environmental assessment had been undertaken,” with evidence in all three cases of *post hoc* rationalization of decisions (Cashmore, et al., 2008, p. 1237). Such *post hoc* rationalization is, they claimed, an unfortunately common occurrence (Cashmore, et al., 2008).

Although Jain, et al. (1993) provide a good example of the lack of respect often afforded to the individuals or groups who may be impacted by development projects, their statement is also instructive in the types of social impact concerns that can arise. A review of EAs documentation in North America may easily provide insight into the common concerns raised by those who believe they will be affected by project implementation, as well as an understanding of the groups or communities who are typically marginalized by or excluded from the EA process. Unfortunately, there is no central repository of EA studies or reports in Canada, or in Ontario despite the requirement in the Environmental Assessment Act to document the decision-making process.

In terms of analyzing bias, values, and normative aspects of EAs, Cashmore (2004, p. 405) accuses academics of inadequate “scientific rigor in elucidating and analyzing the values and judgments that underpin contested issues” in the practice of EA. He posits that this lack of rigour stems from poor theoretical conceptualization of the underlying purpose of EA, and that practitioners and academics alike should focus less on questions of how to complete an EA, and spend some time examining the reasons

why. Cashmore (2004) concludes that an inadequate focus in EA theory on decision science, and on the role of politics and power in the decision-making process, has led to an unbalanced decision mechanism, thereby undermining the legitimacy of EAs as a tool for sustainable development.

### **1.2.2 The Ontario Context**

While proponents are required to follow the EA process as described in the EA Act, the Ministry of the Environment also has obligations to review and approve the process outcome at various times during the EA study. The Minister or the minister's delegate will review the EA study for sound science supporting environmental principles, but cannot know the subtle impacts of all projects across the entire province, and therefore can only check that the proposed works will be in the public interest in the broadest sense of the term. To do otherwise would simply be too much work. To address the need to define the public interest in greater detail, the EA process in Ontario includes public consultation requirements, purportedly to gage the impacts of projects on the people who will be most affected by them, and implement mitigation measures where necessary. Where public concerns are not addressed by proponents to the satisfaction of stakeholders, or government reviewers, mechanisms exist within the Ontario EA Act to refer the matter to mediation or to hold a tribunal. These mechanisms, however, are rarely used, as many projects are considered exempt from tribunal requirements (Lindgren & Dunn, 2010). A recent review panel has found major flaws in the Ontario EA Act (Lindgren & Dunn, 2010), in part due to the effects of "streamlining" initiatives in the mid-1990s.

In 1996, major reforms were made to the EA Act in Ontario. Two of the main reforms involved the formal inclusion of Class EAs in the legislation, and the discontinuation of intervenor funding:

The legislative reforms of 1996/1997 coincided with further major shifts in the EA regime. For one thing, the government decided to let lapse an eight-year pilot project that had allowed intervenors in EA processes to apply for funding to cover the costs of technical and legal expertise. Some critics complained that intervenor funding had been used to employ too many lawyers who were gumming up the process. But its dismantling left the public with greatly reduced capacity to provide informed input into the technical aspects of EA proposals (ECO, 2008, p. 34).

This packed a double punch in weakening the Act, in that intervenor funding was required for marginal or economically disadvantaged stakeholders to be able to make themselves heard during an EA process, while the broad proliferation of Class EAs across the province since the practice began in the early 1980s meant that many EA studies were never given government oversight. In addition, the 1996 changes to the act brought in the ability for proponents to draft their own terms of reference for Individual EAs at the same time that funding was cut from the EA branch of the Ministry of Environment, reducing the review

capacity of ministry staff. Class EAs are subject to considerably less public scrutiny than Individual EAs. As there is little initial government oversight of proponents conducting Class EA studies in Ontario, the onus is on the proponent to ensure that project details are chosen based on an optimal outcome for the social, ecological, and economic environments. Critical review of proponent work for a Class EA typically depends on the voluntary efforts of affected stakeholders. Although some government bodies may be involved in reviewing class EA evaluations or decisions (e.g. Conservation Authorities may consider some aspects of class EA projects that have implications for waterways) no formal government review is required prior to project approval. As Lindgren and Dunn (2010) explain, the monitoring and enforcement of EA outcomes, for Class and Individual EAs, are clearly lacking. They note that the available staff at the MOE to enforce implementation of projects across the province as directed by the EA study process, as of 2010, consisted of a single enforcement officer for individual EAs and no one for Class EAs.

In 2008, the Environmental Commissioner of Ontario delivered scathing criticism of the EA process in Ontario, stating

Ontario has been long burdened with an EA system where the hard questions are not being asked, and the most important decisions aren't being made—or at least not being made in a transparent, integrated way. The province has increasingly stepped away from some key EA decision-making responsibilities, and the Ministry of the Environment (MOE) is not adequately meeting its vital procedural oversight role. As a result, the EA process retains little credibility with those members of the public who have had to tangle with its complexities (ECO, 2008, p. 28)

For those who, as the Commissioner states, have had to “tangle” with the complexities of the EA process in Ontario, it may appear that, despite the stated purpose of the Act to ensure that projects result in the “betterment” of the people of Ontario, EAs do not aim to deliver an alternative solution to a problem that is better for the environment (i.e. a positive contribution to sustainability), but simply a solution that is less bad for the environment. A less bad solution, while more desirable than a worse solution, is not the same thing as “betterment”, just as less unsustainable is not the same thing as sustainable.

It is often stated that sustainable development encompasses three pillars (Gibson, 2006), and is conceptualized as a three-legged stool. One leg refers to the examination of impacts to the natural environment, one to the examination of impacts on the economic environment, and one to the examination of impacts on the social or cultural environment. If any “leg” is missing, the stool falls down. While this approach is sensible enough as a means of categorizing the types of environmental impacts that could result from a project, it does not capture the interconnections between and among the pillars where disputes or controversial issues often lie (Gibson, 2006). Capturing the complex interconnections between and among social, ecological, and economic impacts and priorities promises not only to strengthen a

project's contributions to sustainability (Gibson, 2006), but also to align assessment with the purpose of the Ontario EA Act, a requirement that is seldom recognized or acknowledged. As alluded to above, the purpose of the Act is "the betterment of the people of the whole or any part of Ontario by providing for the protection, conservation and wise management in Ontario of the environment" (R.S.O. 1990, c. E.18, s. 2).

Unlike the federal EA Act, the Ontario EA Act clearly requires the wise management and conservation of the environment for the betterment of the people of Ontario. Thus, proponents should examine the impacts that can be had in the socio-economic, socio-ecological, socio-political, and other social realms, and not just the realms of the three pillars individually. As Cashmore, et. al (2008) have shown, social bias is an important influence on decision-making in and the outcome of EA studies, and yet is not explicitly recognized in EA documentation, nor transparently outlined as a decision-making metric in the way other metrics are outlined in EA decision-making. This lack of transparency has resulted in an EA process that the Environmental Commissioner of Ontario (ECO, 2008) has criticized as lacking in substantive purpose. And although potential effects related to the first two pillars are regularly examined with some rigour, the EA process (and particularly the Class EA process) tends to fall short where public values must be expressed and incorporated into decision-making. That is not to say that bias, politics, and power do not play an important role in EA decision-making; however these social influences tend to be incorporated into EA studies, as Cashmore, et. al (2008) have shown, in a manner less formal, and therefore less transparent. This may be the result of an EA process that the Environmental Commissioner of Ontario (ECO, 2008) has criticized as lacking in substantive purpose.

In addition, when an EA focuses on biophysical and economic priorities, the tendency to view these two realms as separate and dichotomous can result in justifying trade-offs made during EA decision-making (Gibson, 2006). Where economic priorities are traded for biophysical functions (for example, job creation as justification for habitat destruction where economic priorities are deemed more important than ecological ones), EAs can, at best, result in solutions that are merely less bad than were no EA to have been performed at all.

Thus the opportunity for the third pillar in Ontario EA practice is one of consolidation or integration of social concerns with ecological and economic concerns. If social concerns about projects typically centre around the potential impacts that environmental and economic impacts will have on human health, civil society, security, culture or heritage (Gibson, 2006), then there is an opportunity for actual sustainable outcomes (rather than less unsustainable outcomes) resulting from EA studies in Ontario when the overlaps among the pillars is examined, rather than the individual pillars themselves.

In summary, despite initial enthusiasm about the potential for EA legislation to improve the sustainability of projects, and the stated purpose of Ontario's EA Act to develop projects within the province that better

the lives of Ontarians, the actual improvements resulting from EA studies do not appear to be living up to expectations. The inclusion of regard for social impacts and the intersection of social environments with the natural and economic environments represents an opportunity for EA studies to better align to the stated purpose of the Act.

### **1.3 The Practice of Environmental Assessment in Ontario**

In Ontario, Environmental Assessments for development projects have been well entrenched in the legislative and institutional cultures since the 1990s. The Minister of the Environment (MOE) is the approval authority for all non-federal EA studies conducted under the Ontario Environmental Assessment Act. Under the EA Act, all development projects undertaken by public proponents (for example, municipalities) must undergo an EA unless the undertaking or category of undertakings has been specifically exempted by legislation. The Ontario EA Act requires proponents to set out and defend the purposes of proposed undertakings and systematically review different alternatives to and for implementing a project or plan, taking into account the impacts of each alternative on the environment, and most importantly, mandated public consultation as a part of the assessment process (Lindgren & Dunn, 2010). Generally, EA studies involve the review of the anticipated environmental impacts of multiple functionally different approaches to implementing an undertaking (a project, and sometimes a plan), and the identification of mitigation measures for each impact (MOE, 2011(a)). In most cases, each alternative approach is evaluated against a set of criteria, which can include economic, social, and environmental criteria, and a preferred option is selected based on (sometimes overtly-articulated, sometimes unarticulated) priorities.

An Individual EA requires government approval of both the study terms of reference, and the study conclusions. At both points (and often at points in between as well) the public is given an opportunity to review project documents and provide comments. Thus the government oversight includes public scrutiny at multiple points during the course of the EA study. EA documents in support of proposed undertakings are prepared by government proponents, or by private proponents, where mandated by legislation. The submission, review and approval of the EAs and associated undertakings must follow one of two processes, depending on the size, complexity, and potential impacts of the project. For large, complex, or high-risk projects or projects with potential impacts that may cross provincial or national borders, an Individual EA process is followed. The Ontario Ministry of the Environment (MOE) oversees the EA process where the federal government is not involved, and acts as the approval authority for individual EA studies (conducted under Part 2 of the EA Act). Some EAs result in ongoing monitoring efforts throughout or after implementation (MOE, 2011(a)). The Ontario EA Act mandates public consultation as a part of the assessment process (Lindgren & Dunn, 2010). Public consultation opportunities are required at multiple points at the outset, during and prior to finalizing the conclusions of individual EA studies,

including providing a public review of EA conclusions through the province's online Environmental Registry.

As the EA Act captures a broad range of development projects, it also allows for the creation of streamlined EA processes for specific types of routine projects, as noted above. These Class EAs are approved by the MOE, and all proposed projects falling within the project definition of a particular Class EA are usually able to proceed without ministerial approval so long as the approved processes as outlined in the Class EA are followed. The Class EA process is intended for projects with predictable outcomes or easily mitigable adverse impacts. Section 2.1 of the EA Act allows a proponent or a group of proponents to prepare an overall Class EA for any category or grouping of projects that are considered to be routine or well understood, have a predictable set of environmental impacts, and therefore have standardized EA outcomes. Each Class EA outlines a different set of requirements for public consultation, depending on the scope of the project within the class. Currently in Ontario there are 11 different Class EAs (MOE, 2013), outlined in Table 1-1 on the following page.

*Table 1-1: Approved Class Environmental Assessments under the Ontario Environmental Assessment Act*

<b>Class Environmental Assessment Document</b>	<b>Proponent</b>	<b>Examples of Project Types</b>	<b>Date Approved / Amended</b>
Class Environmental Assessment for Activities of the Ministry of Northern Development and Mines under the Mining Act	Ministry of Northern Development and Mines	Disposition of Crown resources, conversion of existing land tenure, forfeiture or surrender of titles, and, mine hazard rehabilitation activities at abandoned mine sites.	December 2012
Class Environmental Assessment for Waterpower Projects-amended	Ontario Waterpower Association	Dams, powerhouses, diversion channels, weirs, canals, aqueducts and pipelines, access roads	October 2008; Amended March 2011
Municipal Class Environmental Assessment-amended	Municipal Engineers Association	Municipal road, water, sewer infrastructure projects (road widening, pumping stations, watermains, sewers)	October 2000; Amended September 2007, August 2011
MNR's Class Environmental Assessment Approval for Forest Management on Crown Lands in Ontario (Declaration Order MNR-71) Amending Declaration Order MNR 71/2	Ministry of Natural Resources	Forest management activities	June 2003; Amended March 2007
Class Environmental Assessment for Provincial Parks and Conservation Reserves	Ministry of Natural Resources	Establishing new/revising provincial park, conservation reserve boundaries	December 2004

Class EA Process for the Ministry of Energy and Infrastructure for Realty Activities Other than Electricity Projects	Infrastructure Ontario	Acquiring/disposing of Crown land or property; building repair, alteration, restoration (tourist information centre, patrol yard, child care centre)	April 2004; Amended 2008
GO Transit Class Environmental Assessment Document	GO Transit	New commuter rail stations, bus terminals less than 12 ha; rail route extensions less than 50 km; maintenance/storage yard expansions	December 2003; Amended 2005
Class Environmental Assessment for MNR Resource Stewardship and Facility Development Projects	Ministry of Natural Resources	Disposition of Crown resources, access roads; shoreline stabilization; fisheries habitat management	March 2003
Class Environmental Assessment for Remedial Flood and Erosion Control Projects	Conservation Ontario	Water diversion; replacing bridges/culverts; channel realignments; berm, dyke, seawall construction; bank/slope stabilization	June 2002; Amended September 2009, June 2013
Class Environmental Assessment for Provincial Transportation Facilities	Ministry of Transportation	New highways; freeway widening; interchange improvements; provincial ferryboat connections; commuter parking lots	December 1997; Amended July 2000
Class Environmental Assessment for Minor Transmission Facilities	Hydro One	Transmission lines, transformer stations, distribution towers, telecommunication towers	April 1992

As there is little initial government oversight of proponents conducting Class EA studies, the onus is on the proponent to ensure that the appropriate Class EA process requirements are met. For example, in the Municipal Class EA process project options and specifics must be selected based on an optimal outcome for the social, ecological, and economic environments, after multiple alternative solutions to a stated problem or opportunity have been rigorously evaluated. If, upon completion of a Class EA study, stakeholders feel their concerns have not been adequately addressed, or the Class EA process has not been correctly followed, they can request that the Minister of the Environment review the project specifics, and determine if Part II of the EA Act must apply (meaning that an individual EA process must be followed, and the final EA recommendations must be approved by the Minister). This request is now called a Part II Order request, though the earlier term “bump-up request” is also still used. Few are granted. Typically, consideration of Part II Order requests results in delays in commencing project implementation, which can be costly for the proponent (MEAAP– Executive Group, 2005), however it can also lead to discussions between the proponent and dissatisfied stakeholders and result in some accommodation of concerns.

As the practice of and legislation for Ontario EAs has evolved over the past four decades, the EA process has evolved to recognize different levels of risk to the people of Ontario. Thus, conducting an EA for a large, complex, or high-risk project (such as a waste disposal site near a sensitive aquifer) requires a very different set of procedures and approvals than for an EA for a routine project with easily mitigated environmental impacts (such as replacing an existing watermain along a suburban street). Nonetheless, a number of common elements exist across the spectrum of EA processes, such as the requirement to examine alternatives to the project or alternative designs for project implementation, including the options: to do nothing; to consider the impacts of the project to the social/cultural, natural, and economic environments; and to consult with the affected public prior to finalizing any public decision-making with regards to the project under consideration. And although the public consultation requirements vary in depth and breadth depending on the authorities' assumptions about the level of project risk, public opposition to government projects appears not to vary with actual risk, but with the perceived risk of negative impacts (Schively, 2007).

Class and Individual EA processes have built-in public consultation requirements, which are designed to require proponents to take into consideration the impacts that projects will have on stakeholders over the medium and long-term, in keeping with the purpose of the Act. It appears, however, as though the duty to consult does not always translate into the ability for citizens to be able to participate effectively in meaningful consultation:

Serious concerns have been repeatedly expressed by First Nations, aboriginal communities and various stakeholders (referred to collectively as participants) that they cannot participate in the planning, approval and monitoring of undertakings subject to the EA Act. They claim that the comment periods are too short, relevant documents are too inaccessible, and consultation efforts are too superficial and with no real purpose other than to enable a proponent to report to the EAAB that it has fulfilled its statutory obligation to consult. In addition, concern has been raised that public consultation rights are illusory at best if participants lack sufficient resources to retain the technical, scientific or legal assistance necessary to meaningfully participate in the EA process (MEAAP– Executive Group, 2005, p. 71).

It is presupposed that a project that contributes to the public interest will contribute to the environmental, social, and economic aspects of the lives of the public, and that the public is in the best position to determine the public interest. This is why public consultation is mandatory for all but the most routine projects with negligible impacts.

With the Municipal Class EA process, public consultation is mandated for larger, more complex projects. These projects (categorized as Schedule B and Schedule C projects) are considered to be more complex and to have the potential for greater impacts than lower schedule projects (categorized as Schedule A and



Schedule A+), and will typically have impacts such as the requirement for property acquisition, impacts on fisheries that are easily mitigated and do not require federal approvals, easily mitigated impacts on significant woodlots or wetlands, and/or other impacts which are considered significant to the community (Municipal Engineers Association [MEA], 2000, as amended). The Municipal Class EA document (MEA, 2000, as amended) provides direction on how to categorize a project, the appropriate level of public and stakeholders consultation for each project category, the types of impacts and mitigation measures that may be encountered with different types of projects, and how to assess project alternatives. Examples of the ways in which the public can be consulted are given in the Class EA document; however consultation requirements are minimally prescriptive, to allow for variations in project scope and specifics. Schedule B and Schedule C projects have requirements for one and two “points of public contact”, respectively; however it is left up to the judgment of the proponent how to contact the public (MEA, 2007). In addition, there is no minimum standard set for the way in which that contact is made; proponents can choose the way in which consultation efforts are conducted and the amount of power given to stakeholders to influence the outcome of the EA (MEA, 2007).

In her seminal piece on citizen participation, Arnstein (1969) names the different degrees of power that can be given to the public in her Ladder of Citizen Participation. At the bottom rung of the ladder is manipulation, which sees no power afforded to citizens at all. Consultation is in the middle of the ladder, and entails hearing but not necessarily heeding public input. At the top of the ladder is citizen control. Cornwall (2008) explains that Arnstein’s ladder retains significant contemporary relevance, outlining that many modern participatory regimes view what Arnstein described as “tokenism” as participation. She notes that

[c]onsultation is widely used, north and south, as a means of legitimating already-taken decisions, providing a thin veneer of participation to lend the process moral authority. Its outcomes are open to being selectively read and used by those with the power to decide. Rarely are there any guarantees that what is said will be responded to or taken into account (Cornwall, 2008, p. 270).

Cornwall (2008) reviews various different typologies for describing the different kinds of participation into which citizens may become involved, noting that neither Arnstein’s ladder of citizen participation, nor the other typologies reviewed address the different kinds of participants. Nonetheless, Cornwall (2008, p. 276) explains that even if a broad range of different types of people are involved in participatory efforts, “if they are only informed or consulted their participation would remain ‘shallow’.”

There are no minimum requirements in the Municipal Class EA document for the amount of power that shall be given to the public or to different stakeholders; project proponents are free to involve citizens in the decision-making process in whatever way they feel is most appropriate for the particular circumstances of the project, be that through citizen control, or manipulation, or anything between.

Despite proponents being allowed, by legislation, to select the level of power given to participants in the EA process, the Minister's Environmental Assessment Advisory Panel (2005, p. 73) notes that "there appears to be overwhelming consensus among EA stakeholders that the MOE must develop appropriate policy and guidelines to ensure [that proponents allow] meaningful public participation in the EA planning and decision-making process," and that most stakeholders prefer to have some level of input into the EA decision-making process.

The basic steps for conducting a Municipal Class EA are laid out in the Class EA document in a straightforward manner, and so long as a proponent follows those steps and no Part II Order request is made and granted, the EA is considered to be approved and the project can move forward to implementation. The final step in the Class EA process for Schedule B and Schedule C projects is the public posting of a Notice of Completion of the EA Report and the final project documentation for a (minimum) 30-day public review. If, during the 30-day public review period, any group or individual feels as though the Class EA process has not been adequately followed, stakeholder concerns have not been adequately addressed, or the outcome of the EA study will lead to unacceptable negative impacts to the social, economic, or natural environment, that group or individual may make a Part II Order Request, as noted above. Part II Orders can only be given by the Minister under very specific circumstances, as outlined in the Act.

In their assessment and critique of Ontario's EA system, the Minister's Environmental Assessment Advisory Panel (2005, p. 91) notes that

failing agreement between the proponents and EA participants, the only remedy is for those concerned to await the completion of the project-specific Class EA and resulting ESR, and then request a bump-up/Part II order... [Part II Order] requests are especially problematic for proponents, in that they may result in unfathomable delays before they are acted on by Minister's staff, and because they can result in new and unknown factors being potentially considered by MOE staff in their processing.

Although Part II Order requests are almost never granted by the Minister (Lindgren & Dunn, 2010; MEAAP– Executive Group, 2005), the submission of a Part II Order request can nonetheless lead to delays in project start-up, as no work associated with the project can commence until the Minister rules on the Part II Order request. The average response time (in 2005 to 2011) from the Ministry for Municipal Class EA Part II Order requests was 272 days (MEA, 2012). For projects that are deemed to be routine and benign enough to fall within a Municipal Class EA process, a 272-day delay can mean the loss of funding or significant cost escalation, at the taxpayers' expense. One could therefore assume that the threat of receiving a Part II Order request would therefore be enough for proponents to engage stakeholders in meaningful discussion on the public impacts of proposed projects. However; as is shown

in the figure below, the number of Part II Order requests submitted each year over a four-year period for which data were available appears to have remained relatively constant. This may be due, in part, to the fact that the submission of a Part II Order request can lead to discussions between the proponent and the requester, in some cases resulting in some accommodation of concerns (see, for example, City of Waterloo, 2010). As noted by Professor Robert Gibson (personal communication, February 23, 2014), the potential for a Part II Order request to result in fruitful discussions with stakeholders, sometimes mandated by the Minister of the Environment, may explain why informed citizens continue to make Part II order requests, and why despite the unlikelihood of a Part II Order request being granted, proponents may choose to make changes in response to Part II Order requests.

Upon receiving a Part II Order request, the Minister must review all project documentation provided by the proponent, and if appropriate, consult with ministry staff or staff from other government agencies or other interested persons. A decision to deny, deny with conditions, or grant a Part II Order is made based on the information review and consultation (Government of Ontario, 2009). If the Minister elects to impose conditions on project implementation, through a “carry out commitments now made” condition of EA approval, the conditions can lead to sometimes dramatic changes to the outcome of the EA study (Robert Gibson, Personal communication, February 23, 2014).

Scores of Municipal Class EA projects are referred to the Minister of the Environment by stakeholders every year for Part II Order requests due to unresolved conflicts or disagreements between proponents and stakeholders<sup>3</sup>. Lindgren and Dunn (2010) found that between 1996 (when Class EAs were formally recognized in the EA Act) and 2001, 271 Part II Order requests from various different Class EA processes were submitted to the Minister, and none was granted. The Minister’s Environmental Assessment Advisory Panel (2005, p. 93) has reacted to the dearth of successful Part II Order requests thusly:

Some proponents whose projects are covered by Class EAs claim that the absence of successful Part II Order requests demonstrates that such requests are unmeritorious, and proves that Class EA planning procedures are working well. The Executive Group respectfully disagrees with this claim, especially given the inherently political nature of the current bump-up decision-making process. In our view, the fact that bump-up requests continue to be filed by Ontarians (despite the strong likelihood of rejection) suggests that there is significant and ongoing public dissatisfaction with Class EA implementation (i.e. insufficient or untimely public notices, inadequate documentation prepared by proponents, unacceptable environmental impacts or trade-offs,

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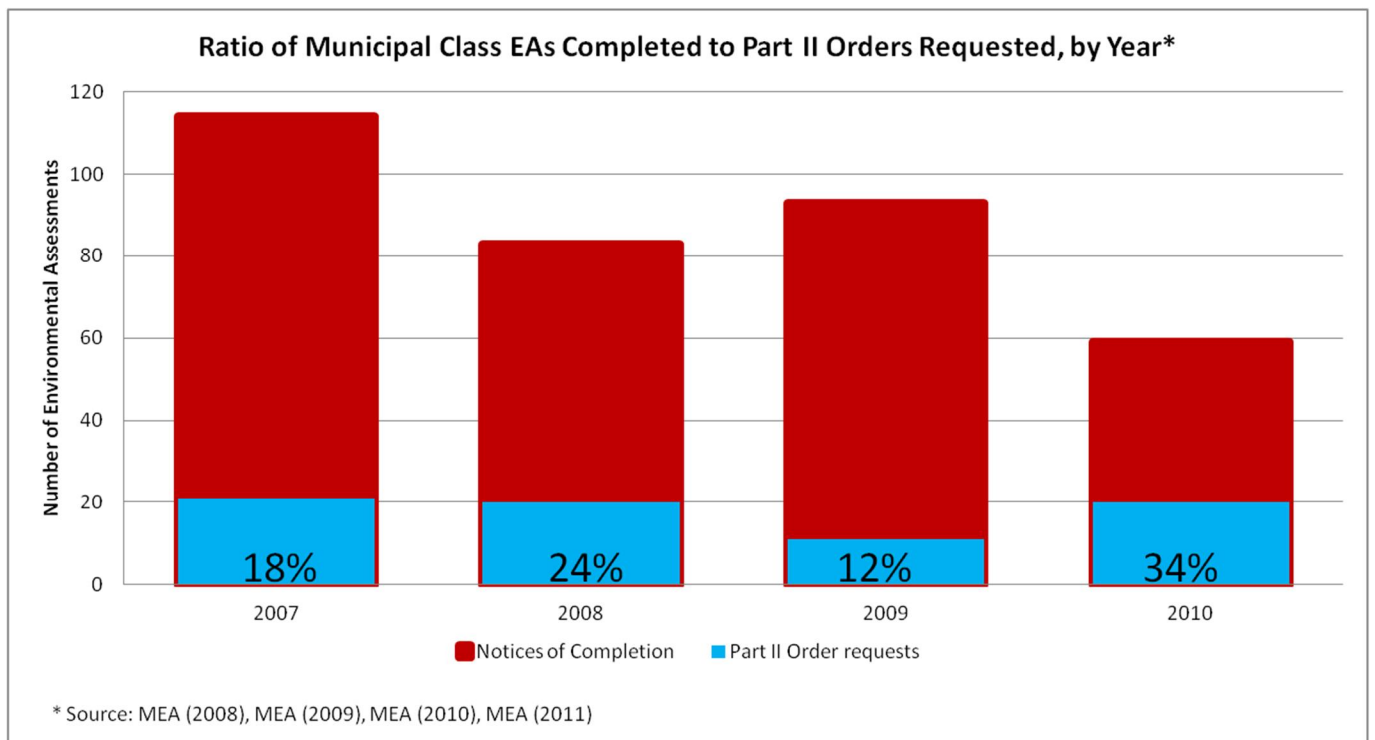
<sup>3</sup> Between 2005 and 2011, an average of approximately 14.5 Part II Order requests were submitted for Municipal Class EA projects each year (Municipal Engineers Association, 2012).

inappropriateness of Class EA procedures for particularly significant projects or sensitive sites, etc.).

To illustrate the rate at which Part II Orders have been requested for Municipal Class EAs, we can look to the Municipal Engineers Association’s annual Municipal Class EA Compliance Reports from 2008 to 2012, where the Association reports on the number of Schedule B and C Municipal Class EAs that are completed each year, and the number of Part II Order requests that are received for completed projects in each year. The results are summarized in Figure 1-1, on the following page.

As shown in Figure 1-1, below, in the four years 2007–2010, over 20% of all Municipal Class EAs were referred to the Minister through a Part II Order request. This means that at least one stakeholder from every one in five projects was dissatisfied enough with the process or outcome of an EA for a project that was, by definition, routine and low-impact, that he or she felt it necessary to refer the EA to the Minister of the Environment. Of 89 requests made during the time frame examined (out of 349 notices of completion filed), only one was granted (MEA, 2010).

Figure 1-1: Comparison of Municipal Class EAs complete to Part II Orders requested from 2007 to 2010



See Appendix A for the complete data set used to calculate the above. As the data set examined by Lindgren and Dunn (2010) includes all Class EA projects, and the data set summarized in Figure 1-1 only includes Municipal Class EA projects, it cannot be determined whether the rate at which Part II Order requests are being made has increased over time.

The fact that some Part II Order requests do result in the imposition by the Minister of conditions on the implementation of the project suggests that, at least in some instances, the proponent has, in fact, been deficient in its practice of environmental assessment, and that some Part II Order requests may be, at least partially meritorious. Nonetheless, the opportunity to request a Part II Order has been available since the formalization of the Class EA, and is still invoked on a regular basis, despite the fact that such requests are almost never successful. As noted by the Environment Commissioner of Ontario (ECO, 2008, p. 42),

Frustrated members of the public invoke the available appeal mechanism (a request for a ...“Part II Order”) about 60 to 70 times in a typical year, but to the ECO’s knowledge, the ministry has not granted one such request. The minister does, in some cases, respond to [Part II Order] requests by imposing conditions on proponents. But the conditions are often soft measures, such as additional consultation through liaison committees, rather than what is most sorely needed: stronger mitigation requirements.

Given that so few Part II Order requests are granted, the proposed research aims to develop a more specific understanding of why stakeholders continue to request Part II Orders with such regularity (as shown above, an average of 20% of all Municipal Class EAs were referred to the Minister with Part II Order requests between 2007 and 2010). It has been hypothesized by the Minister’s Environmental Assessment Advisory Panel (2005, p. 92) that Part II Orders are requested by stakeholders who feel as though their concerns are not being heard or are not being addressed:

Despite obvious and significant public concern about how a proponent may be approaching its tasks under a Class EA, the only current means available of getting the proponent’s attention is to threaten a [Part II Order] request.

The suggestion, above, is that people are requesting Part II Orders not just for substantive issues, but in order to be heard. If this is the case, then the mandated public consultation that forms a part of the Class EA process is not succeeding in making people feel heard. While public consultation is considered to be an important part of the Class EA process, as noted above, the onus is on the proponent to determine how best to consult with the public. If the proponent elects to engage with the public in a manner that amounts to the lower rungs of Arnstein’s ladder of citizen participation, for example, by informing the public or through therapy or manipulation, then the proponent will not have given the public an opportunity to even voice concerns or opinions, let alone being heard. This may leave stakeholders with only one option to have their concerns addressed: through the submission of a Part II Order request. Where social or environmental impacts have been ignored or missed, or the public interest is not appropriately accounted for in an EA study, it is not uncommon for the Minister to deny a Part II Order request but impose conditions on the implementation of the project such that important concerns are addressed.

That being said, as an EA practitioner my experience and the experience of colleagues with whom I have shared anecdotal evidence of the reasons for Part II Order requests, have suggested that the reasons for these requests in Municipal Class EA cases are far more nuanced than simply “being heard” or having technical concerns addressed with technical solutions. Stakeholders in Schedule B and C Municipal Class EA studies are given opportunities to express their opinions and concerns, meaning that either they want something more than simply an opportunity to be heard, or they do not feel as though these consultation activities are actually resulting in being heard (and are instead tokenistic activities in which stakeholders are not influencing the process). This begs the question: what is it that stakeholders want from the EA process that they are not getting, that they believe they will get from submitting a Part II Order request? It must be noted that, in asking what stakeholders want, the research reported in this thesis is not based on an assumption that Part II Order requesters are necessarily asking to gain personal benefit or prevent or mitigate personal loss from a change to the project subject to class EA. It is recognized that some, perhaps most, stakeholders may be at least in part speaking for those that cannot, seeking to address intergenerational or environmental injustices, or other power imbalances in the social or natural world. And although it is recognized that each EA is unique to the project geography (both human and physical) and social realities (including economic milieu), this research will search for commonalities of purpose amongst those who have requested Part II Orders.

While the majority of Municipal Class EAs are completed unopposed by the public and by government agencies, the volume of Part II Order requests in Ontario speaks to an important problem with the environmental decision-making apparatus’ in Ontario – namely, that the Class EA process, as described above, has not been set up to resolve stakeholder concerns adequately. Suggestions for improving the Class EA system may be more broadly applicable to environmental decision-making across the Province, and indeed, the country, and therefore lead to improved development sustainability and community resilience.

Of particular note is the apparent risk associated with Class EA projects. These projects have been categorized, in policy and in legislation, as routine projects with minor, well-understood, and easily-mitigated impacts and low risk profiles. Yet nonetheless, stakeholder opposition to purportedly low-risk, routine projects remains high, as shown above. For those who request Part II Orders, does opposition to these routine public undertakings result from a failure of the project proponent to do defensible assessment work (failure to define purposes properly or poor selection among potentially reasonable alternatives, or inadequate attention to the full range of environmental impacts of the preferred alternative proposed as the favoured project), or simply from a failure to communicate this assessment to the public?

As mentioned above, public opposition to a project can occur with small, routine, and apparently safe projects just as often as it can occur with large, complex, and risky projects. Thus, predicting the magnitude of or reasons for public opposition to an EA can be difficult. How does one define

“opposition” in a manner that is measurable? With the Class EA process, however, the ability to request a Part II Order from the Minister provides a convenient window into the motivation for public opposition. One person, or one group of people, can submit a Part II Order request, during the public review period for a Class EA study, and in this request they must outline their reasons for opposing the project. Thus, an examination of Part II Order requests might yield an explanation for public opposition to projects at the EA stage that goes beyond the simplistic notion that opposition to public projects is motivated by NIMBYism and parochial self-interest (Lake, 1993, Schively, 2007). And while it is recognized an examination of Part II Order requests is unlikely to yield a quantitative outline of the depth and breadth of public opposition to undertakings by government proponents, this research endeavour was designed with the aim of building a better understanding the cause for and substance of public concerns, in addition to determining the likelihood of successfully resolving issues through or outside of the Part II Order mechanism.

## **1.4 Research Question**

This research examines Part II Order requests and the Municipal Class Environmental Assessment studies in Ontario for which Part II Order requests were received to answer the question, “what motivates stakeholders to submit Part II Order requests to the Minister of the Environment?” It is theorized that NIMBYism, or the self-interest of stakeholders will not adequately explain the reasons for public opposition to government projects, and it is hoped that understanding why Part II Orders are requested for Class EAs in Ontario will provide insight into why stakeholders oppose public projects, and the extent to which stakeholders feel as though Class EAs are or are not responding to their concerns associated with government projects. This information will inform recommendations for project proponents and associated EA practitioners on how to address stakeholder concerns to avoid Part II Order requests, and will yield policy recommendations for adjustments to Class EAs, EA implementation policy and guidance, or EA law reform.

## **1.5 Overview of Methods**

A preliminary research direction was developed by surveying a broad spectrum of Part II Order requests for Class EAs to begin to understand the reasons presented by requesters for opposing EA outcomes. The outcome of this preliminary research was examined in greater detail with three case studies of Class EAs for which Part II Order requests were received. The research methodology is presented in greater detail in Chapter 2.

## **1.6 Thesis Outline**

The current chapter has presented the background research that provides context for the research question. The next chapter provides a detailed explanation of the research methodology. In Chapter 3 the preliminary hypothesis is developed and in Chapter 4 that hypothesis is tested with the case studies. In Chapter 5 the preliminary hypothesis is refined and recommendations are made for further research.



## 2 Research Methodology

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Given the broad nature of the types of Class EA processes in Ontario, and the limited research resources available at the time of the research undertaking, only Municipal Class EAs, were examined in-depth. Municipal Class EAs have the advantage of being numerous, widely distributed throughout the province and diverse enough in substance to be more representative of the strengths and limitations of class EA practice than other class EA processes in Ontario.

Bernard (2000) explains that there are three levels of a methodological framework: epistemological, strategic, and technical. Following Bernard, my research methods were determined at all three levels.

### 2.1 Epistemological Method

The epistemological method outlines the philosophical vantage point from which the research was designed and undertaken, and from which the results were analyzed. Based on the nature of the “problem” outlined in the previous chapter, it is clear that there are differences of perspective and/or experience among stakeholders, proponents, and perhaps government review agencies that are resulting in conflicts that cannot be resolved during the EA. These differences in opinion and experience suggest that a phenomenological epistemology is an appropriate lens through which to approach this study. As Bryman Teevan and Bell (2009, p, 8) explain, this interpretive approach to research allows the researcher to “interpret people’s actions and their social world from the point of view of the actors.” Thus, the investigation did not aim to suggest a “correct” interpretation of facts, but rather, compared multiple understandings of events, processes, and phenomena. The emphasis here is on the meanings given to phenomena by those involved. This lens is an appropriate one through which to review data gathered in the form of case studies, as it allows the case studies to highlight the multiple viewpoints of actors involved in each case.

### 2.2 Strategic Method

The strategic method describes the types of activities that will be undertaken during the study to answer the research question. Because the question posed was not one that I have found in other research papers, an explanation building approach (as described by Yin, 1994) was taken to address the question. The research activities followed from the approach and principles of grounded theory, as described by Glaser and Strauss in 1967. This iterative approach examines first the data derived from social research, develops a hypothesis based on the data, and then tests the hypothesis through the collection of more data. The emphasis is placed on the process by which theory is derived, as Glaser and Strauss (1967, p.5) explain,

the adequacy of a theory for sociology today cannot be divorced from the process by which it is generated. Thus one canon for judging the usefulness of a theory is how it was generated – and we suggest that it is likely to be a better theory to the degree that it has been inductively developed from social research.

It must be noted, however, that given the scope of the study, it was not anticipated that a grand theory could be determined regarding the reasons for requesting Part II Orders by stakeholders. Instead, this research aims to develop a plausible explanation, and therefore is a somewhat modified approach to grounded theory. Following the modified grounded theory approach, the answer to my research question came from a review of the social data available to me, and my plausible explanation was developed iteratively, as follows.

Although there has been some examination and critique of Environmental Assessment in Ontario (see the previous chapter), theories on the reasons for opposition to EA studies have been difficult to find. Yin (1994) explains that, where the existing knowledge base and available literature provide no conceptual framework or hypothesis, it is appropriate to design new empirical study as an exploratory study. Following the steps outlined by Bryman, et. al (2009) for the process of theory-building using a grounded theory approach, once my research question had been determined, I began by drawing a sample of relevant Municipal Class EA studies for which Part II Orders were requested, as made available by municipal staff from across Ontario. The first step in answering the research question entailed an archival review of Part II Order request letters to develop a preliminary or tentative answer to the research question that was used to provide direction for the next phase of research, which flushed out the preliminary research results. Although it is recognized that many Municipal Class EAs may involve an element of controversy that does not result in the submission of a Part II Order request, this particular mechanism was examined in the Class EA process because it provides a convenient proxy for identifying the common conflicts between proponents and stakeholders.

Early repeated attempts to obtain copies of Part II Order request letters from the Ministry of the Environment were unfruitful. However the Ministry eventually provided a partial list of titles of EA studies for which Part II Orders were requested within the past five years, selected by Ministry staff. The list did not include proponent information; however enough of the EA study titles provided clues to the proponent or were searchable on the internet that a short list of municipal contacts could be compiled. Each municipality was then contacted and a request was made for copies of the complete EA documents and Part II Order request letters received for the EA studies listed. Many municipalities were not able to provide the information requested, for various reasons, or did not respond to the information requests. From those that did respond, copies of Part II Order request letters from 19 different projects subject to Class EA requirements were obtained.

Of those 19 Class EAs, five were not used as they were not Municipal Class EAs. From the 14 remaining Class EAs, 39 Part II Order request letters formed the sample of Part II Order request letters reviewed. All 39 letters were subjected to a themed analysis; by exploring the relationships between categories and themes, commonalities of purpose amongst the requests were identified. From this exercise a number of reasons for requesting a Part II Order emerged, and these were grouped into broad categories, or classes of reasons.

Aronson (1994, n.p.) describes the process required to undertake a themed analysis of qualitative data, noting that “thematic analysis focuses on identifiable themes and patterns of living and/or behavior.” The various methods for teasing themes from texts are described in greater detail by Ryan and Bernard (n.d.) and by Bernard (2000). At this early stage of data analysis, and without the benefit of follow-up or detailed background research, only very broad themes could be discerned, which was anticipated. The review of Part II Order requests provided only a superficial understanding of the reasons for each request, revealing perhaps only broad themes of complaints, questions, or concerns; however these themes were useful in directing the next phase of research, and provided a stable basis on which to approach more in-depth research and theory-building activities.

The next step in data gathering and analysis was based on the recognition that the Ministry of Environment has set limitations on the reasons why the Minister can issue a Part II Order, as outlined generally under section 16 of Ontario’s EA Act and more specifically in the Municipal Class EA document (MEA, 2007), and that informed participants in the EA process are more likely to follow these requirements in their official requests in order to improve the likelihood of the Part II Order being granted, or at least given serious review. Thus, the next step of research was designed with the understanding that the Part II Order request letters reviewed likely did not tell the whole story of what led up to the submission of each letter or a complete explanation as to why each letter was submitted. Further details were necessary than what could be obtained from official correspondence, and so the EAs for which the Part II Order requests had been submitted were examined more closely. A multiple case study design (as described by Yin, 1994) was adopted and three cases of Municipal Class EAs were selected for detailed examination. A multiple-case study design was selected because, of the 14 EAs examined, none was a case that was, in my professional opinion, revelatory or critical in terms of the range of stated reasons for requesting Part II Orders, and thus none was appropriate for a single case study design (Yin, 1994). Following Yin’s (1994) advice on how to select a case, three EA studies were chosen that had enough in common that they could be broadly compared; that were, to some degree, representative of the types of projects that are frequently undertaken in municipalities across Ontario; and that could be examined practically because there was enough detailed documentary information available for developing an understanding of the circumstances leading up to the submission of the Part II Order without any major gaps or questions. A determination of the typicality of each case was based on my

professional judgment as an EA practitioner, rather than a broad review of project types across the province.

Again, it must be emphasized that the research goal was not to find the correct interpretation of facts, but to develop a deeper understanding of the meanings (and especially, the differences between meanings) given to those events and circumstances of the EA from different actors. The case study methodology was designed to examine multiple, embedded units of analysis. Each case was defined as the EA study itself, beginning at the time period of the issuance of the Notice of Commencement and ending when the Minister of the Environment declined to issue a Part II Order for the EA study. The embedded unit in each case is the viewpoint of the actors (the person/people or group affected by the EA decisions, and the proponent conducting the EA), again, time-limited as above.

More details on the case study design and interpretation are available in Chapter 4.

The more in-depth review of the selected case studies allowed for the development of an understanding of the context of the study, the stated study goals, the project alternatives and the resultant approved project. However the review of the documentary evidence resulted in only an overview of mostly technical issues and solutions examined in each case study. In other words, details on the metrics used for decision-making were minimal as is common in an EA report. In all cases, EA decisions were based mostly on technical issues, such as design and cost considerations. Evaluation criteria varied in each case, but generally the social implications of the projects were glossed over or not present at all in each report. Given the limitations of the data set (the inability to observe participants directly during the EA studies, for example), further evidence was required to understand better the political and social context within which the case EA studies were performed. Where Part II Order requesters were available, interviews helped to fill in the gaps; however, accessing interviewees proved to be challenging. Although all comments and Part II Order requests can be made public for EAs, most of the materials supplied by the municipalities for this research had been redacted, and names and contact details were not available for many of the stakeholders. I contacted the MOE to request this information and received no response. But because the information provided to proponents by stakeholders becomes part of the public record, some archived web documents contained enough details about some of the requesters that at least partial contact information could be pieced together using multiple web-based sources, including telephone directories. In one case, only a name and address were available, so a letter was sent to the requester asking for participation in an interview. This person did not reply.

All available stakeholders and proponent project managers (referred to in the case study reports, simply, as proponents) were invited to participate in semi-structured interviews, as described by Bernard (2000), to answer the questions derived from the documentary evidence in the EA. In total, three stakeholders and three proponents were interviewed. Two interview guides were produced for interviews: one for

stakeholders and one for proponents. The guides featured open-ended interview questions so that the same questions were asked of each interviewee; however, they were allowed to respond in such a manner that allowed a story to be told. Follow up questions were asked, as appropriate, to each interviewee response, following the “narrative inquiry” approach described by Chase (2005). Each interview focused on ascertaining the respondent’s understanding of EA issues, and how that understanding affected either the EA processes (in the case of proponents) or the decision to request a Part II Order (in the case of stakeholders). Thus, the interviews aimed to develop an understanding of the meanings given to substantive issues that arose during the EA by those involved in it.

Again, a themed analysis was performed for each case study. Within each case study multiple sources of evidence were reviewed. In each case, the sources were interviews with the project manager and with the individual(s) who requested the Part II Order(s) (where available), documentary evidence of the written comments from stakeholders received throughout the EA study and published with the final EA documentation, and any media coverage of the EA process available, archival evidence where census or demographic data were deemed to be useful, and direct observation by visiting the site. Interview questions were developed based on the preliminary hypothesis about the reasons why stakeholders request Part II Orders. From the themed analysis the main concerns of each participating stakeholder associated with each project were discerned. Where interviews with Part II Order requesters were available, a more direct response to the research question could be obtained to develop a better understanding of requester attitudes and motivations. Most importantly, a comparison of the themes that emerged from different sources allowed me to compare different views of social reality held by different actors. This helped to define further my theory of why people request Part II Orders for Class EAs, and also to understand better the cleavage points between stakeholders and proponents.

Themes were first identified within each case individually, and then compared between cases to determine if overarching themes would emerge across all projects or groups of projects. The results of the cross-case analysis formed the concluding results of the research and were used to identify future research opportunities.

## **2.3 Technical Method**

Bernard (2000) explains that the technical method of a research undertaking describes the research techniques, or how the above-described activities were undertaken. For the first activity, submitted Part II Order requests were collected from proponent municipalities, in electronic format for review. A manual themed analysis of the text was performed by identifying and grouping key phrases in each Part II Order requests and the associated Ministry responses. EA study documents were then collected electronically from proponent websites, or directly from proponents via email or postal mail, and EA details were taken

from these documents to help in the selection of appropriate cases. A comparison of the 16 cases was performed manually, as described above.

Upon selection of three case studies, semi-structured interviews, following an interview guide, were performed over the telephone and in person, depending on the respondent's availability and location. Where permission was given, interviews were recorded using a digital tape recorder and type-written notes. For two of the interviews, only type-written notes were taken. The results of the interviews were transcribed (or notes were clarified for legibility) and forwarded back to each respondent electronically to check for accuracy and provide an opportunity for additional comments or questions. All documents collected for each case study were then subject to a themed analysis using NVivo software. Analysis began with open coding, followed by interpretive coding, as described by Bryman and Burgess (1994). Codes were not predetermined, but emerged from the data analyzed, and were grouped into themes and subthemes. The results of the themed analysis for each information source were compared. A more detailed guide to the case study method employed is presented in chapter 4.

Prior to contacting interviewees, all research methods and interview materials were reviewed and approved by the University of Waterloo Office of Research Ethics.

Glaser and Strauss (1967) note the importance of verification in the field of social sciences, and underline that the generation of theories is as important as testing them. Therefore opportunities for further research associated with verifying my theories and testing my recommendations were also outlined as a part of this research endeavour. It is my hope that further research opportunities will be undertaken to refine or expand upon the theories outlined in this thesis.

In summary, the research took a slightly modified grounded theory approach to build an explanation or answer to the research question that accounts for biases by examining the multiple perspectives of stakeholders and proponents in an EA study to understand the conflicts and relationships that resulted in the submission of a Part II Order request. The first step in so doing was the examination of as many Part II Order requests as were available to the researcher, the results of which are discussed in chapter 3.

## 3 Archival Review of Part II Order Requests

### 3.1 Gathering and Organizing Data

As described in the previous chapter, Part II Order request letters were collected from municipalities that had received them in the past five years. The documents consisted of a combination of original Part II Order request letters, redacted Part II Order request letters, Minister's responses to Part II Order request letters, and Part II Order request letter summaries. In total, 39 letters requesting or responding to requests for Part II Orders for 14 Municipal Class EA studies were gathered. These Municipal Class EA projects for which letters were obtained are described briefly in Table 3-1, below.

*Table 3-1: Outline of Municipal Class EA projects for which Part II Order letters were collected*

<b>Project Identifier</b>	<b>Project Name</b>	<b>Project Type and Schedule</b>	<b>Project Proponent and Year Completed</b>
Duffins Creek WWTP	Provision of Additional Capacity at the Duffin Creek Water Pollution Control Plant	Schedule C Municipal Class EA for the expansion of a wastewater treatment plant	Regional Municipality of York and Regional Municipality of Durham, 2006
King Rd at Humberlea	King Street (Regional Road 9) Improvements, Humberlea Road to Peel/York Boundary	Schedule B Municipal Class EA for improvements to an existing arterial roadway	Regional Municipality of Peel, 2009
Jarvis Bike Lane	Jarvis Street Operational Changes Project	Schedule A+ Municipal Class EA for the removal of painted bicycle lanes on an existing arterial roadway	City of Toronto, 2012
John St	John Street Corridor Improvements	Schedule C Municipal Class EA for improvements to an existing local roadway	City of Toronto, 2012
Kanata West	Kanata West EA Master Servicing Study, Kanata West Stormwater Management Projects, Kanata West Sanitary Servicing Projects, and Carp River Restoration Plan (CRRP)	Municipal Class EA Master Plan for stormwater management and river valley restoration projects.	City of Ottawa, 2010
Kirkhams Bridge	Kirkhams Road Bridge Over the Rouge River	Schedule C Municipal Class EA to address a deteriorated road bridge over the Rouge River	City of Toronto, 2007

<b>Project Identifier</b>	<b>Project Name</b>	<b>Project Type and Schedule</b>	<b>Project Proponent and Year Completed</b>
North Yonge Transit	North Yonge Street Corridor Public Transit and Associated Road Improvements Project	Schedule C Municipal Class EA to expand public transit operations along a regional arterial corridor	Regional Municipality of York, 2008
Peel Gladstone	Peel Avenue and Gladstone Avenue Reconstruction Project	Schedule B Municipal Class EA to improve pedestrian movement and public realm along a local collector roadway	City of Toronto, 2010
Queen's Quay	Queens Quay Revitalization	Schedule C Municipal Class EA to address pedestrian, public transit, and vehicular movements along a local collector roadway	Waterfront Toronto, 2009
Roncesvalles Improvements	Roncesvalles Avenue Streetscape Improvements	Schedule B Municipal Class EA to improve streetscape elements along a local collector roadway	City of Toronto, 2009
Sheppard LRT	Sheppard East LRT	Schedule C Municipal Class EA to address public transportation needs along a regional arterial roadway	City of Toronto, 2009
Union Station	Front Street/Union Station Project	Schedule C Municipal Class EA to address pedestrian access to Union Station	City of Toronto, 2012
Walkers Creek	Walker's Creek Rehabilitation Study	Schedule B Municipal Class EA to rehabilitate a section of a watercourse in a suburban neighbourhood and realign an exposed sewer pipe.	City of St. Catharines, 2009
Waterloo N Water Supply	Waterloo North Water Supply	Schedule C Municipal Class EA to identify and evaluate potable water supply solutions for a growing neighbourhoods in a medium-sized urban centre.	Regional Municipality of Waterloo, 2011

From the above sources the thoughts, sentiments, or concerns expressed in each letter were summarized for ease of data input into NVivo. The goal of this exercise was to explore themes and categories of themes within the officially-stated reasons for requesting Part II Orders through a high-level analysis of the text in order to ascertain overarching themes (as opposed to the myriad details presented in the text of many of the letters). In some cases, groups or individuals submitted similar letters, or the same letter,



written from boilerplate text. Where the content of letters was the same, the text was entered into NVivo as though it had come from a single letter in order not to overstate the importance of some themes, as compared to others. Compiling multiple boilerplate letters as a single letter counteracted the effect of the “squeaky wheel” (Rivers & Buchan, 1995; Vantanen & Marttunen, 2005).

This exercise was designed to develop a broad understanding or a “long list” of reasons given to the Minister for requesting Part II Orders, and as such a broad range of Part II Order request letters was collected and analyzed at a high level, rather performing an in-depth examination of the letters. One example is a paragraph in a letter opposing the removal of a bicycle lane on a busy urban street, which stated:

The proposal to remove the existing bicycle lanes and add a fifth reversible centre lane is a major new change to the road infrastructure and streetscape. Specifically, it was a dangerous street to cycle when there were five lanes as each lane was very narrow. When drivers had to pass me, they had to slow down and do a lane change. Some drivers would not leave a safe amount of room when they passed me on my bike. The removal of the bike lanes is serious safety concern to residents who live along Jarvis Street. The bike lanes make the neighbourhood safer for drivers, pedestrians and cyclists. (Drew, 2012)

This was summarized in NVivo as:

Removing bike lanes will adversely affect driver, pedestrian and cyclist safety.

### **3.1.1 Data Controls**

Another reason for summarizing the text was to control for the variability in quality and detail of the letters obtained. In some cases, the original Part II Order letter was not provided, and in its place a summary of the letter, or the Minister’s response to the letter was given. In these cases, the proponent or the Minister summarized the issues, and so summarizing the original or redacted Part II Order letters equalized the quality of the data in each source. The letters also varied significantly in their length. Some were prepared by lawyers, others by well-informed stakeholder groups, and some by less sophisticated stakeholders. Those prepared by lawyers and by more sophisticated stakeholders tended to be longer and more detailed than the less sophisticated letters, and often raised multiple issues, including legal or complex scientific or engineering issues. Summarizing the issues presented, as noted above, also helps to equalize the data by removing the “squeaky wheel” effect often seen when one stakeholder has greater resources to participate in a public process than another (Rivers & Buchan, 1995; Vantanen & Marttunen, 2005).

While some Part II Order request letters may have raised several issues each, and subsequently been coded to a dozen or more themes, or brought up multiple, separate concerns that were coded to the same

theme, other letters may have been a page or less, and resulted in only two or three coding instances. For example, the only Part II Order request letter for the Queen's Quay Revitalization EA in downtown Toronto was 23 pages long, and resulted in 30 instances of coding, mostly within three themes. In contrast, one of the 10 Part II Order request letters submitted for the North Yonge Street Corridor Transit EA north of Toronto was submitted by a new Canadian who wrote a one-page letter that resulted in only six instances of coding to four themes. To control for the "squeaky wheel" effect, if the same issue was brought up multiple times in the same request letter, it was only coded once. For example, in one letter requesting a Part II Order for the Waterloo North Water Supply EA, 2012, the requester asks "Have citizen, corporate efforts and the closure of manufacturers resulted in enough water savings to offset the need for this new well?" and later in the letter asks "Do we need this well to keep taps running?" Both of these questions are asking if a proposed new drinking water well is required in the immediate future, and therefore were coded together as a single question under the theme "Questioning Project Need." More information on the coding process is outlined below.

### **3.1.2 Coding**

The content of the letters was coded to facilitate the identification of themes and the analysis of relationships or similarities between the letters. Open coding of themes was derived from key words or phrases found in the text of the letters, as described by Bryman, et al. (2009). Each theme was given a defined scope, in order to help differentiate between themes and guide how content was associated with each theme. For example, the above-noted content was coded under the theme of "pedestrian and cyclist safety," which was defined as content that was suggestive of or pertained to real or perceived threats to pedestrians or cyclists while travelling within the municipal right-of-way. Threats can be from automobiles, poor terrain, or other travel-related conflicts but do not include public safety threats such as crime or harassment. Thus, the above text can be differentiated from content that would have been coded under the theme of "public safety," which was defined as content suggestive of or pertaining to real or perceived threats to the general health and welfare of the public as a result of fire, medical or natural disaster, the inability of first responders to access those affected by the above, or threats to the welfare of motorists or the general public as a result of dangerous driving conditions including poor visibility, complex traffic patterns, or illegal traffic movements.

Themes were grouped into broad categories for further analysis. Bryman, et. al (2009) call this axial coding, and it involved grouping themes into categories based on how they were similar, connected, or in some way related. The categories that emerged were as follows:

- Environmental assessment process: Comments or questions that suggest that the EA process and purpose have not been properly followed, or procedural requirements have been ignored,

including criticism of the process as the stakeholder perceives it should be, regardless of legal requirements;

- Project impacts: Concerns or questions about the potential impacts of the construction or operation of the project on individuals, groups, or the environment, including concerns about long-term or cumulative impacts [includes positive as well as adverse effects?];
- Stakeholder requests: Questions or comments that imply a specific request for something that the EA does not promise to provide, including requested changes to project design, implementation, or post-implementation follow-up or monitoring. Requests may benefit a single individual or multiple people, and may suggest that the project will be improved if the request is granted; and
- Distrust of the intent or outcome of the EA: comments, questions or requests that suggest that the stakeholder does not believe that the conclusions drawn are supported by the evidence provided, despite clear logic showing otherwise; that not enough evidence has been provided to properly draw conclusions despite ample evidence, or that the data provided are inaccurate or incomplete, despite clear documentation of supporting studies. Comments may call into question the competency or the motivation of the EA practitioners, their consultants, or the proponent, or may question the need for the project altogether.

All themes and theme definitions are outlined below in Table 3-2.

*Table 3-2: Definitions of themes that emerged from the coding of all collected Part II Order request letters*

<b>Category</b>	<b>Theme</b>	<b>Definition</b>
<b>EA process</b>	Additional alternatives	The EA study should have evaluated more alternative solutions or designs than were evaluated and other potentially feasible solutions were therefore missed.
	Disregard for public concerns	The proponent has not included comments or concerns from previous related projects in the decision-making for this project.
	Procedural concerns	The Class EA process is flawed or inconsistent or unfair.
	Fairness	Stakeholder requests to be treated in the same manner as other stakeholders have been treated, or to have similar exceptions made as were made for other stakeholders
	Foregone conclusion	The preferred alternative was preselected and the EA is an exercise designed to confirm it.
	Piece-meal	The scope of the study was not large enough to account for the entire scope of the proposed works, and is, instead, examining only a small section of the works in order to downplay the impacts of the proposed works.
	Policy	The proposed works do not meet local, provincial, or federal policy mandates.

<b>Category</b>	<b>Theme</b>	<b>Definition</b>
	Public consultation	Questions or comments suggesting or pertaining to concerns about or criticisms of public consultation activities, including accessibility, timing, and scope of activities; complaints of not having been consulted, or not having been heard or heeded.
	Scope	The scope of the study was not large enough to account for the entire scope of the proposed works or the scope of the potential impacts, or was changed during the study.
	Inadequate documentation	The documentation of the EA study did not include all of the information or data collected during the study, including comments or questions from the public, or a complete account of the decision-making process.
Project impacts	Costs	The project costs are too high or will have an unacceptable impact on tax costs to taxpayers.
	Cumulative impacts	Although the project may seem to have only minor impacts at first, over time those impacts will become compounded and increase in magnitude; in combination with other, similar projects, the total impacts will be greater than the sum of individual project impacts.
	Impacts to operations	The construction or operation of the proposed works will negatively affect regular business operations.
	Impacts to parking	The construction or operation of the proposed works will reduce or move available parking spots.
	Loss of business	The construction or operation of the proposed works will result in a loss of business traffic or a decrease in revenue on a temporary or permanent basis.
	Noise, vibration, odour or air pollution	The proposed works will result in a greater decibel level of noise, an change to subsurface vibrations, an increase in odour or air emissions produced during construction or operation; or will result in a greater number of receptors in the vicinity of an existing source of noise, vibration, odour or air emissions.
	Pedestrian or cyclist safety	The proposed works will increase the risk of harm to pedestrians or cyclists.
	Private property	The proposed works could result in damages to private property.
	Public safety	The proposed works will force unsafe vehicle, cycle or pedestrian movements or will reduce access to EMS vehicles.
	Relocation	The proposed works will result in land taking that will force business or residential relocation.
	Traffic	The proposed works will worsen traffic congestion or alter traffic patterns.

<b>Category</b>	<b>Theme</b>	<b>Definition</b>
	Natural heritage	Concerns regarding the potential impacts of the project on vegetation or other natural features.
Stakeholder requests	Design	concerns about or requests for changes to project design elements
	Direct benefit	A request that, if granted, will result in the requester gaining a direct benefit from the project that may not directly benefit surrounding or neighbouring stakeholders, even if diffuse benefit may be obtained for the broader community.
	Mitigation measures	Request for further impact mitigation measures or concerns over adequacy of proposed impact mitigation measures.
	Monitoring	Concern over lack of monitoring to determine success of proposed works.
Trust	Distrust of commitments	Decisions should not be made on the promise of future investigations or analysis, but should wait until future investigations or analyses are complete.
	Distrust of data	Comments or questions suggesting a deficiency in the collection or use of data used to draw conclusions or make decisions, despite ample documentation of study methods and results, including questioning underlying model assumptions, questioning adequacy of data points or baseline data, requesting peer or third party review of data or models, questioning competence of professionals or experts involved in data analysis, and making recommendations for alternative interpretations of data or alternative designs based on speculated alternative interpretations of the data.
	Distrust of intentions	Proponent is not being honest or is not being transparent about intent of EA study.
	Distrust of evaluation methods	Questions or comments that call into question the evaluation criteria weighting or suggest additional evaluation criteria, or suggest evaluator bias or inconsistent, illogical, or non-rigorous evaluation methodology.
	Requests access to additional data	Data used in decision-making are being withheld from public scrutiny or concerns that future data will not be made publicly available.
	Request further study	Requests for further studies, evaluations or analyses based on the suggestion that data have been missed or ignored.
	Questioning project need	Suggestions that the no changes to the status quo are necessary or that there are underlying, unspoken motives behind the proposed changes to the status quo.

## 3.2 Analysis of Results

### 3.2.1 Themes

Once arranged by category, analysis of the data began to show patterns; there were some themes that appeared more often than others, and some categories that were more consistently represented across projects than others. Themes within the EA Process category appeared in all but two EAs. The EA Process category had the most instances of themes coded to it, with the Trust category coming in a close second. By visualizing the coding instances per theme per EA study, patterns began to emerge. Some projects had multiple Part II Order requests, and some Part II Order request letters were far lengthier than others or raised many more or a wider diversity of concerns than others, meaning that some projects had many more instances of coding to themes than others. The difference in quantity of data collected for each project biased the data towards the projects with the longest or most letters. To address this bias, the “importance” of each theme was calculated by determining how many times a theme was coded as a percentage of all the coding instances for all Part II Order request letters assessed. A total of 168 instances of coding to any theme were recorded for all letters assessed, so the number of instances of coding to any theme within any project are shown as a percentage of 168. The results of this exercise are shown on the following page, and the raw numbers are shown in Appendix B. Themes that appear more often, relative to all instances of theme coding, highlighted in a black box. The four themes that appeared the most often, or were the most important, in relative terms were the themes of “Public Consultation”, “Request Further Study”, “Distrust of Evaluation Methods”, and “Distrust of Data”. The most important single theme was that of public consultation, which was coded in almost all of the EA projects. The combination of themes from the trust category also figured highly in most of the EA studies. These two themes became the focus of further investigation, as described in the following chapter.

Table 3-3: Importance of coded themes by project by category (percent of overall coding)

	Concerns about EA process										Concerns about project impacts										Stakeholder requests			Trust									
	additional alternatives	disregard for public concerns	distrust of process	fairness	foregone conclusion	piece-meal	policy	public consultation	scope	inadequate documentation	costs	cumulative impacts	impacts to operations	impacts to parking	loss of business	noise, vibration, odour or air pollution	pedestrian or cyclist safety	private property	public safety	relocation	traffic	vegetation	design	direct benefit	mitigation measures	distrust of commitments	distrust of data	distrust of intentions	distrust of evaluation methods	requests access to additional data	request further study	questioning project need	
Duffins Creek WWTP			1.19												0.60										0.60	1.19	0.60	1.19					
King Rd at Humberlea															1.19		0.60					0.60											
Jarvis Bike Lane							0.60	0.60															0.60				0.60						0.60
John St							0.60				0.60					0.60																	0.60
Kanata West		0.60				0.60	1.19	2.98	3.57	1.79		1.19											0.60		0.60		4.17		0.60	0.60	1.79		
Kirkhams Bridge					0.60			1.79																1.19	0.60				2.38		0.60		
North Yonge Transit				0.60				1.79		0.60		1.79		1.79	0.60		0.60	1.79	1.79									0.60		2.38			
Peel Gladstone								1.79																									
Queen's Quay	2.98							4.76													1.19			0.60				2.98		5.36			
Roncesvalles Improvements	0.60							0.60										0.60			0.60					0.60							
Sheppard LRT									0.60	0.60					0.60		0.60			1.79		0.60				0.60		1.19		0.60	0.60		
Union Station				0.60			1.19	1.19					0.60					0.60					0.60	0.60									
Walkers Creek																								0.60									
Waterloo N Water Supply							1.19			0.60	1.19						0.60					0.60				0.60				0.60	1.19	0.60	
TOTAL BY THEME	3.57	0.59	1.19	1.19	0.59	0.59	3.57	15.5	3.57	2.98	0.59	1.79	1.79	0.59	2.38	2.38	1.19	1.79	2.98	1.79	3.57	0.59	3.57	2.38	1.79	0.59	7.14	0.59	8.93	0.59	11.3	1.19	
TOTAL BY CATEGORY	30.36										2.98	21.43										7.74			30.36								

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The scattered nature of the instances of coding within the other two categories suggests that, while the combination of stakeholder requests and stakeholder concerns about impacts (which were often two sides of the same coin) are often present in many of the Part II Order requests, the themes within these categories do not appear consistently enough throughout the letters to be suggestive of an important category of themes. It is possible, however, that the circumstances of each EA study were so different, and requests and impacts are project specific enough that they wouldn't show consistency unless the EAs were controlled by project type. In other words, had there been enough Part II Order request letters that they could have been grouped by project attributes such as project scope, population demographics, and history of public involvement, more consistency within each of these groups may have emerged in terms of the types of stakeholder requests that were made and the types of concerns regarding project impacts that were expressed in Part II Order letters. Unfortunately, there simply were not enough Part II Order request letters to be able to do this.

Demographic data for those who submitted Part II Order requests were unavailable therefore it was not possible to correlate Part II Order request reasons with other factors (such as level of education, age, or occupation), and thus the data analysis cannot control for external factors such as the gender, occupation, age or level of education of the Part II Order requester.

### **3.2.2 Relationships**

The literature on public policy-making, public decision-making, and public consultation is rife with theories on and examples of public distrust of elected officials and bureaucrats as a result of or in spite of the participatory elements of these public processes (see, for example, Slovic, 1993; Zussman, 1997). Bishop and Davis (2002, p. 14) point out that even when consultation activities expressly target specific special interest groups, “people distrust having others speak for them. They want a direct say, not one filtered through elected representatives or peak lobby groups. Existing patterns of consultation are rejected as insufficient, for they assume interests can be aggregated into organizations that speak with one voice.” Owens (2000) notes that the public lacks trust in the competence and impartiality of regulators and regulatory frameworks. Ulsaner and Brown (2005) showed how public distrust of political institutions results in reduced political participation, while Yang (2006) showed that administrators' trust in citizens affects their willingness to include the public in decision-making activities that will affect them.

Given the significance in the literature of and sometimes correlation between the two issues of public (dis)trust in government and the importance (and often inadequacy) of public consultation; and given the results of the data gathering reported above, it appears that, in instances where public consultation activities were viewed as being deficient in some way by stakeholders, there are likely also trust issues

present between stakeholders and proponents. To check the validity of this statement, the instances of request letters with and without public consultation complaints were compared to instances of request letters with and without trust complaints. Of the 14 Part II Order request letters examined, eight had coding instances of concerns regarding public consultation and 10 had coding instances of trust. Six had coding instances of both. To determine the significance of the association between public consultation and trust, the 14 Part II Order request letters were grouped according to whether or not public consultation was mentioned as a reason for the request. Within the two groups, the Part II Order request letters were further separated by whether or not there were coding instances of trust issues. This delivered four categories of letters, as follows: public consultation and trust, public consultation and not trust, not public consultation and trust, and not public consultation and not trust, the results of which are shown below in Table 3-4.

Table 3-4: Part II Order request letters by mention of public consultation and of trust

	Trust	Not Trust
Public Consultation	6	2
Not Public Consultation	4	2

The letters were arranged into a two-way contingency table, as shown above, and Fisher's Exact Test was performed to determine if there was a nonrandom association between the two variables. Fisher's Exact Test is used to determine the statistical significance of multiple variables in a small sample size, using the following equation (Preacher & Briggs, 2001):

$$p = \frac{\binom{a+b}{a} \binom{c+d}{c}}{\binom{n}{a+c}} = \frac{(a+b)! (c+d)! (a+c)! (b+d)!}{a! b! c! d! n!}$$

where p is the probability of obtaining the observed result or a more extreme (less likely) result, and a, b, c, d and n represent the following values, shown in Table 3-5 as they relate to the above 2 x 2 contingency table.

Table 3-5: Values used to calculate P using Fisher's Exact Test

	<b>Trust</b>	<b>Not Trust</b>	Row Total
<b>Public Consultation</b>	A	b	a + b
<b>Not Public Consultation</b>	C	d	c + d
Column Total	a + c	b + d	a + b + c + d =n

This result of the test yielded a one-tailed P value of 0.594, meaning that, although both issues were prominent issues in the Part II Order request letters examined, the association between rows (groups) and columns (outcomes) is considered to be not statistically significant (since the result of P is greater than 0.05).

As Slovic (1993) and Bishop and Davis (2002) note, there is an indirect relationship in North America between public feelings of trust and public participation in decision-making. Thus, despite the lack of statistical significance in this case, it is reasonable to suspect that people who find reason to distrust the proponent's work or who are dissatisfied with the quality of public consultation connect these concerns with persistent negative feelings about the anticipated effects of the project (as has been shown, for example, by Upretia and van der Horst, 2004). In the context of the current research, the strong presence of both trust issues and public consultation issues in the majority of the letters suggests that when stakeholders feel they aren't being appropriately consulted for an EA, it breaks down the trust relationship between the proponent and stakeholder (or hampers such a relationship from forming). Alternatively, when there is a poor trust relationship between stakeholders and the proponent, stakeholders are more likely to feel their participation in the EA decision-making process should be higher on Arnstein's (1969) ladder of citizen participation than what has been offered by the proponent. As noted in chapter 1, there are procedural requirements for requesting a Part II Order, and prescribed circumstances in which the Minister may grant the request. It is equally possible that, in some cases at least, Part II Order requesters may well be aware of the prescribed reasons for which a Part II Order can be granted, and are using procedural arguments as ways to win attention to and adjustment of substantive components of the project – perhaps to block project approval, perhaps merely to win some particular concessions. The data available in the Part II Order request letters are not adequate to determine if procedural or technical issues were the sole cause of each request, or if issues surrounding trust and poor public consultation underpinned the decision of each requester to submit the request. To sift through the potential reasons for submitting Part II Order requests, and determine why a request was submitted within the particular context of a specific Class EA study, three cases were examined in greater detail, as described in chapter 2. The results of the case studies are described in chapter 4.

# 4 Case Study Design

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## 4.1 The Need for a Case Study

The preliminary research results outlined in the previous chapter were obtained from a data set made up of official correspondence to and from Ontario's Minister of the Environment, and as such, does not include contextual information such as the magnitude of the changes associated with each project, or the historical relationships between the proponent and the people who have requested a Part II Order. The lack of context limits the ability to make connections or see relationships between data points, and therefore limits the depth of the answer to the research question. To enrich the data set, and following the process for theory building using grounded theory outlined by Bryman et al. (2009), a more in-depth review of select projects reviewed in the previous chapter was performed in the form of case studies. Each case study was selected from the 14 EAs examined in the previous chapter. Each case study examined the context within which EA studies were performed, and the opinions of actors involved in the case studies. By developing a more complete picture of each actor's understanding of and feelings about the EA study, the subjective realities of the different actors involved could then be compared and contrasted within the context of each EA study.

## 4.2 Selecting Case Studies for Further Examination

The case study methods were designed to build on the initial results outlined in the previous chapter, in order to develop a sound theoretical response to the research question. Given the difficulty encountered in obtaining EA documents to begin with, and the goal of developing a deeper understanding of the preliminary research results, case studies were selected from amongst the documents already obtained. This strays slightly from the description in Bryman, et al. (2009) of the process of building theory using a grounded theory approach, in that they suggest that, upon developing a preliminary hypothesis, further data are sought from additional sources to test the hypothesis. Although the initial research results outlined in the previous chapter could have been used to formulate an initial hypothesis, to test that hypothesis a different data set would be required. It was determined that, given the difficulty in obtaining the original data set, it would not be expedient to attempt to obtain a different, larger, data set. Instead, three case studies were selected from within the original data set, and further information was sought for each case to build on the initial research results, in accordance with Yin's (1994) case study methodology.

Selecting from the 14 EAs required an examination of the details of the EA documentation available to ascertain the scope, schedule, and location of each EA, along with what was unusual and what was typical about each project. Comparing the similarities and differences between the 14 projects yielded some that

were very similar in scope, location, or controversy. None of the cases appeared to be revelatory cases (as defined by Yin, 1994), so a multiple-case study design was chosen. The number of cases selected was limited to three in order to bound the research endeavour within the time available to complete it. Yin (1994, p. 38) explains that cases in a multiple (or a single) case study design should not be viewed as samples in a statistical sense and “cases are not ‘sampling units’ and should not be chosen for this reason.” Yin (1994) goes on to explain that each individual case study is generalized to theory through the process of analytic generalization. Thus, the three cases are not examined in aggregate, like individual samples in a survey, but rather each case informs a theory or rival theory, and all three are then compared for similarities of differences in a cross-case analysis. If, in the cross-case analysis, “two or more cases are shown to support the same theory, replication may be claimed;” however replication should not be confused with statistical generalization (Yin, 1994, pp. 38-39).

The three cases selected were similar enough to allow comparisons among them, but did not have so many similarities that I would be over-sampling, and therefore risking not learning anything new through repetition of cases that are essentially the same. A comparison of the three cases selected, in Table 4-1 below, shows many similarities in the scope and details of each case. The context and details of each case are described in depth in Chapter 5. Although the scope of each project was similar, in each case, the stakeholder or stakeholders who requested a Part II Order perceived very different potential impacts associated with the proposed projects, and this was reflected in their Part II Order request letters. I anticipated that some of the variation between the different stakeholders’ reasons for opposing the EA could be accounted for by the difference in perceived personal impacts associated with the proposed works. Otherwise, project scale, project type, and type of project proponent were all similar. Selecting multiple, similar cases allowed for replication logic, improving external validity.

*Table 4-1: Comparison of EA studies selected for case study research*

<b>Name</b>	<b>Queen’s Quay Revitalization</b>	<b>North Yonge Street Transit Corridor EA</b>	<b>Humberlea Rd Improvements</b>
<b>Identifier</b>	Case Study 1	Case Study 2	Case Study 3
<b>Proponent</b>	City of Toronto – Large, upper-tier municipality	Regional Municipality of York – Large, upper-tier municipality	Region of Peel – Large, upper-tier municipality
<b>Project Description</b>	Reduced travel lanes to one lane in each direction to provide space for pedestrian path, streetcar transitway, streetscape improvements.	Improvements to public transit infrastructure along Yonge Street from Newmarket to Richmond Hill, including road widening, dedicated median BRT lanes, additional BRT stations	Reconstruction of rural 2-lane road to urban 2-lane road with sidewalks, curbs and gutters, and enhanced boulevard.
<b>Project</b>	C	C (initially individual)	B

Name	Queen's Quay Revitalization	North Yonge Street Transit Corridor EA	Humberlea Rd Improvements
<b>Schedule</b>			
<b>What is unusual about this case</b>	The scope of the project was enlarged significantly from the time the project began to the time the Notice of Completion was published.	This project started out as an individual EA; however with the addition of transit projects to the MCEA in 2005, was downgraded to a Schedule C Class EA, thus reducing the rigour associated with the study and eliminating the ministerial oversight originally built into the process.	Nothing.
<b>What is typical about this case</b>	Streetscape improvements happen all the time in urban areas where there is a desire to shift the modal split, encourage alternative forms of transportation, speed economic development, attract tourists or focus tourist attention, increase population density, or any other number of reasons.	Widening of a regional thoroughfare through mostly rural and highway-commercial land uses. It involves the addition of transit infrastructure (dedicated bus lanes). It requires the expropriation of private property. All of these are very common projects to which class EAs requirements apply.	Modernization of rural roadway as a result of population growth and increased traffic volumes in urbanizing areas of Ontario.
<b>Why this is a good case study?</b>	These types of projects are common in large urban centers, and may be opposed by a well-organized group of stakeholders or a single affected individual. In this case the Part II Order requester was a single property owner, apparently concerned about noise and traffic issues.	Stakeholders requesting PIIOs were directly impacted by land takings, or indirectly impacted by perceived loss of business function/future revenue, or both. This project is highly representative of similar projects where the municipality implements a "greater good" project with impacts to individuals/businesses.	This may be the most typical B EA out there. From my own experience, this is both an extremely common type of project and project scope, while opposition to it is almost textbook in its likelihood.
<b>Representative of similar projects?</b>	This project is very similar to other road projects, in that it is meant to accommodate an ever-urbanizing environment. Very typical impacts, and the details of the project context are relatively common in Ontario urban areas.	The main project impacts from this are related to concerns over changes in traffic patterns, and the taking of land, both of which are common to projects in all categories (water, wastewater, transit, roads, and even other Class EAs).	This project reads like a textbook case, and the potential impacts (and reasons why the PIIO was requested) are almost stereotypical.

Name	Queen's Quay Revitalization	North Yonge Street Transit Corridor EA	Humberlea Rd Improvements
<b>Similarities</b>	<ul style="list-style-type: none"> <li>● Initial public interest was low, with many of the main concerns being voiced near the end of the project</li> <li>● Very little potential for major (natural) environmental impacts</li> <li>● Potential for major social impacts</li> <li>● Cumulative impacts not considered</li> </ul>	<ul style="list-style-type: none"> <li>● Initial public interest was low, with many of the main concerns being voiced near the end of the project</li> <li>● Very little potential for major (natural) environmental impacts</li> <li>● Potential for major social impacts</li> <li>● Broader scope not considered</li> </ul>	<ul style="list-style-type: none"> <li>● Very little potential for major (natural) environmental impacts</li> </ul>
<b>Differences</b>	<ul style="list-style-type: none"> <li>● Relatively local (larger neighbourhood) scope</li> <li>● Stakeholder concerns focused on personal convenience and cumulative impacts</li> </ul>	<ul style="list-style-type: none"> <li>● Regional scope</li> <li>● Stakeholder concerns focused on impacts to private property/business operations issues</li> </ul>	<ul style="list-style-type: none"> <li>● City (multiple neighbourhood) scope</li> <li>● Stakeholder concerns focused on private property enjoyment and convenience impacts</li> </ul>

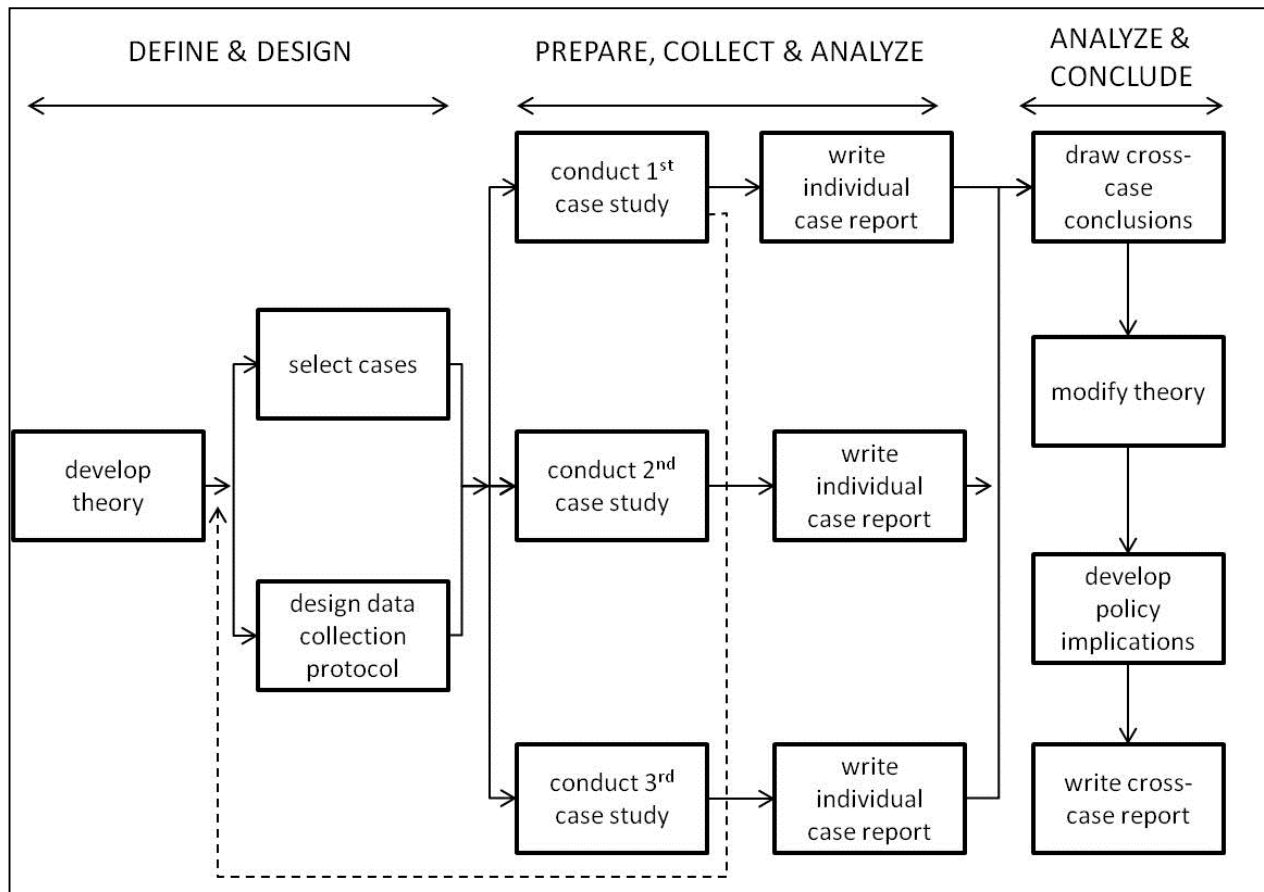
### 4.3 Case Study Design

In the previous chapter Part II Order request letters were analyzed and the preliminary research outcome was that the two most important reasons for requesting the Part II Orders were a perceived deficiency in the public consultation efforts of the proponent and a lack of trust in the proponent or EA process.

Although it was determined from the sample that no statistically significant associations existed between the public consultation issues and the trust issues, as the two most commonly-noted reasons for requesting Part II Orders, the next stage of research focused on these two elements. The preliminary research outcome was thus used as the proposition upon which to base the design of the case study methods. As explained by Yin (1994), the proposition allowed for the scoping of the case study in a manner that bounded the research problem appropriately. This is illustrated in the case study design diagram, shown in Figure 4-1, on the following page.

A case study protocol was developed to ensure research reliability (Yin, 1994). In each case, the project proponent and at least one Part II Order requester was identified and contacted for participation in a semi-structured interview. As described in Chapter 2, the goal of the case studies was not to determine a correct interpretation of facts, but to describe the differences in perspective between each embedded unit in each case. Each interview took the form of a focused interview, as described by Yin (1994), and interview questions were designed to gather information on the subjective feelings and experiences of each interviewee with regards to the EA study. Because project works were incomplete at the time of the

Figure 4-1: Multiple case study method, adapted from Yin, 1994, p. 49



interviews, follow-up type questions were not asked, such as whether respondents felt, in hindsight, as though their views had been justified, had changed, or were otherwise influenced by the present-day project implementation activities. Instead all questions focused on issues of trust and concerns with the public consultation activities, to the best of the respondents' abilities to remember how they felt at the time of the EA. An interview guide was prepared in advance of contacting all interviewees, and different questions were asked of the proponents than those asked of the requesters in order to focus the interviews on the perspective each interviewee. As each interview was semi-structured, interviewees were given the opportunity to provide as much or as little detail as they wished in response to each question, and where relevant, additional questions not included in the interview guides were posed. Thus, although the same interview guide was used for each different type of interviewee, the questions posed in each interview were adapted for the specific circumstances of each case, as appropriate. The full transcripts of each interview are reproduced, and redacted where required to preserve anonymity, in Appendix C. The interview questions focused on the issues identified as important in the previous chapter, and are listed in Table 4-2 on the following page.



Table 4-2: Interview Guide Questions by Type of Interviewee by Reason for Question

Reason for Question	Type of Interviewee	
	Project Proponent	Part II Order Requester
Establish how each party viewed the proponent's competence to understand the particular issues being studied	Would you say that this project was a routine or a typical project in your municipality?	Do you feel that the proponent had enough information to make a decision on project design and implementation?
		Do you feel as though you could trust the proponent to make the right decision?
Establish the degree to which each party viewed the adequacy of the consultation activities	How would you characterize the degree to which stakeholders were given opportunities to provide feedback on the project?	Do you feel that you were given enough information to support the municipality in their decision to implement the project as presented in the EA study report?
		Do you feel as though the proponent was sharing all of the information it had? If not, do you feel as though the municipality was intentionally withholding information?
	Would you say that they were given fewer opportunities than normal, a normal number of opportunities, or more opportunities than normally given to provide feedback on a municipal class ea study in your municipality?	Do you feel as though the proponent provided you with adequate opportunities to provide them with comments or ask questions during the EA study?
		Do you feel as though your concerns were being heard by the municipality?
	What elements were accounted for in the decision to give stakeholders this level of feedback opportunity?	Do you feel as though you had a say in the decision-making process?
	Were there any extenuating circumstances that made stakeholder consultation more difficult than usual?	
	Prior to designing the public consultation program, was there any internal discussion about the types of concerns that may be raised by the public or by stakeholder groups during the EA?	Do you feel as though the municipality was addressing your concerns in the preferred alternative selected?
	If so, did the results of this discussion influence the stakeholder feedback opportunities at all?	
Establish the understanding that each party had of the particular	Would you say that the questions and concerns raised by stakeholders and stakeholder groups during the EA were typical of the types of questions raised	Do you feel as though the decision made by the municipality would have a negative effect on you or your property? If yes, please describe what

Reason for Question	Type of Interviewee	
	Project Proponent	Part II Order Requester
stakeholder concerns raised	for this type of project in this municipality?	you thought those effects would be?
	Did the stakeholder(s) who requested the Part II Orders make their concerns clear to the project team prior to the 30-day review period? If so, did the project team attempt to address these concerns prior to issuing the notice of completion?	Did you voice your concerns to the municipality at one of the public consultation events, prior to submitting your Part II Order? If so, did the municipality respond to those concerns?
	If so, do you feel as though the project adequately addressed these concerns?	Were you satisfied with their response?
Establish the effects of the Part II Order request on each party	Would you say that you “saw the Part II Order coming?” In other words, were you surprised by the Part II Order request, or could you have reasonably anticipated it?	Did you receive legal advice prior to submitting or to help you to prepare your Part II Order request?
	How did the Part II Order request affect your project in terms of budget or schedule?	What were you hoping to achieve by requesting the Part II Order?
	Are you likely to do anything specific in the future to avoid Part II Order requests?	Do you feel as though you got what you wanted by requesting the Part II Order?

To establish construct validity in this explanation-building approach to case study research (as described by Yin, 1994), multiple sources of evidence were gathered to establish a chain of evidence: focused interviews from multiple perspectives where possible, documentary evidence, archival records where available, and site visits. In addition, upon transcription of each interview, the transcript was forwarded to the respondent for review and comment prior to finalization.

Prior to contacting potential interviewees, clearance was obtained from the University of Waterloo’s Office of Research Ethics (ORE). The consent letter from the ORE is reproduced in Appendix D.

## 4.4 Contacting Stakeholders and Proponents

Contacting stakeholders proved to be only slightly less difficult than accessing the EA information in the first place. Names and contact details for those involved in each EA were not published in the EA documentation, despite the legality of including the personal information of Part II Order requesters in the

public record, as per the EA Act<sup>4</sup>. To play it safe with the Municipal Freedom of Information and Protection of Privacy Act, however, project proponents would not directly provide contact details of the Part II Order requesters. This information was requested from the Ministry of the Environment, however Ministry staff did not reply to the request. To reach the Part II Order requesters I was required to sift through other, related documents made available publicly, and piece together what information I could on the requesters' locations, names, or places of work. Where required, phone calls were made to property managers, employers, or businesses to try to fill in the information gaps. In the end, partial contact details were obtained for seven people who had requested Part II Orders from the three case studies, at least one requester from each. The results of these contacts are described in more detail in chapter 5.

## 4.5 Framework for Analysis

For each case study, a minimum of three sources of information were coded separately:

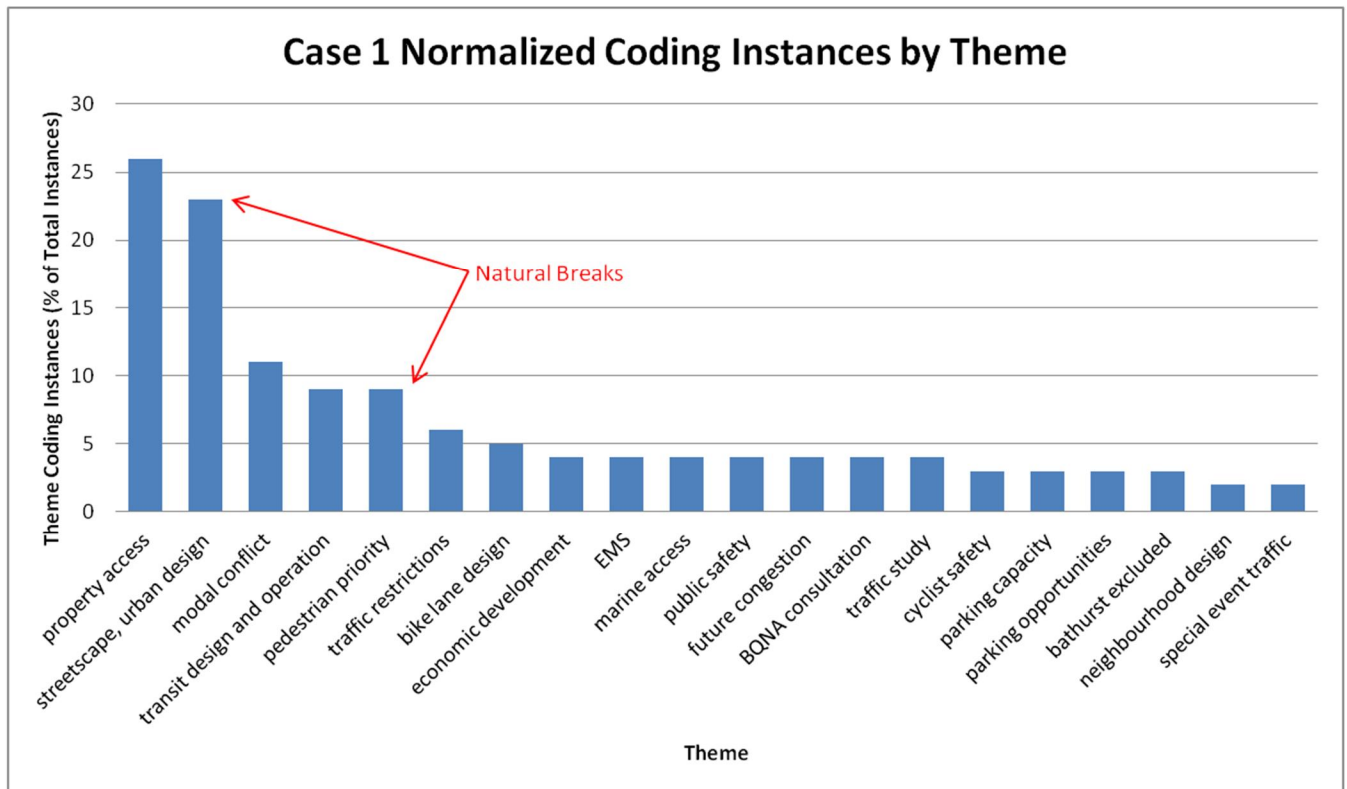
1. The Environmental Study Reports (ESR) for each EA study were reviewed and all comments from stakeholders that were included in ESR appendices or public consultation summaries were coded to help to develop an understanding of the issues and concerns that arose during the study. Where lists of comments or concerns, or meeting minutes were included in appendices, care was taken to ensure that summaries of the same data in the body of the report were not coded to avoid double-counting.
2. Interview data were collected from Part II Order requesters to gain more in-depth insight into the requesters' thoughts and feelings about the public consultation activities, the concerns held by the requesters, and to better understand the reasons given for requesting Part II Orders. In one instance, the Part II Order requester was not reachable, and so only the Part II Order request letter was used to determine reasons for the request.
3. Interview data were collected from EA proponents to gain a more in-depth insight into the perspective of the proponent on the adequacy of public consultation and their understanding of the public's and stakeholders' issues and concerns.

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<sup>4</sup> When stakeholders decide that they would like to request a Part II Order for a Class EA project, they may find themselves searching on the MOE's website to determine how to do so. The Ministry's guideline document How to Make a Part II Order Request (MOE, 2011(b), p. 2) states "Under the Freedom of Information and Protection of Privacy Act and the Environmental Assessment Act, unless otherwise stated in the submission, personal information such as name, address, telephone number and property location in a submission become part of the public record and will be released, if requested, to any person." None of the Part II Order request letters that I obtained included a request for anonymity.

All of the coded data were then analyzed by searching for the most important themes within each source. The most important themes (by number of mentions as a percent of all theme mentions) were determined by looking for natural breaks. Many of the themes arose only once (and thus were deemed to be of minor importance as compared to themes that arose multiple times) and while many themes had multiple coding instances, some themes were coded many more times than others. Thus, for each case it could be determined which were the most important themes arising from each data source. This is illustrated by an example from Case Study 1 in Figure 4-2, below. Normalization was performed by determining how many times each coding instance arose for each source as a percent of the number of times all codes arose for each source. This allowed for a comparison of theme importance between sources. For example, in Case Study 3 one of the sources of data was the public comments and questions reproduced in the appendices of the EA report. From this source 36 items were coded to 17 themes. Each coding instance from this source therefore has an importance of  $1/36^{\text{th}}$ . The theme of private property issues had four coding instances, while the theme of noise only had one coding instance, meaning that private property issues make up approximately 11% of all coding from this source while noise only represents less than 3% of the coding for this source.

Figure 4-2: Example of Code Analysis to Determine Importance of Coded Themes by Source



Similarly to the initial data analysis described in the previous chapter, where it made sense to do so themes were arranged into categories. Relationships between themes and categories of themes were then

explored. The categories of themes that emerged were checked against the categories of themes that emerged during the initial data analysis, as described in the previous chapter. Given the difficulty in controlling for variables in each case (due to multiple elements within each case that were unique to that case), and the small number of studies analyzed, pattern-matching did not make sense as an analytical tool to confirm or revise the preliminary research outcome. Instead, explanation-building, as described by Yin (1994) was used as an analytical approach to improve internal validity.

Upon completing the coding and analysis of the three cases, a theoretical proposition was developed for each case. These propositions were compared to and contrasted with each other, and then to the preliminary research outcome.

The above-described analysis resulted in the creation of a hypothetical response to the research question and a proposal for additional research to test this hypothesis. As Yin (1994) explains, the explanation-building method employed does not allow conclusions to be drawn, but rather proposes a theoretical response to the research question that will require further testing, beyond the scope of this thesis.

# 5 Case Study Results

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## 5.1 Schedule C Municipal Class EA to Alter a Minor Arterial Roadway to Rebalance the Modal Split

Queen's Quay is a 3.5km stretch of road located within the City of Toronto's central waterfront neighbourhood of the same name. According to the Environmental Study Report (ESR) documenting the EA study (City of Toronto & Waterfront Toronto, 2009) the corridor was identified by the City as needing revitalization; the balance of pedestrian, motorist, public transit and cyclist space within the corridor was considered to be inadequate for the existing and anticipated future demand placed on the corridor by the different users. This urban road cross section included pedestrian space, vehicle lanes, and public transit lanes. The public transit lanes operated alternately in mixed traffic and in their own right of way, and for the most part, the cross section included two automobile travel lanes in each direction with turning lanes at most intersections. The desire to rebalance the cross section began with the identification that Queen's Quay was not meeting the vision set out for it in the City's Central Waterfront Secondary Plan (City of Toronto, 2003) to:

- be a scenic water view drive
- provide ready access to the public activities of the waterfront and pedestrian connections to the water's edge
- meet the diverse needs of motorists, public transit users, cyclists and pedestrians
- provide opportunities for vistas to the harbor and lake

The City commenced the EA study by inviting a diverse group of stakeholders to participate in a detailed and involved process of defining the problem with the Queen's Quay corridor. The problem definition stated that the configuration of Queen's Quay made it a barrier to the City's waterfront rather than a gateway, despite the fact that the street had been identified as the City's main waterfront street (City of Toronto & Waterfront Toronto, 2009, p. 1-1). The problem definition also stated that the street was difficult for pedestrians to cross, cycle paths were deficient or nonexistent, that it was aesthetically unbecoming of an economically vibrant street, and that modal conflicts were common. Thus the problem statement identified the opportunity to revitalize Queen's Quay such that City policy objectives could be met while more effectively balancing the needs of its residential, business, recreational and visitor users and coordinating with other planned waterfront projects and public transit infrastructure.

### 5.1.1 Demographics

The study area is entirely contained within the City of Toronto's "Waterfront Community/The Island" neighbourhood (City of Toronto, 2011), and covers parts of the City's Ward 20 and Ward 28. Within the

study area land uses are predominantly a mix of high-density residential and commercial/retail uses. Residential uses are housed within multi-unit, high-rise and mid-rise residential dwellings, and occupied predominantly by singles, unmarried people, and couples without children (City of Toronto, 2011). Across the two wards the residential units are predominantly occupied by renters; however specific housing tenure information for the study area was not available. The project study area encompasses several established residential areas and planned future residential areas. Based on the 2006 Census, the neighbourhood in which the study area is situated had over 15,000 residential dwellings, and in the study area residential uses are located predominantly within several towers-on-podium type high-rise developments, most of which have condominium-type ownership, as opposed to being rental apartments. Many of the residential buildings within the study area have retail uses at street level, which primarily serve the local neighbourhood. Many of the ground-floor retail establishments rely on street access only for shipping and receiving. Approximately 250 businesses are located within the study area, including two large hotels, two office towers, many small businesses, and one active industrial site (City of Toronto & Waterfront Toronto, 2009).

## **5.1.2 Urban Form**

The Queen's Quay neighbourhood has undergone significant changes in use and urban form since it was constructed as ad-hoc lakefill for port uses between the mid- 19<sup>th</sup> and mid- 20<sup>th</sup> centuries (Waterfront Toronto, n.d.). Although the study area was initially developed to serve Toronto's marine and shipping industries, the decline of the shipping industry in Toronto in favour of land-based container shipping, and the consolidation of shipping activities in the area to the east known as the Port Lands resulted in a significant decline in shipping activity along Queen's Quay by the 1970's (City of Toronto & Waterfront Toronto, 2009). Since then, a number of planning initiatives and redevelopment activities have repurposed the former industrial area into a dense metropolitan waterfront neighbourhood with a mix of land uses, including public parks and spaces, commercial and retail uses at street level and in office and mixed use buildings, institutional uses and residential high rises (City of Toronto & Waterfront Toronto, 2009).

## **5.1.3 Scale of Change**

### **5.1.3.1 Urban Form Prior to Commencing EA Study**

Queen's Quay is classified as a minor arterial road according to the City of Toronto's road classification system, meaning that Queen's Quay has been designed to accommodate primarily through-traffic, with limited property access (City of Toronto, 2008). At the time of the EA study, traffic volume was estimated at between 12,000 and 26,000 vehicles per day during the summer peak traffic season, in keeping with the volumes for which a minor arterial is designed (City of Toronto, 2008). According to

the ESR for the EA study (City of Toronto & Waterfront Toronto, 2009), at the time of commencing the EA study in 2007 the existing right-of-way featured an urban cross section with 4 traffic lanes and a median-lane public transit right-of-way. Streetscape design issues included a lack of signalized pedestrian crossings, long block lengths, and no bike paths or on-street bicycle lanes. Traffic in the study area was considered to be problematic, especially during peak driving periods in the summer time. As described in the ESR (City of Toronto & Waterfront Toronto, 2009), frequent curb-lane stopping on Queen's Quay resulted in only one lane in each direction being useful much of the time. And while intersections were considered under capacity during peak times at the time of conducting the EA study, the projected future traffic scenario with no intervention (the do nothing scenario) showed most intersections operating near capacity, and two at capacity. In addition, connectivity with existing neighbourhoods and proposed future development was poor. In general, the streetscape was considered to be uninviting to pedestrians, lacking continuity and mature trees, and in some places needing repair or looking dilapidated; while as much as 20% of the automobile traffic was not local traffic, but "cut through" traffic using the Queen's Quay corridor as an alternate route around traffic congestion in larger, parallel arterials such as Lakeshore Boulevard (City of Toronto & Waterfront Toronto, 2009).

#### **5.1.3.2 Proposed Urban Form**

Although the proposed alignment and width of the road right of way remained unchanged in the preferred solution, according to the ESR (City of Toronto & Waterfront Toronto, 2009) the proposed alterations to the corridor would noticeably change the volumes of cars, pedestrians and cyclists that could be accommodated during peak periods. The proposed changes to the right of way included reducing traffic to one lane in each direction, creating separate pedestrian and bicycle lanes along the waterfront side of the street, separated from automobile traffic by a public transit right-of-way, the addition of transit signalization to improve operating efficiencies as well as additional signalization to facilitate access to some of the properties within the corridor and improve turning movements. The technical modelling of future traffic considerations was conducted under the projected future full build-out scenario within the study area. Streetscaping elements such as street trees and consistent finishing materials were proposed to provide a cohesive aesthetic along the length of the corridor, provide shade, and beautify the road right-of-way. Although the proposed relocated public transit right-of-way would result in some changes to property access, traffic modelling of the proposed lane reductions showed that the long-term traffic capacity would not result in a marked increase in traffic congestion as compared to the long-term congestion effects of doing nothing (City of Toronto & Waterfront Toronto, 2009). As noted by a Waterfront Toronto staffperson familiar with the EA study during a May 24, 2013 interview, the preferred alternative solution to the problem statement represented "a big change to the street."



## 5.1.4 Public Consultation Activities

The proponent understood that there would be significant public interest in the outcome of the EA, and designed the public consultation program accordingly. The ESR (City of Toronto & Waterfront Toronto, 2009) describes the extensive public consultation activities undertaken throughout the EA study, which sought feedback from area residents, businesses, stakeholder groups, and government reviewers, collectively and individually. While a Schedule C Class EA requires only two points of public contact, Waterfront Toronto recognized the public interest and concerns surrounding the ongoing traffic problems in the Queen's Quay neighbourhood. As the staffperson from Waterfront Toronto stated in a May 24, 2013 interview, "there was a definite worry that stakeholders in our community, you know the general public, would be concerned about rebalancing the street," meaning there would be "a decrease in vehicular capacity to the street. There was a definite worry up front that that was not going to be taken easily." To Thus, Waterfront Toronto designed a consultation program that extended well beyond the minimum requirements of the Class EA, including regular meetings with formal advisory committees, over 50 meetings with individual stakeholders, and three public information sessions.

The ESR (City of Toronto & Waterfront Toronto, 2009) describes the two formal advisory committees convened: a stakeholder advisory committee (SAC) as well as a technical advisory committee (TAC). The membership and meeting minutes of both committees are outlined in the appendices of the ESR (City of Toronto & Waterfront Toronto, 2009). Members of the SAC included representatives from major stakeholder groups, including local businesses and property owners, city council, neighbourhood associations, and various user groups. Members of the TAC included technical staff from the City of Toronto and other interested agencies. Both committees participated regularly in project decision-making by providing feedback on project studies and proposals. While the SAC allowed for direct representation of key stakeholder groups in Waterfront Toronto's decision-making process, additional meetings with individual stakeholders or stakeholder groups were also undertaken to address questions or concerns on an individual basis (City of Toronto & Waterfront Toronto, 2009).

To capture the sentiments of the general public, Waterfront Toronto held three public information sessions throughout the EA study, each of which are well documented in the appendices of the ESR (City of Toronto & Waterfront Toronto, 2009). Each session included an open house, followed by a presentation, and then an interactive feedback session involving either documented break-out round-table discussions or facilitated plenary sessions. Comment sheets were distributed at each session for attendees to provide comments anonymously. After the third public information session a drop-in open house allowed the general public to address members of the project team one-on-one to ask questions or make comments. At the first session approximately 300 attendees signed in, approximately 250 attendees signed in at the second session a year later, and approximately 350 attendees signed in at the third session

four months after that. This represents an exceptional turn-out, suggesting that a good proportion of the interested general public had the time, information, and resources available to attend consultation sessions, and felt that their participation would make a difference in the outcome of the EA (Diduck & Sinclair, 2002).

For anyone who could not attend the information sessions, a project website was also set up to provide project information and updates, and included feedback options in addition to project information and notices. A dedicated email address was set up for public inquiries (City of Toronto & Waterfront Toronto, 2009).

The staffperson interviewed on May 24, 2013 noted a sense of pride felt in the comprehensive nature of the consultation efforts and the outcome of the EA that resulted from the study process employed.

### 5.1.5 Results

Comments and questions from stakeholders, as presented in the appendices of the ESR were coded along with the Part II Order request letter, and interviews from the proponent and the person who requested a Part II Order. Between the three sources a total of 41 themes were coded within ten different categories. Theme definitions by category are presented below in Table 5-1.

*Table 5-1: Definitions of all themes coded in Case Study 1, by category*

<b>Category</b>	<b>Theme</b>	<b>Definition</b>
Financial considerations	Economic development	Comments about or requests for consideration of solutions that will help local businesses to increase profits.
	Financial impacts	Expressions of concern regarding the impacts on or the role played by business owners in the study area.
NIMBY	NIMBY	Statements that the proposed works will change or negatively affect a stakeholder's personal convenience/comfort/enjoyment/routine with regards to a private or public good, regardless of positive outcomes that could result for others.
Access	Property access	Comments or concerns regarding existing or proposed changes to property access.
	EMS	Concerns or comments regarding the ability of emergency vehicles to access all parts of the study area.
	Marine access	Concerns or comments regarding the ability of users of boats, ferries, or other marine vessels to access docks or launch ramps within the study area.
Miscellaneous technical questions/ concerns	Transit design and operation	Questions or comments regarding or requests for different transit operational features, designs, vehicles, fare systems, routes, etc.
	Technical concerns	Concerns about the operation or maintenance of the preferred alternative.
	Magnitude of	Expressions of the magnitude of the change within the study area

<b>Category</b>	<b>Theme</b>	<b>Definition</b>
	change	resulting from implementing the preferred alternative.
	Pedestrian priority	Requests for and comments regarding design features that will prioritize, make more comfortable/convenient or improve the safety of pedestrian movements.
	Bike lane design	Comments on or requests for changes to design elements of proposed bicycle lanes, including width, location, signage, separation, markings, etc.
	Neighbourhood design	Issues of existing or proposed height, density, scale, demographics, public amenities, massing, etc.
	Streetscape and urban design	Comments regarding or requests for aesthetic features, public amenities, street trees or furniture, colour schemes or materials, or design features, including accessibility features for those with disabilities.
	Public safety	Concerns that existing or proposed design or operational conditions within the study area pose a risk to public health and safety.
	Cyclist safety	Concerns regarding or comments about the safety of cyclists moving through the study area.
	Scope	Comments suggesting that the scope of the study should have been expanded to account for a larger area or a longer timeframe.
Traffic	Modal conflict	Comments or concerns regarding existing or potential conflicts between different modes of transportation, including cyclists, pedestrians, auto users, public transit users, taxis, and recreational trail users, and design considerations that could alleviate conflicts.
	Traffic restrictions	Recommendations for alternatives and designs that will restrict traffic flow through the corridor to below pre-implementation levels.
	Future congestion	Comments or concerns about congestion that could be caused by the preferred solution in the future.
	Special event traffic	Suggestions for and questions about how to address traffic generated by special events.
	Parking capacity	Comments about the adequacy of existing or requests for additional parking spaces or the location of existing or future parking spaces.
	Parking opportunities	Suggestions for ways to create additional or relocate existing parking spaces.
Bathurst Quay	BQNA consultation	Any instances of consultation with the Bathurst Quay Neighbourhood Association (BQNA).
	Bathurst excluded	Comments or questions regarding the exclusion of the Bathurst Quay neighbourhood from the study area.
Consultation	Poor public consultation	Comments suggesting that consultation materials or documents were not clear or understandable, or that consultation events were not inclusive.
	Heard not heeded	Statements indicating stakeholder comments did not influence EA decision-making.

<b>Category</b>	<b>Theme</b>	<b>Definition</b>
	Public heard and heeded	Statements that comments received from stakeholders were received and accounted for in the decision-making process.
Trust	Disingenuous	Statements that suggest the proponent was telling partial truths, was obfuscating or candy-coating reality, was making promises that could not be kept, or was in some way lying to the public.
	Politics	Concerns or suspicions about political influence or meddling, quid pro quo, or partisanship, especially from upper levels of government.
	Traffic study	Requests for additional studies of existing and potential future traffic flows.
	More info needed	Requests for additional studies or data collection efforts or statements that studies used were not adequate for proper indecision-making and further data collection/study/analysis would be required, or questioning the veracity or relevance or comprehensiveness of the data used.
Procedural concerns	EA process inadequate	Suggestions that the EA process was not followed as required under the Municipal Class EA, that elements were missed, evaluations lacked rigor, or the process was subject to political or other outside influence.
	Rushed	Concerns that the EA study was pushed through without adequate analysis or debate.
	Ignoring data or evidence	Statements that relevant data was not included in evaluations or considered in decision-making.
	Proponent responsibility	Statements that the project should have had different proponenty or someone other than the proponent would be responsible for project implementation.
	EA delay	Comments regarding the pause in public communications while technical details were addressed by the study team.
	Part II Order Expectation	Comments in hindsight about the expectation of receiving a Part II Order request from various stakeholders.
Comments in support of the EA process or outcome	EA process better than adequate	Comments showing or suggesting elements of the EA process that met or exceeded the minimum requirements of a Municipal Class EA.
	Confidence in technical staff ability	Comments showing support for the technical competence of staff involved in the EA study.
	Approval conditions	Comments showing support for implementation of preferred solution with a request for certain conditions to be imposed by the Minister of the environment.
	Stakeholder support	Expressions of support for the study process or outcome.

The two most commonly expressed concerns and questions raised by stakeholders during public consultation events or meetings, as outlined in the ESR (City of Toronto & Waterfront Toronto, 2009), were related to access to commercial properties and to streetscape and urban design features. The most important issues raised by the Part II Order requester indicated feeling around the perceived inadequacy of the public consultation, or were suggestive of feelings of distrust towards the proponent. The coding for the requester interview yielded similar results to the coding for the Part II Order request letter, which is unsurprising given that the requester noted in a June 11, 2013 interview that the issues raised in the letter were not addressed with any satisfaction by the Minister's response to the letter. The staffperson interviewed from the proponent's side, in contrast, spoke mostly about how the EA study consultation activities exceeded the minimum requirements of a Municipal Class EA study, how stakeholders were given more power over decision-making activities than is typical for an EA, and how the public were generally supportive of the EA outcome. When viewed side-by-side, an outline of the most important themes by coding instances (as a percent of total coding instances) shows the very different perspectives presented by the different information sources. These are presented in Table 5-2, on the following page, in order of importance, below. Because the Part II Order request letter and the interview with the requester covered substantially similar topics, and came from the same person whose main concerns about the EA study remained relatively unchanged since first writing the letter, the contents of the letter were not included in the analysis of results in order to avoid double counting. Nonetheless, additional details about the issues presented in the letter were gleaned from the interview and for comparison purposes, the coding results from the two sources are shown side-by-side.

The most important issue that arose from the coding of the public consultation documentation in the ESR (City of Toronto & Waterfront Toronto, 2009) was that of property access. Business owners were concerned about maintaining public/customer access to their businesses, while residents were concerned about accessing their residential buildings. Related to these access concerns were the more minor (in terms of coding importance) concerns raised about access to all areas of the study area by emergency vehicles. Access issues are not unusual concerns when changes to a right-of-way will result in reduced opportunities for mid-block turning movements (such as with the construction of a median-lane separator or exclusive-use transit lanes), or in the case of altered turning movements at intersections (such as with the construction of non-automobile right-of-ways like pedestrian trails, exclusive-use curb-lane transit lanes, or separated curb-lane bicycle lanes). Although traffic congestion-related concerns were raised by the public, these issues did not arise with as much regularity as issues of modal conflicts, transit design and operation considerations, and requests for features enhancing pedestrian priority.

Table 5-2: Most important themes by source

<b>Proponent Staffperson</b>	<b>Part II Order Requester</b>	<b>Part II Order Request Letter</b>	<b>ESR Public Consultation Documentation</b>
EA process better than adequate	Poor public consultation	Disingenuous	Property access
Public heard and heeded	Disingenuous	More info needed	Streetscape and urban design
Part II Order expectation	Politics	EA process inadequate	Modal conflict
Stakeholder support	rushed		Transit design and operation
Financial impacts	More info needed		Pedestrian priority
	EA process inadequate		
	Scope		
	Heard not heeded		

The first case study received only one Part II Order request, although the staffperson from Waterfront Toronto interviewed on May 24, 2013 expressed surprise that there weren't more of them. Given the lengthy discussions held with stakeholders in the business community, as described above, the staffperson explained in the interview that it had been assumed that multiple Part II Order requests would come from that stakeholder group. Instead, according to the staffperson interviewed, letters were written by business owners to the Minister of the Environment upon completion of the EA study to support the preferred solution (albeit to request conditions placed on its implementation). Comments and questions received from the general public and from special interest stakeholder groups during consultation activities, as summarized and outlined in the ESR (City of Toronto & Waterfront Toronto, 2009) tended to focus on the experience of moving through the study area, including access to properties, transit operation, pedestrian movements and traffic restrictions, as well as streetscape and urban design elements. The Part II Order request letter, while lengthy, focused much more on traffic congestion concerns than on other technical considerations. In the interview with the requester, many concerns were raised about the public consultation and EA processes. The staffperson noted the widespread support amongst the general public and described an EA process that far exceeded the minimum requirements of the Municipal Class EA process.

One of the issues noted by both the requester and the proponent was that the timing of public consultation activities was somewhat atypical. In a June 11, 2013 interview, the requester explained,

We had a public information centre, PIC#1, which stated some fairly broad objectives... And then a whole year goes by. Nothing happens. And then we have PIC #2 and at that information centre nothing new is reported... No new information was shared, no new input was given by the public, and no controversial items were raised. No traffic information was reported. So then within four months...PIC #3... And lots and lots of information is available on display. All of it not available prior to the PIC. All of it not available in the website...no one had a chance to have a look at any of it before going there.

When asked about the effect of the timing of the public consultation sessions, the requester's response revealed a lack of trust in the proponent, and suggested even that the proponent was hiding something:

Lots of work was presented and the work that would have been presented, the magnitude of that work would have far exceeded the three months spanning the interim between PIC #2 and PIC #3. Which showed that for reasons unknown to the public, *Waterfront Toronto was holding back information*, did not explain it to the public in PIC2, did not use PIC 2 for the purposes of explaining work ongoing to date (emphasis added).

The requester also suggested that the materials presented to the public were not representative of the intentions of Waterfront Toronto, and that much of the public support for the project came from a public who had been misled. The requester stated in a June 11, 2013 interview that Waterfront Toronto's "marketing guys were going to town on the beautiful graphical drawings that were completely fantasy. That is not fair."

The staffperson interviewed on May 24, 2013 also brought up the above-noted timing issues with public consultation efforts, explaining that there was a long lull in the EA to resolve a technical transit-related problem, and stating that "we couldn't figure out how to rebalance the street without impacting transit service, negatively." Nonetheless, there was an awareness of the potential issues caused by the lull in communications, with the staffperson stating that the year-long lull made stakeholder consultation more difficult "because no news is bad news to people... you get a lot of anxiety created as a result of being silent."

The characterization in the ESR (City of Toronto & Waterfront Toronto, 2009) of the role played by the general public and stakeholder groups during the EA study was one of a generally supportive public with technical concerns that were addressed with technical solutions. Unsurprisingly, in a May 24, 2013 interview with the staffperson from Waterfront Toronto, the public and stakeholders were similarly characterized. For example, the staffperson noted that generally as the EA study progressed "support grew to the point where the last EA meetings, with a turnout of 500-600 people, were all people saying 'just get on with this thing.'"

Both the requester and the proponent spoke in their respective interviews about who they perceived to have influence over the outcome of the EA. In the interview conducted with the staffperson at Waterfront Toronto on May 24, 2011, almost 25% of all coding instances were of comments that showed how the proponent's decision-making process or metrics were influenced by stakeholders, or how the proponent exceeded the minimum requirements of the Municipal Class EA process (in some cases by quite a lot) in order to address stakeholder concerns. For example, the Waterfront Toronto staffperson noted that there was a need to include "a much finer level of detail than I think we might have wanted to" in the EA because "we wanted to go in knowing that everybody was really on the same page as us" prior to completing the EA "and in order to do that a lot of people needed to see the details in order to be comfortable." Thus preliminary detailed design work was done during the EA "to make a lot of stakeholders feel comfortable." These were mainly stakeholders with financial risks (property owners or business owners) and thus a section in the EA lists all of "the things that we committed to doing after the EA was over."

The requester saw things differently. In nine separate statements the requester suggested that the EA outcome was influenced by upper levels of government, mostly the federal government or the Toronto Port Authority (an arms-length federal body). In one of these statements it was suggested that the EA outcome had been predetermined: "this is a classic case of outrageous behavior by... three arms of government... To me what this looks like here is a lot of political individuals who are making an arbitrary decision and justifying it by saying that there was a comprehensive EA study process completed."

## **5.2 Case Study 2 – Schedule C Municipal Class EA to alter a corridor to accommodate public transportation infrastructure**

Case 2 involved a Schedule C Municipal Class EA for the introduction of new, and the improvement of existing, public transit infrastructure in a growing municipality in Ontario. For this case, the municipality proposed alterations to traffic patterns along the alignment of the proposed transit route, and in some cases, road widening was required to accommodate these changes.

### **5.2.1 Demographics**

The Regional Municipality of York ("York Region") is an upper-tier municipality encompassing a number of lower-tier cities and towns in Ontario. York Region has recently experienced, and is forecasted to continue to experience significant population growth. Between 2006 and 2031, the municipal population is forecast to grow by more than 160%, while job growth for the same period is forecast to increase by an even larger percent (York Region, 2008). With that population growth has come economic growth and diversification, new jobs and commercial areas, urban intensification, and a forecast for future



traffic congestion (York Region, 2008). Already, traffic congestion had become problematic in some parts of the study area for this project, which includes approximately 18 km of Yonge Street, from Richmond Hill to Newmarket. At the time of study, sections of the major roadways within the study area were operating above capacity during peak hours, with both regional and local traffic mixing in limited roadways during weekdays, as well as during Saturday peak hours (IBI Group, 2008).

### **5.2.2 Urban Form**

Yonge Street is the central arterial corridor that runs through York Region, connecting it to numerous similarly-sized historic towns and their associated suburban housing developments. Within the study area Yonge Street supports mostly highway commercial uses as well as some residential uses. The corridor also runs through the picturesque, quaint, late 19<sup>th</sup> century downtown core of the Town of Aurora.

Throughout the majority of the EA study area, Yonge Street consists of four general purpose lanes with a centre left turn lane. Paved boulevards are provided on each side of the road. In downtown Aurora, however, Yonge Street becomes narrower and does not have a centre left turn lane. Some on-street parking is permitted in downtown Aurora, including on Yonge Street, where building facades are generally at or near the property lot lines, creating a cozy, historic, and pedestrian-friendly atmosphere for residents, shoppers, and tourists. Just outside of Aurora, Yonge Street opens up to accommodate larger highway-commercial uses, such as strip malls, auto dealerships, drive-through restaurants, and office buildings. Within the study area, the average annual daily traffic (AADT) along Yonge Street varies from 19,200 to 33,600 vehicles (York Region, 2008), with a speed limit of 60km/h outside of downtown Aurora, which qualifies it as an arterial road (IBI Group, 2008).

Near the northern end of the study area, the smaller Davis Drive feeds regional traffic onto Yonge Street from area suburbs and from Highway 404. In this area, Davis Drive is home to mostly highway-commercial developments and small businesses, as well as a handful of mid-century, mid-rise residential apartment buildings. This east/west arterial roadway lies entirely within the boundaries of nearby Newmarket, and extends approximately 5 km from Yonge Street, east to the provincial, controlled-access highway. Davis Drive consists of four lanes, with left turn lanes provided at some major intersections. It has a posted speed of 50 km/hr (York Region, 2008). Of note is the regional hospital for the area, located on Davis Drive approximately half-way between Yonge Street and Highway 404.

The proposed transit corridor will run along Yonge Street, with a feeder branch along Davis Drive to the highway.

The need for improved public transit infrastructure within the study area was identified by the Municipality of York Region as part of a larger strategy to meet provincial policies encouraging growth, intensification, and the development of transit-supportive land uses that are well-served by multi-modal

transportation options. At the time of commencing the EA, significant growth was anticipated in Newmarket. By 2021, Yonge Street and Davis Drive within the study area were expected to meet or exceed the “realistic theoretical capacity range of the existing roadways. The growth in traffic will undoubtedly exacerbate current traffic operational issues and translate into additional delay for road users” (York Region, 2008, p. 2-5).

Existing public transit did operate in mixed traffic within the study area at the time of conducting the EA study; however York Region saw an opportunity to improve efficiency, carry more passengers, and better serve the community for regional and local trips by providing infrastructure prioritizing transit within the study area. The municipality saw this as an important factor in attracting and accommodating anticipated growth, as previous studies had showed that “the shortfall in the Yonge Street Corridor road capacity at the 2021 and 2031 planning horizons can be reduced by attracting a significant share of corridor trips to public transit” (York Region, 2008, p. 2-6).

### **5.2.3 Scale of Change**

At the time of commencing the EA study, Yonge Street and Davis Drive had a combination of typical suburban arterial-type built form, directing traffic into and out of small urban centres. A site visit performed during a regular weekday evening drive time on March 13, 2013 confirmed that the pedestrian and vehicular traffic is typical of each urban configuration, with large trucks generally diverting around the urban centre of Aurora to avoid slower speeds, shorter block lengths, and more congestion. In the same vein, pedestrian traffic can be heavy through the centre of Aurora and slightly less-so on Davis Drive as it approaches the centre of Newmarket, however all but disappears outside of these urban centres where block lengths are very long, intersections are larger, and sidewalks are not well shaded and on some blocks, are only on one side of the road.

The proposed works, as described in the final Environmental Study Report (ESR) (York Region, 2008) involve the widening of Yonge Street and Davis Drive as well as a third street, Green Lane, at the northern end of the study area (for connectivity) in order to accommodate two median lanes for the exclusive use of bus rapid transit vehicles. Through the centre of Aurora, the buses will operate in mixed traffic due to physical restrictions that will not allow for adequate road widening for exclusive-use lanes. These exclusive-use median lanes will alter traffic patterns such that they will flow in a manner that is more typical of urban centres, with limited left-turn movements at designated locations only, designated transit loading and unloading locations, and facilitated pedestrian movement with sidewalks along both sides of the roadway and landscaping features to improve the pedestrian environment (York Region, 2008). In an April 15, 2013 interview with municipal staff familiar the EA study, the interviewee noted that it was understood from the outset of the study that this project was unique for the Region of York in that it had a very high potential for unique corridor impacts. The Region recognized that this project

would be very different from the types of Class EA projects that are regularly undertaken throughout the Region, such as road repaving, road widening, or the addition of signalization or turn lanes at intersections. The Region knew that the addition of a median transit right-of-way would result in changes to road alignments to add left turn lanes and new u-turns, and other changes to address parking issues, transit stops, road widening, and other features that were not typical of other traffic management projects that had been implemented in the past. Given the scope of the project, the proponent stated the ten Part II Order requests received were not unexpected. “I wasn’t surprised that there were some but I never make a guess as to how many,” he stated on April 15, 2013 when asked if the Region had foreseen the requests. “I keep myself in a state of readiness [to receive Part II Orders] during all [EA] submissions.”

### 5.2.3.1 Public Consultation

York Region provided more consultation opportunities than the minimum required for a Schedule C Municipal Class EA. A staffperson interviewed about the Region’s EA efforts on April 15, 2013 stated that the efforts made to consult with stakeholders throughout the EA were better than adequate, and used words such as “extensive” and “very high” when describing the extent of consultation activities.

According to the ESR (York Region, 2008) 4 Public Information Centres (PIC) were held, each in at least two different locations on different dates, with estimated attendance as follows (based on number of people who signed in at each meeting):

<b>PIC</b>	<b>Attendance by location</b>
PIC # 1	Location A: 44 Location B: 8
PIC #2	Location C: 7 Location A: 37
PIC # 3	Location D: 5 Location C: 12 Location A: 15
PIC # 4	Location E: 28 Location C: 33 Location F: 82

In addition to public information centres, the Region produced numerous update newsletters which were mailed out to stakeholders, consulted directly with property owners who contacted the project team with specific concerns regarding property impacts, maintained a project website with EA study updates, and convened a Technical Advisory Committee made up of technical stakeholders/approval agencies and staff from lower tier municipal staff.

As outlined in the ESR (York Region, 2008), the Region formed a Technical Advisory Committee (TAC) of agency and municipal government stakeholders to review and provide feedback on project progress

and decisions at key points during the study. Local business owners in Newmarket were invited to information open houses twice, and multiple meetings, site visits, and workshops with individual stakeholders were convened. All of the project information was made available on the Region’s website as it was published, and the Region prepared a series of information bulletins not just on the project itself, but on the EA process, the costs and benefits of and the Region’s vision for transit, the links between sustainability, technology, mobility and the economy, and even the role of the TAC.

The staffperson interviewed on April 15, 2013 stated the belief that York Region went “above and beyond” in terms of consultation opportunities, and this was directly tied to the interest of lower-tier municipalities as well as a recognition of the uniqueness of the project scope and subject. The interviewee outlined that the stakeholders with the most interest in the EA study outcome were the lower tier municipalities, however anticipated that the study would be generally well-received, citing previous experience with transit EAs. Although the Region anticipated some challenges in finding ways to fit new transit infrastructure into some of the more restrictive parts of the corridor, the staffperson noted that the Region “would have done the level of consultation we did regardless of issues anticipated.”

## 5.2.4 Results

The second case study benefitted from by far the most data of the three cases examined. The volume of data was due in part to the scope of the EA, but also to the number of people who objected to the project; ten Part II Order request letters were submitted to the Minister of the Environment upon completion of the EA study. Two requesters from this case study agreed to be interviewed, one whose main complaint was the expropriation of property necessitated by the preferred solution, and the other whose main complaint was the loss of mid-block left-turn movements that would result at a specific location from the implementation of the transit right-of-way.

A total of 58 themes arose in examining the content of each information source. Theme categories and definitions are outlined in Table 5-3 below.

*Table 5-3: Definitions of all themes coded in Case Study 2, by category*

<b>Category</b>	<b>Theme</b>	<b>Definition</b>
Consultation	Adequate consultation	Statements or evidence that consultation efforts met or exceeded the minimum requirements of the Municipal Class EA.
	Inadequate consultation	Statements or evidence that consultation efforts or activities were not successful in conveying project messages, that interested parties were left out of the process deliberately or by accident, or that additional efforts could have improved the outcome of the EA.
	Tokenistic consultation	Evidence of consultation activities that are one-sided or do not engage the stakeholder in meaningful conversation.

<b>Category</b>	<b>Theme</b>	<b>Definition</b>
	Heard not heeded	Indication that the stakeholder was given an opportunity to comment or ask questions, and those comments or questions were either ignored, or not accounted for in the decision-making process; or else they were accounted for in the decision-making process but still did not result in the proponent making the changes requested or addressing concerns of stakeholder.
	More consultation	Requests for further consultation during or after completion of the EA, either directly or indirectly.
	Public education	Consultation efforts that are one-sided and aim to inform interested parties without engaging them in dialogue, or that aim to change the perspective or bias of an interested party.
	Clarification	Request for further information purely for informational purposes without the suggestion that the proponent has missed or ignored relevant information.
Process	MCEA process misunderstanding	Comments or questions that indicate a misunderstanding of the EA process or requirements or methods.
	EA process	Administrative or procedural components of the EA, including indication of support for EA decisions or positive feelings about EA process or recommendations.
	Feeling rushed	Pertaining to feelings by stakeholder that there is not enough time to address concerns or the proponent is rushing the process along in some way.
Power	Proponent self-interest	The idea that the proponent, despite being a municipality elected and designed to look out for the broader public interest, is actually self-serving, and/or uncaring about the residents or businesses within the municipality.
	Powerlessness	Expression of feelings of powerlessness or inability to affect change in the context of the EA study.
	Adversarial process	Comments indicating an us against them mentality or opposing viewpoints or needs existing in a space that can accommodate the viewpoints or needs of only one party.
	Unfair advantage	Feeling as though the proponent has an unfair advantage in an adversarial process.
	Fairness of process	Pertaining to the treatment of stakeholders or the application of decision-criteria in a consistent manner, or following due process as prescribed by policy or legislation.
	Stakeholder prioritization	Ranking of stakeholders by their perceived importance or power slow or halt the EA process or project implementation.
	Stakeholder agency	Pertaining to the ability of stakeholders to fight for their own rights or speak on their own behalf or negotiate for an optimal outcome for themselves.
	Ministerial oversight	Requests for the Minister of the Environment to have some oversight of the EA study process or outcome, suggestion that the proponent has not followed the process as required or should not be

<b>Category</b>	<b>Theme</b>	<b>Definition</b>
		given ultimate decision-making authority.
	Autonomous legislation	Comments suggesting that the legal frameworks set up to govern the EA process or the implementation of the preferred solution is an immovable or autonomous force that is not influenced by the people governed by it.
Trust	Further info	Stakeholder requests for further study be undertaken by the proponent prior to making a decision, or existing information is supplied for review. this may include the desire to read whole reports instead of summaries, or to review calculations or model assumptions.
	Distrust	Disbelief in explanation provided or distrust in promises made.
	Political motivation	Concerns or suspicions about political influence or meddling, quid pro quo, or partisanship, especially from perceived powerful actors.
Support for EA process or outcome	Acceptance of change	Indicating a willingness to accept the known changes associated with project implementation and suggesting a flexibility in dealing with those changes.
	Acceptance of EA outcome	Comments indicating stakeholder acceptance of the preferred alternative or a lack of objections against it, or an assumption that the preferred alternative would be accepted by stakeholders.
	Public acceptance	Suggesting or stating that it was anticipated that the general public would be generally supportive of the proposed project and/or the preferred alternative.
Specific perceived impacts to stakeholders	Financial impacts	Pertaining to negative impacts to business operations, property values, or means of minimizing the stakeholder's ability to earn income.
	Impacts to operations	Pertaining to concerns regarding daily business, commercial, institutional or other operations on a property that will be affected by the project, that may have indirect financial impacts such as restricting or changing operating hours or limiting deliveries.
	Expropriation	Pertaining to the taking of land or buildings, permanently or for temporary construction operations.
	Special circumstances	Having circumstances that are different from surrounding stakeholders or other stakeholders. these may be used to justify objections to a project or to validate feelings of unfair treatment in comparison to other stakeholders.
	Non-acceptance of change	Concern over future scenario due to potential or inevitable disbenefit.
	Relocation	Pertaining to the requirement for a home or business to be moved to a different physical location or the impacts of a relocation on owners, tenants, or the community.
	Municipal issues	Concerns or desires related to typical municipal issues, such as growth and intensification, taxation, congestion, economic development, civic and community resources, civic participation.
	Excessive taking	Feeling as though more land than necessary is being expropriated

<b>Category</b>	<b>Theme</b>	<b>Definition</b>
		without justification or without regard to the person from whom it is being expropriated.
	Unanticipated impacts	Comments or concerns that suggest that the proponent did not consider certain impacts or externalities associated with the preferred alternative.
	Traffic	Pertaining to concerns about congestion, noise, safety, vibrations, pollution or other traffic-related concerns not explicitly mentioning business or financial impacts.
Stakeholder requests	NIMBY	Pertaining to private or public stakeholders, either individually or through public officials, requesting site-specific alterations to plans in order to avoid perceived inconvenience, intrusion, or other negative impacts in such a manner as to potentially cause negative impacts to other stakeholders, or to simply shift the existing perceived negative impacts elsewhere.
	Direct benefit	Where a stakeholder request appears to come from a desire to gain a direct benefit from the project that may not directly benefit surrounding or neighbouring stakeholders, even if diffuse benefit may be obtained for the broader community. Does not include a request to avoid direct disbenefit (see NIMBY).
	Actual benefits	Pertaining to what was actually achieved through the PIIO request, regardless of what was desired.
	Compromise	Willingness to compromise or negotiate with the proponent to find a middle-ground solution to a stakeholder concern or a desire to find a mutually-agreeable solution.
	Aesthetic concerns	Concerns regarding the impact of the proposed works on the way the streetscape, pedestrian realm, or built environment will look upon completion.
	Traffic requests	Pertaining to the movement of vehicles within the right of way, but not including the pedestrian experience of that movement.
	Hospital requirements	Pertaining to the demands, requirements, or desires of the hospital on Davis Drive and its existing and future needs, including patient transfer.
	Site specific request	Suggesting that there was no commonality of reasons for Part II Order requests and each request was based on specific circumstances of or effects on individual, self-interested stakeholders.
	Community Infrastructure	Pertaining to cultural infrastructure including parks and sports fields, civil place-making such as public squares or splash pads, and public gathering places or places of learning such as schools and libraries, as well as beautification projects. Not including natural heritage features or private cultural places such as movie theatres.
	Pedestrian environment	Requests for design features to improve the pedestrian or cycle environment.
Private	Pertaining to impacts to or the impacts of privately-funded urban	

<b>Category</b>	<b>Theme</b>	<b>Definition</b>
	development	development. May include infrastructure conflicts or perceived NIMBYism, as well as requests for direct benefit.
Technical considerations	Natural heritage	Pertaining to plant, animal, or habitat concerns but not relating to recreational or cultural use of non-urban spaces or views.
	Policy	Pertaining to a broad statement of public policy from a government body.
	Transit	Pertaining to public transit, including wheel trans, and HOVs, but not including private vehicles with multiple occupants; can include service times, customer experience, or transit-supportive land-use planning.
	First Nations	Pertaining to all land claims, treaty rights, or modern (resolved or ongoing) disputes with First Nations people or communities, or any agreements or partnerships made with First Nations people or communities that are specific to the First Nations people or communities, as individual stakeholders. <sup>5</sup>
	Mitigations	Request for impact mitigation or assurance of impact mitigation.
	Public utilities	Pertaining to the provision of public service such as storm drainage, power, water, etc., but not including recreation, tourism or sport, or cultural activities.
	Litigation	Pertaining to any legal action associated with the EA or that could affect the EA, not including First Nations claims or treaty-related litigation, or legal proceedings associated with the Expropriation Act (which occurred after the issuance of the Notice of Completion).
	Heritage preservation	Related to concerns about cultural or architectural heritage, including archaeology but not including modern First Nations concerns or treaty/land rights issues.

An examination of the overall importance of themes shows the different perspectives presented by different sources of information. An examination of all sources combined revealed the following themes as the most important:

1. Proponent self-interest
2. Adequate consultation
3. Traffic concerns
4. Requests for further information

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<sup>5</sup> In this particular instance First Nations issues are categorized as a technical consideration because they were raised generically, through form letter, by Federal Government departments. Had these issues come from First Nations communities directly, or had they been related to project specifics or specific impacts to communities, they would have better fit the categories of power or trust or impacts to stakeholders.



5. Actual benefits
6. Sentiments indicating NIMBYism
7. Misunderstanding of the EA process
8. Financial impacts
9. Natural heritage
10. Impacts of the proposed works on business operations
11. Desire to gain a direct/personal benefit from the proposed works
12. Public consultation efforts deemed to be inadequate
13. Concerns regarding the requirements to expropriate property
14. Tokenistic public consultation
15. Policy
16. Indication of an acceptance of the proposed works or the outcome of the EA study
17. Excessive taking
18. Transit
19. Special circumstances
20. Political motivation

The above list examines the themes from all sources in aggregate; however when the most important themes from each source were examined individually, the lists change substantially to reveal the different perspectives of each information source.

The initial examination of the 10 Part II Order request letters suggested that the majority of the individuals who wrote the letters felt as though they had not been properly consulted. The two stakeholders interviewed, however, did not indicate any concerns with the level of consultation. Nonetheless, comments made by both interviewees suggested that consultation efforts were not successful in reaching the two stakeholders until very late in the EA study.

One of the Part II Order requesters (Requester 1) owned and operated a business that was required to move as a result of property acquisition requirements for the road widening. From this interview, 21 themes were identified. The other Part II Order (Requester 2) owned land on which multiple tenants operated businesses, and requested the Part II Order as a result of concerns expressed by the tenants about

property access. From this interview, 16 different themes were identified. Because of the volume of Part II Order request letters received for this project, it was deemed appropriate to code the 10 letters in aggregate for comparison purposes. These letters include the two request letters that were submitted by the above-mentioned two requesters; however because the letters focus for the most part on technical concerns (for example, property expropriation or loss of revenue) rather than the more emotional issues expressed during interviews (for example, issues of trust or power struggles) this was not considered to be double-counting. From the Part II Order request letters, 13 different themes were identified. The comments reproduced in the ESR came from a variety of sources, many of which were lower-tier municipal staff and staff from other government authorities. Comments from the public, while summarized in the text of the document, were not reproduced and publicly available on the municipality’s website at the time of conducting the research, unlike the rest of the appendices of the ESR. No reason for this was apparent. As such, the public comments represent mostly those of government departments and organizations, as opposed to the general public. From the ESR, 27 different themes emerged. From the interview with the municipal project manager, 23 different themes emerged. An examination of the most important themes from each source reveals the differences and similarities between each source. The most important themes are summarized in order of importance (the most important being the themes with the most coding instances) in Table 5-4 below.

*Table 5-4: Most Important Themes Coded by Source*

<b>Requester 1</b>	<b>Requester 2</b>	<b>Part II Order request letters</b>	<b>ESR public consultation documentation</b>	<b>Municipal staffperson</b>
Indications of a seemingly self-interested proponent	Actual benefits achieved through requesting a Part II Order	Requests for further information	Concerns about the impacts of the proposed works on the natural environment	Public consultation efforts deemed to be adequate
Public consultation efforts deemed to be adequate	Indications of a seemingly self-interested proponent	Traffic concerns	Expressions of an official policy interest	Sentiments about the public consultation program that indicate tokenistic or non-participant consultation
Sentiments indicating NIMBYism	Misunderstanding of the EA process	Impacts of the proposed works on business operations	Sentiments indicating NIMBYism	Public acceptance of the outcome of the EA study

<b>Requester 1</b>	<b>Requester 2</b>	<b>Part II Order request letters</b>	<b>ESR public consultation documentation</b>	<b>Municipal staffperson</b>
Concerns regarding the requirements to expropriate property	Public consultation efforts deemed to be inadequate	Concerns regarding the financial impacts of the proposed works on businesses or individuals	Desire to gain a direct/personal benefit from the proposed works	Awareness of potential challenges associated with this EA study
Suggestion that the process or outcome was politically motivated	Public consultation efforts deemed to be adequate	Sentiments indicating NIMBYism	Requests for further information	Acceptance of EA outcome by stakeholders
Feelings of powerlessness	Traffic concerns	Requesting alternate outcome due to special circumstances	Concerns regarding the requirements to expropriate property	Actual benefits achieved through requesting a Part II Order
Feeling heard but not heeded	Concerns regarding the financial impacts of the proposed works on businesses or individuals	Misunderstanding of the EA process	Indication of an acceptance of the proposed works or the outcome of the EA study	Concerns about the impacts of the proposed works on the natural environment
Misunderstanding of the EA process	Willingness to accept change		Technical considerations for public transit design or operation	Impacts of the proposed works on business operations
Sentiments about the public consultation program that indicate tokenistic or non-participant consultation	Desire to gain a direct/personal benefit from the proposed works		First Nations considerations	Awareness of municipal issues from lower tier municipality stakeholders
Suggestion that the EA process is adversarial	Acceptance of EA outcome		Request for additional consultation activities	Assurance that project impacts can be mitigated
Feeling as though excessive land is being expropriated needlessly				Explaining the actual impacts of the Part II Order requests

<b>Requester 1</b>	<b>Requester 2</b>	<b>Part II Order request letters</b>	<b>ESR public consultation documentation</b>	<b>Municipal staffperson</b>
Feeling as though the municipality has an unfair advantage in an adversarial process				Explaining the MCEA process or indicating it was followed

From the point of view of the municipal staffperson familiar with the EA study, the most common comments made during the interview were suggestive of a general feeling of satisfaction with the work that went into and the outcome of the EA study. The staffperson felt that public consultation efforts, which were designed to inform the public and stakeholders (rather than engage them or give them any power or authority over elements of the decision-making process) were at least adequate, if not better; and that, although there were some recognized challenges associated with the proposed works, including concerns from specific stakeholder groups (the conservation authority, local businesses, and lower tier municipalities), all impacts could be mitigated and the public was in favor of the preferred solution. The municipal staffperson interviewed on April 15, 2013 explained that York Region had anticipated that there would be intense interest in the project from the local municipalities. According to the staffperson, municipal staff recognized at the time of designing the EA study methodology that this project was very different from a “typical road widening where you have service there already and it will just get bigger; [in that] you are bringing an entirely new service into the corridor in a way that was not before” seen. The Region knew that “rapid transit has a way of transforming a corridor in a way that a road widening doesn’t,” and thus they expected that the major stakeholders would be the towns and villages whose land use policies and plans could be directly affected by the intensifying effects of higher order transit, and that these stakeholders would have a keen interest in the project planning and implementation. What they did not expect, however, was the level of opposition or “push back” they received from within the communities that would be affected by the new transit right-of-way. And although the interest in the outcome was widespread, with comments and direction received from lower tier municipalities to provincial ministries and departments, to businesses and developers, the staffperson explained that the Region understood, as the EA study moved forward, that only the town of Newmarket wished to play a direct role in decision-making for the EA. Noted the staffperson, “there was less concern amongst other municipalities... they didn’t see the corridor changing as immediately as Newmarket saw Davis Drive would... as a result of transit.”

An examination of the comments received during the EA by the project team shows that four distinct groups of stakeholders showed enough interest in the EA to provide official comments. These were government agencies and public institutions, First Nations communities and groups and the government agencies representing their interests, local business owners, and municipal governments. In addition,

comments were collected at public consultation events from the general public; however these were not available for review, having been taken down from the project website at the time of the research undertaking. Nonetheless, none of the Part II Order requests came from local resident stakeholders, so if there were concerns from this group, those concerns were either addressed to their satisfaction, or for some other reason, none of the individuals in this stakeholder group requested a Part II Order from the minister.

One stakeholder, the local conservation authority, was very vocal throughout the EA process, reviewing all interim submissions in great detail and providing extensive comments to the municipality. Although the conservation authority did not voice substantive opposition to the project, many requests for clarification, additional technical details, and minor design changes for the mitigation of impacts to surface water were submitted to the municipality by the conservation authority throughout the EA study. As a result of the volume and length of comment letters submitted by the conservation authority, the themed analysis of stakeholder concerns from the ESR is weighted heavily towards concerns about natural heritage. As explained by the staffperson from York Region, the technical concerns raised by agencies such as conservation authorities were the ones of most concern to the project team because “agencies have specific technical requirements. If we need permits and approvals, we need to demonstrate that the technical requirements are understood at the EA stage as this is critical to move forward.”

The concerns that the Region heard from stakeholders during the EA that were published in the ESR tended to fall under five main categories: concerns about the effects of the project on the natural environment (mostly from the conservation authority), concerns regarding adherence to public policy (mostly from other municipalities), First Nations concerns (mostly from the federal department of Indian and Northern Affairs), and from a variety of stakeholders, concerns about the effects of the project on traffic, concerns about required land expropriation, and concerns about public transit design details.

The picture painted by the comments presented in the EA report, and from the description of the project given by the proponent, is one of a study area with many highly-sensitive environmental features, with multiple policy initiatives to encourage transit ridership amongst an apparently supportive public, overseen by technocratic local governments, adjacent to First Nations communities with a passing interest in maintaining cultural heritage features, if any are found during construction.

The concerns presented by those who requested Part II Orders, however, are very different from the above, though there are some overlaps. All of the Part II Order request letters were received from business owners falling within two categories: those whose businesses would be affected by changing traffic patterns (generally resulting in changes to their property access) and those whose businesses would be affected by expropriation. Of the ten Part II Order request letters submitted, four contained the same content, though they were signed by different stakeholders. Three of the four identical letters came from

neighbouring business owners, all of whom operated the same type of business, and the fourth came from the owner of the land on which two of the businesses were situated. As noted by the staffperson from the Region interviewed on April 15, 2013, the geographic distribution of the Part II Order request letters was random throughout the site, except where the four identical letters were concerned, and based on site-specific objections to the proposed project. In general, the content of the letters describes concerns regarding the impacts of the project on property access and business operations, financial impacts, and required property expropriation.

Based on the coding of the Part II Order request letters, the picture painted is one of a self-interested technocratic municipal government imposing transit infrastructure in a manner that would inconvenience customers, cause dangerous traffic movements, threaten business operations and the financial well-being of local businesses, and unnecessarily expropriate property that was not required for the construction or operation of the transit right-of-way.

These sentiments were echoed somewhat by the two stakeholders interviewed. Both perceived the municipality as acting in its own interest, rather than in the interest of stakeholders or residents, and one of the requesters noted numerous times throughout the interview that the EA process felt adversarial. Both interviewees hoped to gain something from the project, and felt that instead they were losing something. Sentiments expressed by both requesters indicated as though they felt they would have been left out of the decision-making process had they not made an effort to voice their concerns with the Region, yet one of the requesters commented that he felt his concerns were heard but not heeded, stating in a April 25, 2013 interview that once his concerns regarding property expropriation were brought forward to the project team “they really listened; and they said, ‘get out of there.’” Amongst both requesters there was sense of opposition between themselves and the municipality, with one interviewee stating that “very rarely do you win fighting city hall... when you fight them you better have a million dollars to fight them;” and the other noting

I don't have any faith that if I don't ask..., if I just do nothing I'm sure they do nothing, right?

They did send me a letter promising that they're going to continue to work with me and blah blah blah, but you know, it's sort of a namby-pamby-type letter. It doesn't say they're going to be proactive in the whole thing, it just says that they'll work with me.

Both requesters interviewed had specific technical requests that they felt would address their concerns in a fair way. One of the requesters stated that the reason for the Part II Order request was to raise awareness with the Region of a particular concern, noting “I got to say what I wanted to say, I alerted them to the issue and I mean if there's major problems down the road I can always say guys we told you so.” This is suggestive of a feeling that there weren't opportunities to raise this concern prior to the completion of the project, or perhaps that simply stating the concern through the public consultation opportunities would not

hold enough weight within the decision-making apparatus employed during the EA study. This is in keeping with the sentiments outlined above and the fact that both requesters were not aware of the EA study until after the preferred solution was selected. Both requesters stated in their interviews that they saw the Part II Order request as a mechanism for voicing their concerns and being heard.

Despite the fact that both interviewees did not find out about the EA study until it was close to completion, when draft decisions had already been made, neither expressed concern that the public consultation process was inadequate. In keeping with the sentiments expressed by the Region's staffperson, both noted that the Region was just doing its job, with one interviewee stating "I would expect that [the municipality] would do what is best for the municipality, that is what they are hired and paid to do," and the other stating "they did a hell of an efficient and professional job in accomplishing what the mission was."

### **5.3 Case Study 3 – Schedule B MCEA to urbanize a semi-rural corridor cross section in advance of new urban development**

The third case study had the smallest scope of the three studies and contained far less documentation for analysis. This was partly due to the fact that it was only a Schedule B Class EA study, and therefore did not require extensive documentation like the first two, and also due to the fact that the sole Part II Order requester did not agree to participate in an interview. Although I was able to request an interview by mail, I did not receive a response from the addressee. Instead, the perspective of the requester is gleaned from the Part II Order request letter. While not ideal, this method was deemed adequate for ascertaining the reason for requesting the Part II Order, given that the nature of the request was highly technical and focused only on the impacts of the proposed works on the requester's property (in contrast to some of the other requests examined, where concerns were raised about potential project impacts beyond property owned or occupied by the requester).

According to the ESR for the EA study (Region of Peel, 2009), the Region of Peel identified the need to reconstruct a portion of King Street from Humberlea Road to the York/Peel boundary in the town of Bolton in the lower-tier municipality of Caledon, due to poor pavement conditions. Prior to commencing construction activities the 1.5 km stretch of road was classified as a regional arterial roadway (Region of Peel, 2009), and featured a rural cross section with gravel shoulders and open ditches. Some drainage along the corridor was conveyed by short sections of storm drain piping or via culverts directly to the nearby Humber River and Cold Creek. King Street crosses the Humber River on two bridges, both in relatively good shape, within the study area (Region of Peel, 2009). The need for the EA study is outlined in the ESR (Region of Peel, 2009), in which the existing pavement is described as being in poor condition and needing replacement. At the time of conducting the study, there were no sidewalks to facilitate

pedestrian movement. In addition, several side streets and driveways connecting to King St. required improvements to address the need for operational and roadside safety improvements (Region of Peel, 2009), plus the option of upgrading rural cross section to urban cross section with curb and gutter and boulevard enhancements.

### **5.3.1 Demographics**

The municipality of Caledon is located north of the City of Toronto and, according to the 2011 census, features predominantly single-family homes occupied by English speakers (Statistics Canada, 2012). The municipality is growing faster than the rest of the province, with an increase in population of 12.7% between 2001 and 2006, as compared to a population increase of only 6.6% across the province between 2001 and 2006 (Region of Peel, 2009)

In terms of employment by sector, jobs in Caledon are distributed in roughly the same proportions as they are in the whole of Ontario.

Approximately 51.9% of the dwellings in Caledon were constructed between 1986 and 2006, compared with 31.4% in Ontario. The average value of dwellings in Caledon in 2006 was \$457,586. This figure is higher than the value of dwellings in Ontario (\$297,479) in the same year. Census data demonstrate that there has been real growth in Caledon between 2001 and 2006 (Region of Peel, 2009, pp. 20-21).

### **5.3.2 Urban Form**

The study area for the EA study is located in the historic town of Bolton, a rural service centre in Peel. Most of the study area is characterized by the rural, large-lot development flanking it, and features a rural road cross section, as described above, some small, remnant woodlots associated with the Humber River valley, and landscaped front lawns. Approximately one quarter of the western end of the study area is within a built-up portion of the town, which runs through older, smaller-lot, village-type housing and businesses, located closer to the roadway. According to the ESR (Region of Peel, 2009), 10 buildings along the study area are of heritage value.

### **5.3.3 Scale of Change**

According to the ESR (Region of Peel, 2009) the preferred solution to address the degraded pavement of the roadway did not propose an increase in the volume of traffic or lane width. The right-of-way was proposed to remain unchanged. The proposed reconstruction of the roadway would see an alteration from a rural cross section to an urban cross section, which included new pavement, new concrete curbs and gutters, storm sewers where required, full boulevards on both sides of King Street, asphalt paths or concrete sidewalks along the length of the roadway, and retaining walls where required.



### 5.3.4 Public Consultation Activities

According to the ESR (Region of Peel, 2009) all addresses within the study area were mailed a copy of the Notice of Commencement and a comment sheet, asking if they perceived any positive or negative effects of the project and if there were any critical issues that should be examined as a part of the EA study. The Notice of Commencement was also published in a local newspaper. One public information centre (PIC) session was held during the EA study to present the study information findings, alternative solutions to the stated problem, and the preferred alternative. Attendees at the PIC were given the opportunity to ask questions or make comments through comment sheets. When asked about the extent of public consultation activities during the EA study in an April 26, 2013 interview, a staffperson from the Region of Peel familiar with the EA study noted that, due to the scope of the project, it was not felt that a PIC was required, as “it’s a schedule B project, but we still had a PIC which is probably not mandatory for the process.”

### 5.3.5 Results

Comments and questions received from the public and from stakeholders were reproduced in the appendices of the EA study report (Region of Peel, 2009) and tended to focus on two types of issues. Comments received from government agencies were technical in nature, focusing mainly on natural heritage features such as impacts to water quality in the Humber River and to the floodplain of the river. Comments received from the public were all from local residents and tended to focus on either impacts of the proposed works on traffic, or on minor design details. In an interview with a staffperson from the Region of Peel, technical issues were addressed while seemingly playing down the issue of the Part II Order, with the staffperson noting that Region staff had addressed the concerns raised by the Part II Order requester during the EA study and were not anticipating a Part II Order request.

From the three data sources examined, 27 different themes were coded within six different categories. The code definitions are presented in Table 5-5 below.

*Table 5-5: Definitions of all themes coded in Case Study 3, by category*

<b>Category</b>	<b>Theme</b>	<b>Definition</b>
Consultation	Poor public consultation	Evidence of consultation messages not being clearly conveyed, stakeholders not being reached, questions or concerns not being heard or addressed, or documentation not being made available for review.
	Public consultation better	Opinion that public consultation activities exceeded the minimum requirements.
Impacts to stakeholders	Direct benefit	Where a stakeholder request appears to come from a desire to gain a direct benefit from the project that may not directly benefit surrounding or neighbouring stakeholders, even if diffuse benefit

<b>Category</b>	<b>Theme</b>	<b>Definition</b>
		may be obtained for the broader community. Does not include a request to avoid direct disbenefit (see NIMBY).
	NIMBY	Pertaining to requests for site-specific alterations to plans in order to avoid perceived inconvenience, intrusion, or other negative impacts in such a manner as to potentially cause negative impacts to other stakeholders, or to simply shift the existing perceived negative impacts elsewhere.
	Noise	Comments or concerns regarding perceived existing noise problems or the potential for the proposed works to make noise levels worse.
	Private property	Comments and concerns regarding the impacts of the proposed works on private property, including the need for temporary or permanent easements or to expropriate property.
	Property access	Concerns regarding impacts of proposed works on access to residential or commercial properties.
	Public safety	Questions, comments or concerns related to the way in which the proposed works will affect public safety and pedestrian safety.
	Traffic	Statements or concerns regarding existing traffic issues or potential impacts to traffic flow.
Technical considerations	Bridge impacts	Questions or comments regarding the impacts of the proposed works on bridge structures.
	Design	Requests for or comments about specific design features in the proposed works.
	Drainage	Concerns related to drainage issues that affect private property.
	Erosion and sediment control	Requests to include erosion and sediment control measures in construction activities and for designs to mitigate against potential future erosion.
	Fisheries	Request to identify watercourses and fish habitat in design drawings.
	Floodplain impacts	Request to minimize the placement of fill in flood plains.
	Natural heritage features	Questions or comments about potential impacts to green space, parklands, or other natural heritage features.
	Recreation impacts	Requests for proposed works to link to existing paths or trails.
	Redside Dace	Request to acknowledge Redside Dace in planning and implementation of proposed works.
	Runoff water quality	Requests for design features to improve water quality from roadway runoff.
	Urbanization	Explaining the EA outcome resulted in a move from a rural road cross section to an urban road cross section.
Public support	Support	Indicating public support for or acceptance of EA outcome.

<b>Category</b>	<b>Theme</b>	<b>Definition</b>
Proponent attitude	Acknowledgement	Acknowledgement of stakeholder concerns.
	Dismissal	Statements that suggest that comments or concerns raised by stakeholders or the public are not valid or are incorrect.
	Presupposition	Presupposing the potential comments, questions or concerns that will arise during an EA study based on the scope and details of the proposed works.
	Typical concerns	Statement that concerns expressed by public and stakeholders were typical for this type of project.
EA process	Minimum requirement	Commitments to meet minimum requirements required by legislation.
	Part II Order	Comments suggesting the Part II Order request was not expected.

The most important issues raised by stakeholders were generally technical in nature for government agency stakeholders, such as requesting that erosion and sediment control features be incorporated into construction drawings, and for area residents concerns tended to focus on potential impacts to the stakeholders such as the effects of the proposed works on traffic or private property. The Part II Order request letter focused on issues related to the perceived impacts of the reconstructed road on the residential property owned by the requester, and especially the impacts of traffic and salty runoff water spraying onto the property during the wintertime. These concerns, and all of those concerns raised by stakeholders during the EA study, were downplayed by the municipal staffperson interviewed on April 26, 2013, for whom the most important theme was that of dismissal. For example, during the interview, the staffperson stated the opinion that “there was no impact [to private property] created by the project that we were doing” and although it was recognized that the issues raised by the requester may have seemed very real to the requester, “from a project perspective, we felt that we are not changing anything... that is going to impact [the requester].” When asked about how the Region addressed the Part II Order requester’s concerns prior to completing the study, the staffperson stated that the concerns were addressed by explaining to the stakeholder that the concerns raised were incorrect. The staffperson explained that, because the concerns raised by local stakeholders were not anticipated to actualize as a result of the proposed works, the concerns were not taken into consideration during the decision-making process for the EA. In particular, the concerns raised by the stakeholder who requested the Part II Order did not influence the final outcome of the proposed works, nor were additional mitigation measures put in place. Said the staffperson during an April 26, 2013 interview, “during the EA we did not change anything per se because we didn't feel that there was any impact on [the requester's] property.”

In examining the most important themes by source, there is no overlap between the three data sources, as shown in Table 5-6 below. Because there were so few datapoints arising from this case study, an analysis of the differences between each source was difficult. To get a better understanding of the perspectives of

each data source, a comparison was also made between the most important theme categories for each source. Coding instances were summed by category, and then compared, yielding a slightly clearer picture of major issues addressed by each source. A comparison by theme category was not done for the first two cases because there were enough data points for clear patterns to emerge from each data source for each case, allowing a comparison of sources. The results of the comparison by category for Case 3 are shown on the following page in Figure 5-1.

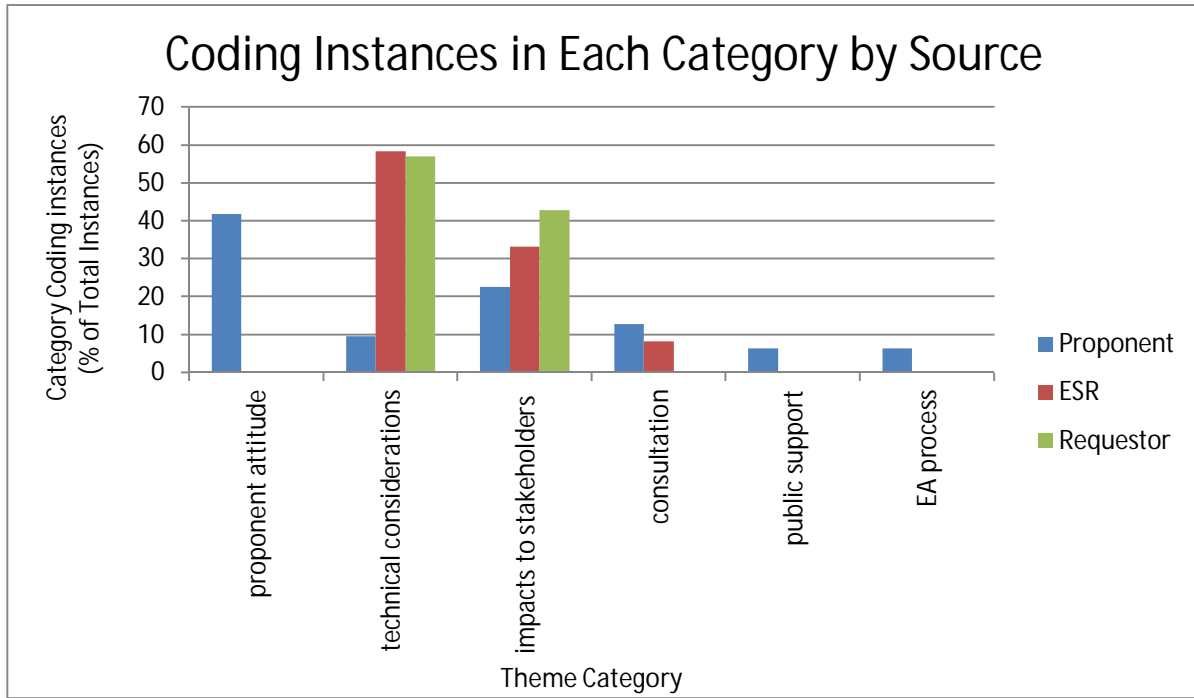
*Table 5-6: Most important themes, coded by source*

<b>Municipal staffperson</b>	<b>Part II Order request letter</b>	<b>Stakeholder/public comments from the ESR</b>
dismissal	runoff water quality	private property
		natural heritage features
		recreation impacts
		public consultation
		public safety
		design
		erosion and sediment control

The most important category for both the stakeholder comments and the Part II Order request letter is the category encompassing themes related to technical considerations, while the most important category for the staffperson interviewed was the one encompassing themes expressing attitudes and opinions about the EA study and its outcome. No concerns about public consultation were raised in the Part II Order request letter.

In chapter 6 the results of the above-three case studies are analyzed and discussed and the implications of the results for policy-making are outlined.

Figure 5-1: Importance of theme categories by source for Case Study 3



# 6 Discussion of Results and Cross-Case Analysis

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In the three cases described in the previous chapter, property owners or area residents requested Part II Orders for projects that they felt would affect them negatively, and they felt strongly enough about this to request that the Minister of the Environment take a second look at the EA documentation. As was posited in the first chapter the motivations of those who requested Part II Orders were likely more complex than simple self-interest (or NIMBYism), and the reasons uncovered in each case study for each Part II Order request were enumerated in the previous chapter. In this chapter these reasons are compared between cases and discussed in the context of the literature.

## 6.1 Case 1 Discussion

As noted in the previous chapter, consultation activities throughout the EA study were extensive, reaching broadly across the community and stakeholders. When compared to the requirements of the Municipal Class EA, the consultation activities far exceeded the minimum requirements. And while the staffperson from Waterfront Toronto believed that the consultation activities undertaken were more than adequate, comments made by the Part II Order requester suggest otherwise. Numerous statements were made by the requester during a June 11, 2013 interview that indicated a belief that public consultation activities undertaken during the EA study were inadequate, and in some cases, were described in the same manner as Arnstein (1969) described manipulative consultation.<sup>6</sup>

This difference in perspective raises the question of the definition of adequacy. While the consultation activities clearly met the requirements of the Municipal Class EA process in terms of the number of points of public contact, it appears as though the Part II Order requester believed that no power or control was afforded to stakeholders during the decision-making process. In Roberts' review of the literature on direct citizen participation, he defines participation as "the process by which members of a society (those not holding office or administrative positions in government) share power with public officials in making substantive decisions and in taking actions related to the community" (Roberts, 2004, p. 320). As the staffperson indicated in a May 24, 2013 interview, public control over the decision-making process was

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<sup>6</sup> On Arnstein's ladder, "manipulation" is the bottom rung and is described as "non participation" activities "that have been contrived by some to substitute for genuine participation. Their real objective is not to enable people to participate in planning or conducting programs, but to enable powerholders to "educate" or "cure" the participants" (Arnstein, 1969, p. 217). Comments from the requester regarding ways in which the proponent was perceived to be hiding information and to be enticing stakeholders with unlikely future scenarios are suggestive of manipulative public consultation.

given at the outset in the definition of the problem statement for the EA study. In addition, protracted discussions were undertaken with local business owners and residents' groups to address concerns about design considerations and questions about how changes to traffic patterns would affect property access.

The process followed, as described by the staffperson and documented in the ESR (City of Toronto & Waterfront Toronto, 2009) is indicative of an appropriate level of public participation that would fall within the realm of citizen partnership in Arnstein's (1969) ladder of citizen participation.<sup>7</sup> As noted by the Waterfront Toronto staffperson in a May 24, 2013 interview, preliminary detailed design work was completed during the EA "to make a lot of stakeholders feel comfortable." And although this sharing of power between the proponent stakeholders is commendable, the person who requested the Part II Order was not included in this power-sharing arrangement because the requester was not a member of stakeholder groups included in discussions (local businesses, the Toronto Transit Commission, and a special interest group), despite being a resident of a neighbourhood adjacent to the study area. The requester recognized this exclusion and commented twice in a June 11, 2013 interview on the fact that this neighbourhood was not included in the scope of study. Perhaps it was the desire to have this particular neighbourhood included in the scope of the study or perhaps simple misinformation, but the requester stated inaccurately that the neighbourhood had been excluded not just from the study area, but from consultation activities altogether. Evidence of discussions between the proponent and members of the neighbourhood association representing the requester are included in one of the appendices of the ESR (City of Toronto & Waterfront Toronto, 2009), including a statement made by the neighbourhood association endorsing the preferred alternative solution.

While it is entirely plausible that the requester had simply been misinformed about the participation of the neighbourhood association, the question still arises as to why the requester felt such distrust of the proponent. Peters, Covello and McCallum (1997, p. 43) argues that "trust and credibility are based on three determinants: knowledge and expertise; openness and honesty; and concern and care." The requester, while expressing trust in the technical expertise of Waterfront Toronto staff, suggested that the project team members were not being open or honest with the public due to political influence from other branches of government. In particular, the requester named branches of government that were perceived to be supportive of a locally unwanted land use that also was outside of the scope of the study area. The land use in question figured prominently in the discussion with the requester, who regularly attempted to

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<sup>7</sup> On Arnstein's ladder, "partnership" is rung 6 of 8 and is described as a situation in which "citizens can enter into a partnership that enables them to negotiate and engage in trade-offs with traditional power holders" (Arnstein, 1969, p. 218).

steer the interview towards concerns surrounding a perceived lack of transparency in the operation of the land use. Thus, the requester indicated a lack of trust in the proponent due to an association between the proponent and other government bodies who the requester stated were behaving in an untrustworthy manner. To the requester, other complaints about public consultation seemed to underline a belief already held about the trustworthiness of the proponent. For example, the requester suggested that the year-long drought in public communications activities was evidence not of the amount of time it took the proponent to address a technical issue that did not require public input (as the staffperson interviewed on May 24, 2013 said to be the case), but of something being hidden from the public.

In examining the factors that affect public perceptions of trust in project proponents, Peters et al (1997, p. 44) observe “that accidents or mishaps are regarded by the public as signals or omens of further, and possibly worse, events.” In this case, it is possible that the requester’s already held bias about the trustworthiness of the players involved in the decision-making for this project (upper levels of government) influenced the requester to jump to the conclusion that the lull in communications and not being included in the project scope were evidence of deliberate malevolence on the part of the project proponent or those powers influencing the proponent.

The reaction of the requester against the EA conclusions can be contrasted with the reaction of the group of stakeholders about whom the proponents were more concerned; the business owners. The staffperson interviewed on April 15, 2013 explained a scenario in which it was assumed that business owners, whom the staffperson typified as having a greater financial interest in the outcome of the EA than other stakeholders, would be more likely to submit Part II Order requests than other stakeholders. To address this concern, extensive consultation with this stakeholder group was undertaken and as a result of the discussions had between the proponent and the stakeholders, commitments were made by the proponent, in the ESR (City of Toronto & Waterfront Toronto, 2009), to implement certain measures that addressed stakeholder concerns. Although the level of detail included in these commitments, and indeed even making design commitments at the EA stage, were certainly not necessary under the Municipal Class EA process, in so doing, the proponent defied the very stereotype held by the requester of an uncaring political bureaucracy, and garnered support from a stakeholder group. In fact, the threat of receiving a Part II Order from a well-organized and powerful stakeholder group may well have been a positive incentive for the proponent to give more power to those particular stakeholders in the decision-making process than might otherwise have been given. As was noted by a staffperson interviewed on May 24, 2013, with regards to the stakeholder group to whom the proponent paid the most attention and gave the most power in the consultation process, “we expected them all to write Part II Order requests.”



Peters, et al. (1997, p. 54) concluded that “defying a negative stereotype is key to improving perceptions of trust and credibility.” Thus, in working hard to show one stakeholder group that they were a responsive, flexible organization, Waterfront Toronto was able to improve their trustworthiness in the eyes of that stakeholder group. Unfortunately for the proponent, this work was not visible to the broader community and therefore the Part II Order requester did not perceive Waterfront Toronto in the same light. Further, where a lag in general public communications confirmed a negative stereotype held by the requester – that Waterfront Toronto was somehow subject to nefarious political meddling and was therefore hiding information from the public – no trust was built and a Part II Order request ensued.

Thus, it can be concluded for Case Study 1 that, although the public consultation activities did not directly affect the requester’s perception of the trustworthiness of the proponent, it is possible that a lack of trust in the proponent for other reasons resulted in the perception of public consultation activities being inadequate. Waterfront Toronto may have been able to build trust with the requester had the organization been able to identify the negative stereotype perceived by the requester or perhaps by the public in general and worked more visibly to prove the stereotype wrong.

## **6.2 Case 2 Discussion**

As indicated in the final ESR (York Region, 2008), and echoed by the staffperson familiar with the project during an April 15, 2013 interview, consultation efforts undertaken for this EA study were more extensive than required by the Municipal Class EA. In both the EA report and the transcript of the proponent interview, allusions were made to the reasons for consulting with the public. The Region of York exceeded the minimum consultation requirements under the Municipal Class EA process, and, as stated in the EA report, they did so in order to identify conflicts and address them with the stakeholders involved.

From speaking with the Part II Order requesters, and reading the public and stakeholder comments included in the ESR (York Region, 2008), it is clear that the Region was successful in identifying the ways in which the proposed works would affect the community. What was not clearly defined, however, was how issues that were identified would be “addressed”. The Municipal Class EA document (MEA, 2007) provides little guidance on how to go about “addressing” stakeholder concerns, and does not state that all issues must be resolved prior to completing an EA study. Many issues, such as project aesthetics or design, cannot be resolved before the detailed design stage of project implementation, well after an EA has been completed. In other cases, addressing the concerns of one stakeholder or stakeholder group may require sacrifices or trade-offs that leave the project less well-equipped to serve the overall public interest. The staffperson interviewed on April 15, 2013 understood this to be the case, stating “at the end of the

day you are not going to satisfy every stakeholder, there will always be impacts that could be mitigated but at the time of the EA they may not be completely resolved.” Klosterman (1980) notes as a truism that “actions which are in the public interest inevitably require that the particular interests of some must be sacrificed to the collective interests of all.” How a proponent decides between mutually exclusive alternatives, or whose interests must be sacrificed for the broader public good may be indicative of the biases of or political power of those who influence the decision-makers. Although outside the scope of this research paper, it is worth noting that the negotiation of trade-offs, mitigation measures, and compensation for negative environmental impacts can, in itself, be a political (rather than solely technocratic) process (Ortolano & Shepherd, 1995), and as such, are as vulnerable to the politics of power as any other part of the EA decision-making process.

In Case 2, some stakeholders were given more power to affect the outcome of the EA study than others. In an April 15, 2013 interview, a staffperson from York Region explained that there was little concern within the project team about how some stakeholders would react to the proposed works, so long as those with more power to affect the outcome of the study (in this case, government review agencies) were appeased:

A Part II Order is just part of the EA process; if I were to think about Part II Order requests that concern me they would be issues that may be from technical agencies, such as a Conservation Authority. Those types of agency issues should never get to the stage where the EA has been filed and the agency is raising concerns about a project or a process.

This is not to say that prioritizing the needs or wants of a government review agency over the needs or wants of a member of the general public is unusual, or in any way bad, however it is illustrative of the way in which EA decision-makers must be aware that some affected stakeholders have more power to affect the outcome of an EA than others.

From the comments made by the staffperson, it appears that the approach taken by the region to “address” public concerns was to acknowledge those concerns and explain to interested parties how the proposed works would result in an improvement over current conditions, despite any impacts that could result from project implementation. For example, at one point during the April 15, 2013 interview, the staffperson explained that most property owners were concerned about the short term construction impacts of the project, but had a sense of the long-term benefit for their properties associated with the higher and better land use that generally follows from adjacency to higher order transit. Nonetheless, the staffperson noted that long-term benefits may not appear to outweigh short-term concerns with construction noise or

changes to property access, and the staffperson speculated that most of the concerns heard from property owners were based on these short-term issues.

Thus, public issues were “addressed” in Case 2 by providing opportunities to all interested parties to ask questions and provide feedback (informally or in writing) at all public information events and online through the project website. In other words, the concerns of interested parties were addressed by being heard, and repeated in project documentation. However, heard does not mean heeded, and as the staffperson noted in the April 15, 2013 interview, the nature of the anticipated public concerns had no bearing on the level of effort put into the consultation activities: “we would have done the level of consultation we did regardless of issues anticipated.”

Nonetheless, York Region undertook an expanded consultation program because they saw the consultation opportunities afforded by this EA study as “more than just going through the EA process, it was also education for the public about VIVA service and the land use evolution that was going on.” In other words, in addition to hearing people’s concerns, the Region also attempted to educate the public and non-governmental stakeholders on the benefits of the proposed works. As is evidenced in the ESR (York Region, 2008), consultation with government reviewers tended to be much more of a two-way conversation, with government stakeholders having more power to influence the outcome of the EA study than the general public. Public consultation efforts for non-governmental groups, as described by the staffperson interviewed on April 15, 2013 would be considered as informative under Arnstein’s (1969) Ladder of Citizen Participation<sup>8</sup>, and as the staffperson explained, this one-way flow of information consisted of telling stakeholders how they would be affected by the proposed project. For example, the staffperson from York Region noted in the interview that

when we met with stakeholders we tried to explain what we were doing and what the project was and how it would work. Where feasible, we incorporated mitigation measures, such as for access, or other issues. If not feasible, we would show them how the proposed transitway would operate and try to allay their concerns by showing them how it works elsewhere.

In fairness to the project proponent, informative consultation may have been the highest rung on Arnstein’s (1969) ladder of citizen participation achievable by the Region. This limitation is due to the

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<sup>8</sup> “Informing” is a tokenistic form of participation located on the third rung of the 8 rungs of Arnstein’s (1969) ladder of citizen participation. As Arnstein (1969, p. 217) explains, when tokenistic participation opportunities “are proffered by powerholders as the total extent of participation, citizens may indeed hear and be heard. But under these conditions they lack the power to insure that their views will be heeded by the powerful. When participation is restricted to these levels, there is no follow-through, no “muscle,” hence no assurance of changing the status quo.”

fact that the evolution described above has not occurred naturally or as a result of market forces alone, but as a result of provincial and municipal policies and plans put in place some years prior to encourage development in a form that would better support public transit ridership in a nodes-and-corridors configuration; what Klosterman (1980) would generally suggest to be a policy “in the public interest.” This policy mandate was communicated to the public and suggested that the need for or desirability of the project had been predetermined, and was therefore outside of the control of those affected by it. The policy mandate for urban intensification and transit development is highly prescriptive (Ontario Ministry of Infrastructure, 2006; York Region, 2002), and as a result, the feedback provided by members of the public could have little effect on the outcome of the EA study, save for the design and implementation of mitigation measures, as noted by the staffperson interviewed on April 15, 2013.

All of the Part II Order request letters submitted to the minister of the environment outlined the specific, technical reasons why each requester did not support the proposed works, detailing the anticipated financial or operational hardship that property and business owners expected to encounter as a result of the proposed works. Thus, one could surmise that those who requested Part II Orders did so in order to seek remedies for perceived hardships. However many of the comments provided by stakeholders (as published in the ESR) were also suggestive of hardship, and not all of those who submitted comments also submitted Part II Order requests.

The attitudes of the Part II Order requesters interviewed revealed further details about the beliefs about and attitudes towards the project and project proponent that help to explain the reasons for submitting the requests. Although perceived hardship certainly played a role in the decision to request the Part II Order, it appears not to have been the only factor. In fact, although one of the requesters very clearly expressed concern about anticipated hardships associated with the expropriation of property, the other requester interviewed displayed ambivalence about the proponent’s preferred solution. Despite the very different impacts of the proposed works on the two requesters interviewed, the commonality between them was the perception of the Region of Peel as acting in the Region’s own interest, as though the municipal government somehow did not have the interests of the constituency in mind.

Owens (2000, p. 1141), states that the “delineation of a ‘public’ is inseparable from the motives of those claiming that the public must be engaged.” In the context of a municipal Class EA study, Owens’ (2000) statement can be interpreted to suggest that the membership of “the public” is made up of those who were targeted for public consultation, and are necessarily separate from those who performed the consultation. It is an unfortunate side-effect of the EA process that those considered to be “the public” are defined by the need of a proponent to be separate from “the public”. In the case of a Municipal Class EA study, the artificial delineation between the public and the proponent is particularly unhelpful in building trust or

positive alliances between the proponent and the public precisely because the proponent *is* the public (or at the very least, was hired to be representative of the common interests thereof). The overarching goal of an EA study in Ontario is always to uphold the best interest of “the public” (as is enshrined in legislation through the EA Act), however all interview respondents appeared to feel as though the opposites were true. The power disparity between the public and the proponent widens with every step down a rung in Arnstein’s (1969) ladder of citizen participation, and the “us versus them” feelings displayed by both interviewees suggests that the consultation activities employed by the Region were doing little to engender feelings of partnership or power amongst stakeholders.

Understandably, not all stakeholder requests can be accommodated for such a large project, and the Region had to keep in mind the overall public interest, and not just the interests of a select few, as required by the Municipal Class EA. Nonetheless, some stakeholders were left feeling as though their concerns were ignored altogether. For example, in an April 25, 2013 interview, one stakeholder repeated what he was told at a public information open house, when he expressed concern over the impacts the proposed road widening would have on his property: “at that point the position was ‘well don’t worry you will be compensated,’ you know?”

In a passage from the EA report, the subtle difference between informing stakeholders and meaningfully consulting with them is seen again:

Two business owner meetings took place in Newmarket to discuss the impacts along Yonge Street and Davis Drive. During these two meetings small groups were formed with project representatives present in each of the groups. The plans were presented to the business owners and they were given the opportunity to review them and provide any comments or ask questions (York Region, 2008, p. 12-4).

The above passage is suggestive, again, of tokenistic consultation, or stakeholders who are heard but not heeded. Nonetheless, the level of effort expended in informing the general public and stakeholders was certainly above average for a Municipal Class EA, and it is clear that the Region wanted to reach as many people as possible who could be affected by the project. In interviews with two Part II Order requesters, both mentioned that York Region had attempted to inform them of the EA study directly via direct mail. However, without the ability to affect any change to the EA outcome, one must ask why go to all the trouble to keep stakeholders informed? Based on comments made by the staffperson from York Region on April 15, 2013, it may have been an effort to assuage fears that the project would result in a disbenefit, and to affirm stakeholders that the overall outcome of the project would be in the public interest:

When we met with stakeholders we tried to explain what we were doing and what the project was and how it would work. Where feasible, we incorporated mitigation measures, such as for access, or other issues. If not feasible, we would show them how the proposed transitway would operate and try to allay their concerns by showing them how it works elsewhere.

Unfortunately showing someone a successful project somewhere else is not the same as assuring them that it will work the same way in their neighbourhood. Where interested parties perceive a policy or project as likely to result in a direct disbenefit, it is understandable that they would seek a remedy; however where there is the perception of an adversarial relationship, that perception may be the tipping point that leads a stakeholder to seek help from a third party just to ensure that he or she is heard. As Klosterman (1980, p. 328) explains,

public support is generally required for the adoption and successful implementation of public policy. However, the question of whether a policy is in the public interest (i.e., benefits the public) is independent of and logically prior to the question of public support in that the members of the relevant public must know whether a proposed policy will benefit them before they can know whether to support it.

In Case Study 2 we see a proponent outlining the overall public benefits of a project as a way to justify the personal disbenefits to a few stakeholders. Neither of the Part II Order requesters questioned the desirability of the project, but neither did they see the project as justification for what were perceived to be the unnecessary hardships resulting from it. It is not clear whether this perceived adversarial relationship preceded or resulted from the consultation efforts employed for the EA study, but a clue can be found in one of the Part II Order request letters (submitted by a party who did not agree to an interview). In this letter the requester outlines the perceived hardships to the requester's business that would result from the proposed works, and then notes that the Region had heard, heeded, and conceded to requests from other business owners nearby, stating:

I understand that the Region and VIVA changed the design of the rapidway on Yonge Street from Murray Drive to Golf Links Drive and elsewhere in Aurora to address similar concerns with respect to the impact of the rapidway design on other existing businesses. I am only asking to be treated in the same way.

The request above is suggestive of a stakeholder who feels excluded from a consultation process that allowed negotiation between other nearby business owners and the proponent, meaning that it is possible that the adversarial relationship was created by a lack of two-way consultation with affected stakeholders.

Although it cannot be concluded with the evidence collected whether or not the consultation efforts employed by York Region were the cause of feelings of hostility by Part II Order requesters, it is possible that these feelings, whether preceding the project or not, were the underlying factor in the decision to submit a Part II Order request for this project.

## 6.3 Case 3 Discussion

There was very little overlap in themes from the three different data sources; however because the data from the requester did not include an interview, it is hard to say how that more detailed data would have emerged and would have affected the results of the case study.

The Part II Order requester submitted a list of comments and concerns via email to the project manager prior to the completion of the EA study, and these were responded to in writing. Although the original email has not been reproduced in the EA report appendices (Region of Peel, 2009), the Region's response to it has been, and from this response it can be ascertained that private property impact concerns were raised at that time. It is not clear if further correspondence occurred between the requester and the Region prior to the submission of the Part II Order request; however it is clear from the Part II Order request letter that the stakeholder reviewed the project file and saw that the concerns raised previously had not been addressed by the project team to the satisfaction of the requester. Some of the same concerns are repeated in both letters.

In the Region's response letter to the requester's initial concerns, the requester was made aware that further information would be provided at an upcoming, but at the time unscheduled, public information centre (PIC); however there is no evidence in the EA report whether or not the requester attended the PIC. In response to one of the requester's concerns regarding the effects of salty runoff in the winter time on private trees, the Region directed the requester to a website that described how road salt was being managed and where possible, reduced throughout the Region of Peel as an environmental initiative. This response is akin to therapy in Arnstein's (1969) ladder of citizen participation<sup>9</sup> in that it aims to suggest to the requester that a very localized concern is, in fact, not a concern at all due to a regional program that purports to address the apparent cause of the concern.

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<sup>9</sup> Therapy is the second last rung on Arnstein's ladder and refers to public participation activities that are characterized by what Arnstein (1969, p. 217) terms "nonparticipation" and "have been contrived by some to substitute for genuine participation. Their real objective is not to enable people to participate in planning or conducting programs, but to enable powerholders to 'educate' or 'cure' the participants."

It is also not clear whether or not the messages conveyed by Region staff to address the requester's concerns were read or understood by the requester. What is known is that the requester read the EA report, and probably saw that none of the previously-requested design elements were incorporated into the preferred solution. The requester's reaction to this realization may have been aggravated by the fact that the local Conservation Authority made similar requests for design details to protect natural features from polluted road runoff, and these requests were granted. Specifically the Conservation Authority was concerned about the impacts of runoff from the reconstructed, urbanized roadway on local watercourses and fish habitat. And while some may argue that the potential negative impacts of polluting a local waterway are far greater than the potential negative impacts of destroying ornamental landscaping features, the perception of the requester on the importance of either feature is, unfortunately, unknowable. What is clear is that the Part II Order requester had asked that specific design details be implemented to address the impacts of road runoff on private trees, and this request was not granted. However, without the benefit of an interview with the requester, it cannot be concluded that the inability to affect change to the project design was the reason for requesting the Part II Order, and in fact, it would be premature to attempt to determine any reason for requesting the Part II Order without a full interview with the requester. Without more information, it is difficult to conclude anything more from this case study.

## **6.4 Cross-Case Analysis**

In all three cases stakeholders raised concerns about the impacts of the proposed works and in all three cases the proponents did not change project details in a manner that assuaged those concerns enough to avoid a Part II Order request. Although the level of effort invested in consultation activities varied substantially across the three projects, in all three projects the form of public participation available to the stakeholders who eventually requested Part II Orders was in the lower half of Arnstein's (1969) ladder of citizen participation. There appeared to be a correlation between trust and public consultation in only one of the three cases studied, supporting the results of the initial research presented in Chapter 3 that, while both issues may be present, a relationship between the two is likely due to chance. Nonetheless, some commonalities did emerge from the three cases studied that help to better understand why stakeholders have requested Part II Orders.

Klosterman (1980, p. 327) notes that "as is true for any collective enterprise, actions which are in the public interest inevitably require that the particular interests of some must be sacrificed to the collective interests of all." All three staffpeople interviewed felt that, while their project was meant to improve a situation for the general public, they were aware of the fact that some people may experience a disbenefit, whether temporary or permanent, as a result of the project. The staff people interviewed for Case Study 1



and Case Study 2 both suggested agreement with Klosterman's statement, above, in stating "I can't guarantee you that every concern that we heard we made changes as a result of it;" and "at the end of the day you are not going to satisfy every stakeholder." The staffperson interviewed on April 26, 2013 for Case 3 noted the impracticality of addressing the requester's concerns, stating that "if we start entertaining or considering such requests we might be obliged to do things for every property."

In all three cases there appeared to be a relative flippancy with which certain interests were, as Klosterman stated, sacrificed. That is not to say that stakeholders were ignored or deliberately excluded, but that in all cases the proponent spent much more time hearing the concerns of, and importantly, negotiating with certain stakeholders than with others. In Case Study 1 those negotiations were with the local business community, a group of stakeholders for whom the proponent not only made many concessions, but whose concerns resulted in the proponent including in the EA study a level of design detail that would typically not be addressed until after the completion of a Class EA study. For Case Study 2 negotiations between the proponent and the local Conservation Authority were extensive, while some concessions were made with some business owners and not others. Despite the fact that a lack of data resulted in no conclusions from Case Study 3, the same power differential between stakeholders was observed. While all three projects at least met, and in two cases, exceeded the minimum consultation requirements of the Municipal Class EA, in all three cases there was evidence of a phenomenon Cornwall (2008, p. 277) describes where "'participatory' processes can serve to deepen the exclusion of particular groups [or individuals] unless explicit efforts are made to include them."

Where stakeholders' concerns were addressed by proponents through thorough discussions and negotiation, those stakeholders did not request Part II Orders. These results are consistent with the findings of Peters, et al. (1997, p. 53), whose multiple case study of the perceptions of trust and credibility amongst participants and proponents in various public decision-making forums found that "for government, an increase in public perceptions of commitment results in a larger increase in perceptions of trust and credibility than any other variable under consideration." Thus, for stakeholders to whom proponents displayed a commitment to address concerns by engaging in two-way dialogue and responding to concerns by making changes to project details, it is likely that more trust was built than for stakeholders who were "heard but not heeded."

The research question asked what was the motivation behind requesting a Part II Order on a Municipal Class EA project, and the preliminary research outlined in Chapter 3 suggested that either public consultation issues or trust issues (or both) were the cause of the requests (rather than, or in addition to substantive issues such as proponent error or omission). In the first two cases it appears as though either poor public consultation on the part of a proponent led to feelings of distrust amongst stakeholders, or

distrust amongst stakeholders lead to a desire for more meaningful participation in decision-making activities. Arnstein (1969, p. 216) states that “citizen participation is citizen power,” and Ulsaner and Brown (2005) explain that citizen participation in civic society is correlated to feelings of equality and the belief that one can trust public officials. Thus, while public consultation activities may not have directly affected the level of (dis)trust felt by Part II Order requesters, there does appear to be a correlation between a lack of power-sharing extended to requesters by the proponent, in contrast to the power sharing extended to other stakeholders, and the submission of a Part II Order request. The power differential may have resulted in feelings of distrust towards the proponent, resulting in a desire to appeal to a higher body (the Ministry of the Environment) to resolve stakeholder concerns.

In this chapter the results of the three case studies were compared and contrasted, and discussed in the context of the literature. In the next chapter the key findings will be summarized and the implications of the findings will be discussed in terms of the theory of politics, power, and decision-making, as well as the practical application of decision-making for public projects, with policy recommendations.

# 7 Conclusions and Implications

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## 7.1 Summary of Key Findings

A review of the literature on the practice of environmental assessment in Ontario and elsewhere found a number of criticisms of current practice, and especially the common critique that EA studies lead to projects that are not necessarily “good” for the environment or society, but rather, projects that are simply “less bad.” In Ontario, the ongoing erosion over time of meaningful public involvement in the EA process is seen as a major reason for the reduction of EA practice from something closer to its idealistic purpose of creating “sustainable” development down to its current use, as many have suggested, as an administrative process to ensure legislated minimum requirements (for action or outcome) are met. Nonetheless, the EA process in Ontario continues to offer one of the best processes available for addressing the potential negative impacts associated with public projects in the province.

Ontario’s streamlined Class EA process is an efficient decision-making process for routine public works, considered to be “pre-approved” and therefore not in need of ministerial review, and does include certain minimum standards for provision of opportunities for public involvement in decision-making. It also includes a mechanism for the public to bring forward a Class EA-assessed project to the Minister of the Environment for review should a stakeholder believe a substantive or procedural error has occurred during the study. Based on anecdotal and professional experience, as well as the literature, it appeared however, that this mechanism, called a Part II Order request, was being invoked for other reasons than to correct substantive or procedural errors, and the research set about determining why stakeholders were requesting Part II Orders. The research was conducted in two stages. The first stage involved the review and coding of 39 Part II Order request letters received for 14 different Municipal Class EA studies. The coding revealed that the two most commonly-found issues in the Part II Order letters were related to stakeholders feeling distrustful of the proponent or the EA process, and stakeholders feeling as though they were not adequately engaged in public consultation activities for the EA study.

To examine these two themes in more detail, three similarly-scoped cases were selected from the original 14 and examined as individual case studies. One of the cases yielded few useful results, as I was unable to contact the person who submitted the Part II Order request for an interview. The other two cases revealed similar patterns of distrust in the intentions of the proponent, however in one case the distrust appears to have predated the commencement of public consultation activities and biased the requestor’s perception of the adequacy of consultation activities, while in the other feelings of distrust appear to be related to the adequacy of consultation activities. In all three cases, the Part II Order requesters were given no power

over the outcome of the EA, however in all three cases other stakeholders were given enough influence over the EA outcome that decisions were made in a manner that mitigated their concerns.

## **7.2 Implications of the Findings for Theory Development**

The initial theory presented in Chapter 1 of this research, that public opposition to government projects cannot be easily explained by NIMBY self-interest, was upheld by the preliminary research outlined in Chapter 3. A number of the authors cited herein have found through their research that a correlation, and sometimes a causal relationship exists between public feelings of trust for public or government officials, corporations, and decision-makers and the degree to which the public is given “a say” in the way in which projects are designed and implemented. The findings of these studies suggest that the more power one is given, the more they trust the power-giver. From the findings of this study, however, suggest that the causal relationship between public consultation and trust is somewhat more tenuous. The findings presented in Chapter 3 underline the importance of public trust and public consultation in building public support for a government project, but did not reveal a statistically significant relationship between the two elements, given the data collected.

The three case studies, designed to examine the importance and possible interrelationships between trust and public consultation in more detail, revealed a much more nuanced theory than that presented in the literature as a direct or inverse relationship between public consultation and feelings of trust. In Case Study 2, where both stakeholders interviewed were poorly-consulted and felt as though there was an oppositional relationship between themselves and the proponent, the above-noted causal relationship is perhaps a bit more nuanced than the works of Arnstein (1969) and Roberts (2004) suggest. While both stakeholders felt as though they needed to take extra care to ensure their own interests were accounted for after the EA was completed, indicating that they did not trust the proponent to do so, both of them seemed to regard the proponent with the same type of respect one pays to a “worthy opponent.” Arnstein’s (1969) ladder of citizen participation is used to label the degree to which citizen power or control was given to stakeholders directly affected by the outcome of the EA. In Case Study 1, where distrust of those who were perceived to be aligned with or supportive of the proponent appears to have predated the commencement of the EA study, that causal relationship may actually have worked in the inverse, with a preexisting distrust influencing the stakeholder’s feelings of powerlessness.

What emerges from the research is that the relationship between trust and public consultation may be less important than the relationship between trust and power. In all three cases, requesters were given no power over the decision-making process, being heard and not heeded, while others were both heard and heeded. All three cases support Cornwall’s (2008) statements on stakeholder participation and exclusion,

and a discussion on trade-offs, while out of the scope of this paper, may serve to shed more light on the role of competing interests and agency in the factors affecting people's decisions to oppose public projects and, indeed, request Part II Orders for Class EAs.

### **7.3 Implications of the Findings for Policy and Practice**

In his study of disputes amongst stakeholders over natural resource projects, Huser (1983, p. 24) explains

we frequently find that the reasons people propose projects are technical and economic, and the reasons people oppose projects are social, cultural and environmental. The proponents continue to generate technical information which does not answer the (social or environmental) concerns of the opponents.

In the cases studied, the proponents tended to respond to the concerns of Part II Order requesters with technical information, rather than responding to underlying issues of power and trust. While many of the concerns raised by stakeholders were related to substantive concerns about the design or implementation of the proposed works (as is evidenced by the stakeholder comments published in each ESR), it must be recognized that many of the issues of power and trust do not arise from nowhere, but are at least triggered by these substantive issues. Where stakeholders perceive there to be an unequal distribution of impacts associated with a project, the question arises of how a proponent decides who will feel a project's negative effects and who will not. Although beyond the scope of this research endeavor, tangential to it is the question of stakeholder agency and the determination of trade-offs. From the research outlined herein, it becomes apparent that, had all stakeholders been given power sharing opportunities, instead of a select few, it is possible that the Part II Order requests would not have been received, at least for Cases 1 and 3. For Case 2, where road widenings required property takings, it is more likely that competing interests would have been left to "fight it out" were a decision about which properties to expropriate left in the hands of the property owners themselves. Power sharing does not mean that the proponent must acquiesce to all public requests for changes to projects, and it does not mean that all stakeholders must be given a seat at the negotiating table. As Arnstein (1969) explains, power sharing should be used to help those with the least agency, and if everyone (including typically privileged or powerful stakeholders) are given the same opportunities to control decision-making, the process may become divisive, or may result in the continuing marginalization of those already without power. Following Arnstein's (1969) typology, power sharing would require the identification and enabling of those least likely to speak out about an issue or project affecting them. This may mean, as was the case in Case Study 1, that proponents should broaden the scope of the study to include adjacent stakeholders, or it may mean, as was the case of Case Studies 2

and 3 that proponents should give stakeholders an opportunity to negotiate directly with decision-makers throughout decision-making activities.

Power sharing is bi-directional, and in addition to offering stakeholders an opportunity to explain their concerns, desires, and visions for their communities, it also allows proponents to share with stakeholders constraints, policy mandates, and political imperatives that guide decision-making. The two-way communication required for power sharing allows all parties at a negotiation table to examine the stereotypes they hold of each other, and to break through those stereotypes to build a relationship based on trust and good faith. To encourage better power sharing, the Municipal Engineers Association could include a section on stakeholder identification and engagement in the Municipal Class EA document that includes guidelines for negotiation and dispute resolution, a well-researched field of practice<sup>10</sup>

Broadening the scope of a study or being more inclusive in decision-making activities requires more effort on the part of the proponent, and this brings up an important question: is it worth the additional effort for a proponent to avoid a Part II Order request if the likelihood of the request actually being granted is so low? In the first two cases studied, additional efforts (beyond the minimum requirements) were made to reach out to stakeholders who would be directly and potentially negatively affected by the preferred alternative, however the extent to which stakeholder concerns were accommodated was not equal amongst all stakeholders. This raises an important question of how a proponent decides who is worthy of accommodation and who is not. As Dr. Robert Gibson has suggested (personal communication, February 23, 2014), this suggests that proponents are deciding how much power to afford different stakeholders, and this decision is likely influenced by more than just the likelihood of receiving a Part II Order request. All three proponents noted that the Part II Order requests received for their projects were at worst a minor inconvenience. All three proponents dealt with the requests in-house, and although municipal staff time and resources were used to address these requests, no material changes in the project implementation resulted from the requests. In the three cases examined, the threat of a Part II Order request was no threat at all. It is possible that the stakeholders afforded power over decisions were able to persuade the proponent that the requested changes would improve the project, or that a government agency with the power to halt or make difficult project implementation wielded their influence (as was the case in Case Study 3), or that stakeholders with political clout were able to insert themselves into the decision-making process through political influence.

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<sup>10</sup> In the Municipal Class EA document (Municipal Engineers Association, 2007) only one page in the entire document addresses dispute resolution, and then only to provide definitions of facilitation, negotiation, mediation, and arbitration.

So long as proponents continue to see Part II Order requests as resulting from technical concerns that can be addressed with technical solutions (Huser, 1983), any additional effort may not be considered to be worthwhile to avoid a Part II Order request. However, if proponents can start to examine the underlying reasons for requesting Part II Orders (and there are likely more reasons than those identified in this research), then the numbers of requests may start to decrease.

In the first two case studies it was clear that the requesters were seeking resolution for a problem they felt was unresolved by the municipality, and hoped that the Part II Order request would result in extending the discussion until the problem was solved. The Part II Order request mechanism is not, however, a very effective mechanism for dispute resolution, due in part to the lack of transparency. Once requested, the Minister may review the project documentation and consult with other Ministry staff, however the Minister does not hold a public hearing or tribunal<sup>11</sup>. While the EA Act allows the Minister to consider any issues raised by a Part II Order requester, in practice Part II Order request reviews have tended to focus on procedural issues. Thus, as the Minister's Environmental Assessment Advisory Panel (2005) has stated, for some stakeholders a Part II Order request may be the only way to draw attention to substantive issues or open dialogue with a proponent. Given the discontinuation of intervener funding has further silenced the voices of those least able to speak up, and given that Class EAs cannot be referred to tribunal for dispute resolution (although the Minister may refer a dispute to mediation), this raises a key question regarding the efficacy of the Part II Order mechanism in addressing substantive or even political disputes. At issue is the lack of direction in the EA Act, and lack of any mention at all in the Municipal Class EA process, of how processes employed by the Ministry upon receiving a Part II Order request, including guidelines on how to determine a mutually agreeable resolution, when a dispute should be referred to mediation, and the nature of possible conditions on approval (for the majority of cases that are not granted a Part II Order). And although the Ministry of the Environment encourages proponents to resolve outstanding concerns about a project prior to completing a Class EA study (Ministry of Environment, 2009), should a resolution not be forthcoming, almost invariably, the Ministry sides with the proponent, turning down Part II Order requests, usually without any conditions. Nonetheless, as has been shown in the three case studies assessed in this research, receiving a Part II Order request implies an underlying issue of power and inequity in a municipality that comes to a head when public works are planned.

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<sup>11</sup> Interestingly, prior to the dissolution of the Ministry's Environmental Assessment Advisory Committee, members of the Committee would occasionally be sent out to communities to perform additional public consultation activities where controversial Part II Order requests had been received (Dr. Robert Gibson, Personal Communication, March 24, 2014).

Part II Order requests may simply be a symptom of a much broader social issue associated with negative perceptions of public officials (Zussman, 1997). Involving citizens in the planning of public works may seem like a lot of effort for a small project, but when viewed as a means for building trust relationships between citizens, elected officials and municipal staff in order to strengthen civic society, the extra effort may well be justified.

That being said, where the political will to strengthen civic society is not found, it is possible that if a proponent wishes to reduce the number of Part II Order requests submitted, or if the Ministry of the Environment wishes the same, public consultation materials could include more information on what a Part II Order request is likely to accomplish: delay, an opportunity to be engaged in discussions with the proponent that wasn't given during the EA study, and a small chance of conditions being placed on the implementation of the project in very compelling cases.

## **7.4 Limitations of the Research**

The case studies examined specific variables in an attempt to determine stakeholders' reasons for requesting Part II Orders. Two likely variables—trust and public consultation— were identified during the preliminary research outlined in Chapter 3. Many other variables could have played a role in each stakeholder's decision to submit a Part II Order request, including demographic issues, previous history of public dissent or political activism, the proponent's history of causing negative stakeholder impacts, etc. As a result, the research does not positively identify the reasons why stakeholders would request a Part II Order on a Municipal Class EA in Ontario.

The size of the sample limits the ability to generalize the findings of a wider population, however, as Yin (1994) has outlined, and as is explained in greater detail in Chapter 4, statistical generalization is not the goal of a case study inquiry. Nonetheless, with only three case studies, fewer opportunities are available for developing rival theories. While the theory evolved with each stage of the research, additional case studies may have provided the opportunity for greater comparisons with rival theories, or the development of new rival theories to the ones presented in Chapters 3 and 6.

## **7.5 Recommendation for Further Research**

The findings of the research presented above are limited due to the scope of the research and the data collection issues described. To strengthen the research findings, additional case studies of similar EA projects could be undertaken to seek replication or non-support of a rival theory, or even to develop a more nuanced version of the theories presented. Future research could build on the research presented



herein by replicating the research methodology with different projects to look for similar patterns of feelings and actions on the part of proponents and stakeholders. Alternatively, future research could examine the same case studies in greater depth to look for alternate explanations for the patterns of feelings and actions observed. Should additional research along the lines as that presented herein be pursued, it is recommended that only those cases where access to all perspectives – proponent, stakeholder, and the public – are available (through interviews, typically, but other data such as diaries, memoirs, media perspectives or news coverage, as available, could also help to enrich the research findings).

The cases selected were selected to be fairly representative of the types of EAs and their outcomes that occur regularly across the province. As explained in Chapter 2, none of the cases selected was revelatory, and therefore none was representative of an “extreme” case or an unusual outcome. To build greater depth into the theory, further research could also focus on replicating the methods used to examine a revelatory case, for example, one in which a Part II Order was granted, or even multiple cases in which the Minister imposed conditions on the approval of the final EA document. Some cases also exist where a group of stakeholders or a community have banded together to demand changes to a project before the EA study has been finalized, and these, too, would allow for some fascinating inquiry into the relationships between power and public opposition to government projects.

Although the research presented herein has produced far more questions than answers, and despite the tenuous nature of the theories that arose from the research, the work builds on a foundation of inquiry into the ways in which public project proponents can better engage stakeholders in meaningful environmental assessment activities such that both technical and social aspects of the environment are addressed in a manner that leads to better projects, as opposed to less bad projects. Any research that builds on this theme will be useful for policy-makers as well as stakeholders and community organizers to improve the sustainability of future development, and I encourage any researcher with an interest in this topic to pursue further inquiry along the lines presented herein.

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## Appendix A – Calculating rate of Part II Order request receipt on Municipal Class EAs

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Year of filing of Notice of Completion	Transit		Roads		Water		Wastewater		Other	Total Notices of Completion	Part II Orders requested	Part II Orders granted	Ratio	Source
	B	C	B	C	B	C	B	C						
2005											9			
2006											24			
2007			24	28	18	5	16	15	8	114	21	0	18.42105	MEA, 2008
2008	1	1	21	25	14	2	8	2	9	83	20	0	24.09639	MEA, 2009
2009	2	1	24	20	6	2	25	6	7	93	11	1	11.82796	MEA, 2010
2010			15	15	6	1	11	6	5	59	20		33.89831	MEA, 2011
2011											17			
TOTAL	3	2	84	88	44	10	60	29	29	349	89	1		

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## Appendix B – Identification of Main themes arising from Part II Order request letters reviewed

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	Concerns about EA process										Concerns about project impacts												Stakeholder Requests				Trust							TOTAL	no of Part II Order request letters provided by proponents
	additional alternatives	disregard for public concerns	distrust of process	fairness	foregone conclusion	piece-meal	policy	public consultation	scope	inadequate documentation	costs	cumulative impacts	impacts to operations	impacts to parking	loss of business	noise, vibration, odour or air pollution	pedestrian or cyclist safety	private property	public safety	relocation	traffic	natural heritage	design	direct benefit	mitigation measures	monitoring	distrust of commitments	distrust of data	distrust of intentions	distrust of evaluation methods	requests access to additional data	request further study	questioning project need		
Duffins Creek WWTP			2													1											1	2	1	2				9	1
King Rd at Humberlea																2		1				1												4	1
Jarvis Bike Lane							1	1									1						1					1					1	6	10
John St							1					1					1															1		4	1
Kanata West		1				1	2	5	6	3		2											1	1			7		1	1	3		34	2	
Kirkhams Bridge					1			3																2	1					4	1		12	1	
North Yonge Transit				1				3	1				3		3	1		1	3	3								1		4		24	10		
Peel Gladstone								3																									3	2	
Queen's Quay	5							8													2				1				5	9		30	1		
Roncesvalles Improvements	1							1											1	1			2				1					7	1		
Sheppard LRT									1		1			1			1				3		1			1		2	1	1		13	5		
Union Station				1			2	2					1						1				1	1								9	2		
Walkers Creek																								1									1	1	
Waterloo N Water Supply							2				1	2						1				1				1			1	2	1	12	1		
TOTAL	6	1	2	2	1	1	8	26	6	5	2	5	3	1	4	4	2	4	5	3	6	2	6	4	3	0	2	12	1	15	2	21	3	168	39

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## Appendix C – Redacted Interview Transcripts

## Case Study 1 – Transcript 1

Interview: Staffperson, via telephone, May 24, 2013, 2:00pm

Recording device: declined

Confidentiality reminder: Before we begin, I want to remind you that no identifying information about you, about the project proponent, the project team, or any other person mentioned during this interview will be published in my thesis or any other reporting on my research written by me.

Q1. Would you say that Queen’s Quay revitalization EA typical type?

No.

Q2. What would you say was unique about it?

Approach was to integrate design into the EA process. EAs mostly focus on formal/technical process. This was about bringing that process and design together “to create vision for the street that was more than just a technical solution but rather a vision for the future of this place, of Queen’s Quay.”

Q3. Would you say then that you could describe your process more as a city building activity?

Had already run an international design competition as the city building activity which created the vision for Queen’s Quay “and it wasn’t like we used the EA process to prove that our vision was right, we used the EA process to evolve our vision and to compare it to all the other options that were out there.” End result was similar design, however there was “a lot of evolution that happened” during EA process, when other “equally good or better” options were evaluated and contained “show stoppers”.

Q4. Prior to designing the public consultation program, were there any internal discussions w/in city/project team about the type of concerns that might be raised by stakeholders?

“Fairly vocal agency stakeholder group and generally the public at large.” Two types of major concerns were anticipated: 1. agency concerns “and we worked very closely with all of our partner agencies to resolve them and they were very technical concerns around transit operations mainly;” and 2. “there was a definite worry that stakeholders in our community, you know the general public, would be concerned about rebalancing the street,” meaning there would be “a decrease in vehicular capacity to the street and there was a definite worry up front that that was not going to be taken easily.”

Q5. Does rebalancing mean the modal split?

Yes. We didn’t actually do modal split assessments, but EA “about rebalancing the space to allow more than just cars to have their own space.” Currently Queen’s Quay has four car lanes, two TTC lanes, “and two tiny, little sidewalks and no space for bikes.” Rebalancing was meant to allow space for bikes, pedestrians, cars, TTC, everybody.

Q6. Would you say that your assessment of potential stakeholder concerns influenced the way in which you designed your stakeholder feedback opportunities?



Most influential factor was actually the problem statement. "we spent quite a bit of time (on every stage of this EA) but on working with stakeholders on that and that really drove the EA and our process throughout... We spent a lot of time to ensure that everybody was on the same page about what the problem on Queen's Quay was." Imbalance between all of the uses was agreed-to problem on Queen's Quay. "It's not like we pushed that on anybody. But by developing that great problem statement and making sure that we planned for having a great problem statement, then our public consultation program thereafter was more conventional."

Q7. Would you say that the consultation program went more smoothly as a result of that?

Yes. Because "whenever there was an issue, we all reminded ourselves what the problem statement was." Team is very proud of way the EA turned out. "It took many years of my life to produce that document."

Q8. Were stakeholder concerns all as expected, or were there any surprises?

"There are always surprise concerns. You can't plan for everything." Biggest surprise was the need to include "a much finer level of detail than I think we might have wanted to" in the EA because "we wanted to go in knowing that everybody was really on the same page as us" prior to completing the EA "and in order to do that a lot of people needed to see the details in order to be comfortable." Thus preliminary detailed design work was done during the EA "to make a lot of stakeholders feel comfortable." These were mainly stakeholders with financial risks (property owners or business owners) and thus a section in the EA lists all of "the things that we committed to doing after the EA was over." That section was written to acquiesce to a group of stakeholders that needed more reassurance than the conceptual-level of detail normally presented in an EA. "But then there was lots of good surprises too." There was a long lull in the EA to resolve a technical transit-related problem. "We couldn't figure out how to rebalance the street without impacting transit service, negatively." During that time "we had stakeholders calling us saying 'what can we do, can we make calls to get this going again? Can we make calls of support for the project?'" So many stakeholders were supportive of the project. "I was actually really surprised of how people kind of became ambassadors and champions through the EA."

Q9. What would you say would be the general split between people who supported this EA and people who did not?

Although most vocal people stick in memory, generally and as the EA went on "support grew to the point where the last EA meetings, with a turnout of 500-600 people, were all people saying 'just get on with this thing.'" So by the end of the EA there was likely "a 90% support rate probably for the project. It's just that you tend to remember the more vocal people, which is the small minority. I'm not even sure it was 10%."

Q10. Were there extenuating circumstances making consultation more difficult, for example the break taken to address technical issues?

The year-long lull made stakeholder consultation more difficult “because no news is bad news to people... you get a lot of anxiety created as a result of being silent, so that actually hurt us a lot.” But consultation activities made up for this after the fact, and when project resumed it moved more quickly. “EAs stop all the time but this one was one that was being watched very closely by a lot of people. There are 20,000 people living on this street so it’s the front door for a lot of people.”

Q11. So given that you have 20,000+ people there and you only got one PIIO request, would you say that you were surprised to get even the one?

“No. we expected to get several PIIOs, to be honest,” due to group of local business stakeholders “we weren’t sure was 100% supportive, and they could have gone either way... Much like St. Clair, or other projects of this scale, businesses are the ones that tend to have the most to lose on major construction projects.” We were unsure if they would be supportive, however the minister received letters from some of the businesses, stating, for the record what their expectations were for the project, “but not wanting to stop it from being approved; which was shocking actually, we expected them all to write PIIO requests.” The letters requested that the Minister include conditions on the project approval to require the City to continue to consult with them, and continue to work with them on various issues. For the PIIO, however, it came as a surprise “because this came from a resident we didn’t even know of. So it came out of the blue from that perspective.”

Q12. This resident had not made any formal complaints or made [redacted] presence known prior to issuing [redacted] PIIO request?

Project team received “a few small emails that we had politely responded to, but [redacted] had never really vocally expressed [redacted] concern, or requested any meetings in advance... When people are seriously concerned about things, they tend to come out of the wood works and want to be heard sooner rather than later.” The requestor is well-versed in the EA process. This was a very different approach to the local businesses, “which were vocal throughout the process. It wouldn’t have been a shock if the businesses all started writing letters.”

Q13. This person is also involved in other community or protest type activities?

[redacted] attends other community group events. “[redacted] came out of the blue to us.” [redacted] sent emails and listed [redacted] concerns at drop-in for PIC #2 or 3 “which I expected [redacted] to send to me but I don’t recall [redacted] ever sending them to me.” These are listed in [redacted] PIIO request, along with mark-ups of the project presentation (also shown to staff at drop-in centre). However, “showing it to me and having a 3-minute conversation isn’t enough to really think that [redacted] is necessarily going to write a 23-page PIIO request.”

Q14. Were there any other residents who had voiced concerns in a similar manner?

“No, in fact, even some of the [redacted] wrote letters fully supporting the project to the minister.” The Minister received one PIIO request and six other letters.

Q15. Were the other letters all letters of support?

"They were all letters of support and then some of them had conditions. But there was two community groups who wrote full letters of support, and the rest are businesses."

Q16. When [REDACTED] approached you with [REDACTED] concerns, was there any attempt to address the concerns?

"Before hand? Well there is an attempt to address all concerns that we heard." Although support was high, many stakeholders had minor concerns, all of which were tracked in a lengthy list. "I can't guarantee you that every concern that we heard we made changes as a result of it. But we definitely listened to all of them and tried to address them... But if you change for every single comment that you get you might not end up with a buildable project."

Q17. How did this Part II Order affect this project in terms of budget or schedule?

No impact. PIIO "came in January 26, and we got our approval in April so it took a few months to resolve it" but the project had been ongoing for seven years "so two months I would say is not a huge impact. And it didn't cost us anything."

Q18. So this wasn't a shovel-ready project that you were ready to build right away?

It was ready to move forward from design stage right away, "but the impact was not significant." And we dealt with it all in-house so it's not like it cost us anything to resolve it. Other than some legal fees." Thus the Order had no impact on time or money. "[REDACTED]"

Q19. Given that this was unexpected, is there anything that you would do on future EAs to avoid PIIOs?

"We worked very hard to avoid PIIOs on this project. Very hard. Probably more than any other EA has ever done." Public engagement was "incredible:" Huge PICs with tons of information, lots of drop-in sessions, lots of roundtable discussions with individuals, buildings/condo corps, boards, stakeholders and active stakeholder groups, community groups, etc. "So I don't think we could have done more. The trickiest part of all of our engagement process, I'll be honest with you, is dealing with the individual person out there who you have no way to get to, except for at these gigantic PICs." Unless individuals make themselves known at PICs, "you don't know they are out there... we did as good a job as we possibly could have with working with the individuals. We are still struggling to get the individuals out, the ones that aren't part of your local community groups." Still wouldn't change anything. "And considering 20,000 people live on the street, and one person took exception to the project, it's pretty good. It's a big change to the street, it's not a little tweak, you know."

Q. 20: Final Comments?

Consulted with the ministry throughout the EA regarding EA process and approach and "they were refreshed by our very positive, design-oriented and progressive way of tackling the MCEA process" and hopefully EAs are changing now, partially as a result of the example we set. "I think that we really did break the mold a little bit so I am pretty proud of it."

Case Study 1 – Transcript 2

Interview: Requester, City of Toronto, June 11, 2013, 8:00pm

Recording device: accepted (presented verbatim)

Confidentiality reminder: Before we begin, I want to remind you that no identifying information about you, about the project proponent, the project team, or any other person mentioned during this interview will be published in my thesis or any other reporting on my research written by me.

Q1. My questions will be focusing less on the technical details of the project and more on why you filed your Part II Order request.

When I first was thinking about filing a Part II request, I thought about these great people at Waterfront Toronto, who do great work, technical staff and whatnot - many of whom I have so much respect for, and two of whom are actually [REDACTED] - you know it's one of those things - are you slapping people in the face, yes or no? I realized that what made me, what affected me on this project is the politics in the context of the project which may be beyond the technical staff's control. So despite best efforts or best wishes that someone may have had, some aspirations when they started on the project may not have been realized due to circumstances beyond their control. Concerns over the future existence of [REDACTED] itself may have also influenced how the process unfolded.

Q2. There were a number of highly technical concerns that you raised, but I am interested in the politics of influence.

You are interested in the key issues

Q2a. Yes, I would like to start with the information that was provided. Did you feel as though the proponent had enough information available to them to make the decisions that they did?

To start with the City was not visibly involved in this project, which was one of the big concerns and underlying motivators for me to request my PIIO, that City staff were not visibly in front of this project and so what was left was to deal with Waterfront Toronto staff - certainly not to take anything away from Waterfront Toronto, both the City and Waterfront Toronto have excellent staff who I respect very much, however the City is the one who will be enforcing, supporting and honoring the commitments that are made.

Q3. Were you concerned that Waterfront Toronto would not have the ability to live up to the promises they were making?

There are a few issues that fuel concerns about Waterfront Toronto steering this project, one of which is that they receive federal money. And that is the same level of government that indirectly and directly supports the Island Airport. So, not to get too into technical matters, but this is actually the fundamental issue that is contingent on the success of this project but was not studied in the project.

[Interviewer: It sounds like you are saying as though you felt that their scope was not broad enough?]

Scope was not broad enough and the limits of the study area for some reason were not extended to include the Bathurst-Queen's Quay intersection and despite the Bathurst Quay neighborhood association walking [REDACTED] of Waterfront Toronto around the intersection showing concerns in 2008 and unfortunately the intersection was not included.

Q4. So the neighborhood association had pointed out their concerns, and do you feel as though those were ignored?

Yes.

Q5. Why do you think that is?

I think the governmental overlap down at the waterfront has complicated matters and also the polarizing influence of the Toronto Port Authority on the entire waterfront community is probably something that Waterfront Toronto and the City wanted to avoid getting bogged down with because they just wanted to get moving with the project. So it's the timing of the delivery of the project and also coupled with that and underlying it is how the project was financed. It wasn't made totally clear to the public, although it was sort of indirectly stated that project - that one of the advantages of doing this project through Waterfront Toronto was that it would be leveraged on adjacent work that Waterfront Toronto was doing. What was not explained to the public in any of the public information centers in a very clear way was that the entire budget for the Queen's Quay revitalization project was dependent on future condominium sales in East Bayfront, which Waterfront Toronto is developing the lands of and coordinating its progress. So basically in 2008-2009 when this study was underway, the housing market was definitely viewed as needing a correction and that is partly due to the collapse in the world economy in October 2008. That really changed the game for all developers, including [REDACTED], the whole industry really was in a bit of a - in some way, on the commercial side, in a tailspin, laying off people/staff left, right and centre. And there would have been a sense of urgency or a sense of panic in terms of what is the cash flow on this project. And so that also colored matters.

Q6. So given that urgency, do you feel as though perhaps things were rushed through?

Yes and no. One of my concerns with the whole process was what we had a public information- started public information centre #1 which stated some fairly broad objectives: we're looking at an iconic waterfront, for example, we're looking at all options, we are posing four general broad categories for potential improvements for points of departure for discussion, is how it was presented in the first public information centre. And then a whole year goes by. Nothing happens. And then we have PIC #2 and at that information centre nothing new is reported, even though [REDACTED] was excellent as usual, [REDACTED] had nothing to say at all even though two hours were filled up, it was an unproductive meeting. No new information was shared, no new input was given by the public, and no controversial items were raised. No traffic information was reported. So then within four months, approximately in March 2009, PIC 3 which is basically one of those PICs where you show up and there is no presentation at all, it is kind of an informal open house down at Harbourfront Centre. And lots and lots of information is available on display. All of it not available prior to the PIC. All of it not available in the website, if it was posted it was within a week or less, and I certainly - no one had a chance to have a look at any of it

before going there. The material was actually lots of open house presentation boards but the font was so small on this stuff and lots of reading to do, even though I was there for an hour and a half I couldn't finish reading all of it and answering my questions. So we have got lots of information in PIC 3 and still no fulsome report information. I fully expected that another PIC would be held given the significance of the new material presented in the last PIC.

Q7. So what type of report information were you looking for?

Well a full on transportation study, which is one of the fundamental cruxes of my concern. And that this project was framed up as an urban realm, parks project instead of it being what it should have been called and that is a road reconstruction project.

Q8. So do you feel as though the Waterfront Toronto was a bit disingenuous?

Disingenuous?

[Interviewer: Yes, it sounds like you take issue with the way that things were worded.]

Well lets finish off with the rush business. So they rushed the PIC 3, lots of work was presented and the work that would have been presented, the magnitude of that work would have far exceeded the three months spanning the interim between PIC2 and PIC3. Which showed that for reasons unknown to the public, Waterfront Toronto was holding back information, did not explain it to the public in PIC2, did not use PIC 2 for the purposes of explaining work ongoing to date. [REDACTED] I can understand sometimes you aren't quite ready yet or whatever, but then why hold the PIC, you know? So here we are in PIC 3 looking at a lot of stuff that would have been prepared in the fall of 2008 and not presented in PIC 2, and then nothing happens for another half year. And then the week before Christmas is when a whole load of information gets dumped on the public and the public has one month to review it, without a presentation, and then decide whether or not anyone wants to submit a PIIO request and then actually prepare the PIIO request. So digest lots of information, discuss, then prepare and submit. And this is straddling a Christmas holiday while everybody knew that most of the people down here are retired, snow birds, and half of them are not even here in the country. So I did want to show you this, it is really quite astonishing [interviewee pulls out thick document from bag] this document is dated December 2009, this is the transportation study, all six hundred and forty some pages of it, issued to the public, without warning, no advanced warning, issued to the public a week before Christmas, and the public was requested to respond to this document full of technical juicies, loaded with assumptions for transportation.

Q9. Is that the EA report, or just the transportation study?

Just the transportation study.

Q10. And was that issued at the same time as the ESR?

Everything was ready in December 2009, and then the notice of completion was issued and then the January 26 or whenever, the response date was established.

Q11. So this is the first time this was released publicly?

Yes.

Q12. Was it the same time as the notice of completion, essentially?

Yes, roughly, well exact same time, really. You know, from the public's perspective, when you're shopping for Christmas holidays, you are not monitoring your emails properly; you're not monitoring the website. So here you go, 4 inches, wow, full of numbers. [Interviewee flips through document] look at this. These are assumptions that we need to go through and have a look at and someone in their wisdom thought this was a fair and reasonable process.

Q13. So did you go through it?

I have still only leafed through some of it and will actually be going through it in the next week and a half because this document is actually now front and centre with respect to the island airport transportation study. Because now all of a sudden, where the residents and retirees of central harbourfront were so joyous over the Christmas holidays, happy that finally after 15 years of arguing on their end, to get a revitalization on the ground, they are happy that finally this project is now at least something is happening, at least something, anything. But I was looking through it and I noticed - I smelled some bad things already. And it emerges that I was correct in my assumptions. That in fact, Waterfront Toronto did not have any airport traffic volumes. They did not model Queen's Quay with the airport traffic volumes that were relevant. They were using 2007 tube counts, which I presume were supplied by the City, meanwhile those numbers are long superseded even by the time that report was issued in 2009, the numbers of slots have doubled and the passenger loading on them had tripled. And there is no limit in trip established. The cause for concerns at Bathurst quay are that the airport expansion is proceeding unmitigated, unstudied, and without limit at this point. So that is what really is now coming to light with respect to Porter's request to expand to jet service, people are getting mobilized and interested and so those residents and retirees in central harbourfornt, which is in York Quay Neighborhood Association (there's two neighborhood associations involved: Bathurst Quay is from Spadina to the west and York Quay Neighborhood Association is from Spadina over to roughly Jarvis) and so the folks who were not so concerned about the traffic study back in December 2009 when it was released are now wishing and looking for that study. They couldn't find it on the Waterfront Toronto website recently and unfortunately it is 43MB and I couldn't email it. So now everybody is interested in looking into how will Queen's Quay be protected from 28,000 projected airport trips that are going to be full of taxis from the airport going to and from York Street going up and down Queen's Quay, which is now going to be narrowed. 50% of the road cross-section capacity is going to be removed from Queen's Quay as a result of the EA Study.

Q14. So given that that was released at around the same time as the notice of completion, do you think that that calculations in the report were in any way taken into account in the Queen's Quay revitalization study?

My understanding is that the traffic report was included as an appendix to the ESR. It is the crucial part of the study; that is really the point here is that it is the study. Whether it was - the MOE felt that Waterfront Toronto reviewed all the issues and made recommendations that will satisfy the future projected growth. So to that end - I brought here with me the response letter I received from the MOE and I was copied on the letter that the MOE wrote to Waterfront Toronto. And almost every response was either not related to the concern, ignoring obvious technical issues, and essentially fluffy. So the MOE did respond and I had started to write a letter in response but wasn't able to due to other volunteer time commitments related to an [REDACTED] and the then newly proposed [REDACTED] project which eventually required a 40 page submission on behalf of YQNA. So I am presenting to you a very complex or a very volatile environment in which many competing interests exist down here at the waterfront.

[Interviewer: So it sounds like what you have is an EA that was looking at one small area that could be influenced by a number of outside factors that were not taken into account, is that what you are saying?]

That is very- for sure, yes.

Q15. So do you think some things weren't taken into account- were missed, or do you think they were ignored on purpose?

Well with respect to island airport, I believe it was purposely ignored.

[Interviewer: But what about for this EA, just for the Queen's Quay?]

For the Bathurst Queen's Quay intersection, which involves airport traffic going down through that intersection and down through Queen's Quay that was purposely, deliberately ignored.

Q16. Why do you think they would do that?

Well, because there is a higher level of government involved, one which is financing Waterfront Toronto, and we have the [REDACTED] is making mistakes every time [REDACTED] writes something down about the Island Airport and [REDACTED] is worried about probably getting sued.

Q17. So do you suspect there might have been a level of incompetence at play as well?

A level of incompetence? No, to be honest no, I think Waterfront Toronto and the city guys they know exactly what they're doing. The policy makers and the decision leads, the directors of the initiative, if you will, had to make some very fundamental political decisions in not wanting to take on the island airport issues. And so fast-forward two years, here we are in May of 2012, parents are marching worried about their kids getting hit after two adults are hit and taken away by ambulance on the south leg of Queen's Quay Bathurst intersection. This triggers the school board getting involved, triggers finally an Eireann Quay transportation strategic study which the city is to lead because the Toronto Port Authority has no respect in the waterfront community. So the City is now leading that study, finally, what should have been done back in 2008 as part of the Queen's Quay Revitalization EA Study process.



Q18. Are you suggesting that the Toronto Port Authority should have been the proponent for the Queen's Quay Revitalization study?

No, they should have been the proponent for their own transportation study, which Waterfront Toronto needed in order to model how successful the cross section, as proposed, was going to be, how it would actually function. So I know from other efforts- I also happen to represent [REDACTED] at the [REDACTED] committee. So at that second meeting in May 2011 is a question from Waterfront Toronto representative asking for projected airport traffic numbers. The TPA answered "we will look into it". Then at another meeting in September 2011 a different Waterfront Toronto rep asked again, "Toronto port authority, can we have your records, who can we contact?" they have not received a response yet. So this is in 2011 after this EA report came out, after the MOE wrote this letter to me in April 2010, so the question in my mind was "who was lying?" was it the MOE or was it Waterfront Toronto when they collectively together decided to write me this letter that says that all projected traffic volumes were reviewed?

Q19. Do you feel as though you can trust Waterfront Toronto to be making decisions in this neighborhood?

Broad question, because with the exception of the Queen's Quay Revitalization study I know that my friends who lived in the distillery district were surprised at an EA that was being completed by Waterfront Toronto out there, did not elaborate on noise concerns which were the number 1 concern out there. And so that is only hearsay but if it is true then that would suggest that they tend to downplay the most controversial components in their EA processes. Now that is hearsay, but is from [REDACTED] who is actually [REDACTED], so it is professional hearsay, but I didn't see it myself so I have to say it is- so in terms of trust I think that overall I can trust them implicitly because the staff is so excellent - the technical staff are, they know. But I think they have to take their direction and it is strategic leadership that I am a bit more wary about. And things may be beyond their control too. [REDACTED] is very respected in the industry, [REDACTED] comes from [REDACTED] I believe, and a total [REDACTED], but there are circumstances beyond [REDACTED] control.

Q20. You had gone to the public meetings and spoken with Waterfront Toronto staff and raised your concerns then-

I went to every public meeting.

[Interviewer: So did you - do you feel as though your concerns were heard?]

They were heard, reiterated, and in many cases documented. The public documentation records are pretty good. My concerns are generally speaking, there. I think it was LURA who did some work out there and I think they really did a good job, but Waterfront Toronto basically documented the concerns and didn't respond or ignored them. They "considered" them, right?

[Interviewer: So you feel heard but not heeded?]

Heard but not heeded. And in fact, I feel even lied to in the sense of the graphical displays in PIC #3. Completely not representing what was in the technical drawings. I am still speechless as to why a Waterfront Toronto [REDACTED] (who was not [REDACTED]) there was another [REDACTED] who I had never seen before. It was [REDACTED] I had spoken with and [REDACTED] insisted that the graphical material that was presented right beside a technical cross section, that the information that was being presented was the same. I couldn't believe it.

Q21. Did it occur to you at the time that there was a difference?

You know, having been [REDACTED] for 15 years and [REDACTED], I am very familiar with engineering drawings. I know how they are built, and I know that the tree species were not clear, utilities were not shown, overhead wires were not shown in the graphical displays, tree crowns lying overtop of the rails, never would happen. Sod in between the rails, TTC has never even considered approving that, and the city itself, the roads guys would never maintain it. The sod would die from the salt. Interlocking and prepatterned concrete with colored concrete would never get approved. The city guys would never maintain it. Yet this was all faithfully shown in the graphical displays and the technical drawings did not show this. So the EA documentation did not contain any of that stuff that everybody fell in love with when they looked at these graphical illustrations. They looked at that and said "that's what we want, we want that. That looks great." In fact it is not approvable, should not have been proposed, nor even suggested to the public as it is not possible. Essentially in the end we are going to get the same ugly transit way swath of concrete like we have now, that triggered the need for the Queen's Quay Revitalization EA Study in the first place.

Q22. So do you think in some ways Waterfront Toronto was overselling?

Totally. Their marketing guys were going to town on the beautiful graphical drawings that were complete fantasy. That is not fair.

Q23. Was there any concern that the proposed works would negatively affect property values or access to properties or anything like that?

The people who are most active - well there are two worlds, the YQNA, the York Quay Neighborhood Association versus Bathurst Quay Neighborhood Association. [REDACTED] So my involvement [REDACTED] has given me some perspective on both. One, the real active people in YQNA in York Quay are mostly retired. Many don't use cars ever; they walk everywhere or take transit. So they don't really see any concerns with traffic issues whereas I [REDACTED] and drive [REDACTED], which is completely not sustainable, I wish I had a shorter commute actually, I would rather be down here but unfortunately [REDACTED] tend to like Markham and Vaughan. So those folks in YQNA are not as sensitive to lower access, but are starting to realize now that accessibility-lower accessibility usually points to decreasing property values. If you can't get to your property as easily, typically that doesn't enhance your property value. So in the case of central harbourfront what that would mean is that there is a very strong potential that, depending on the success or not success of this project, that growth will still happen but it won't be as aggressive. So the property values will not increase as aggressively. Now on Bathurst Quay, the other part of town is full of Co-op housing and two

or three condominiums (actually 4 or 5 now with tip top tailors getting built in the interim years) but the issue there is a little different. A lot of folks there, there is a core community of co-op people who have been there since those co-ops opened in 1983 or 1987 in the case of [REDACTED]. They have been there forever and they aren't moving. They're very happy with non-profit co-operative housing, built and operated specifically to meet the special needs of these communities eg. handicapped needs, artist space needs, etc. But there is also quite a few members that come and go. You know they come in and work for 2 or 3 years and save up enough money and buy a house somewhere else, buy property move out. So there is turnover that is higher in these coops and that does influence people's perception and attachment to the community. It also points to the fact that there are more single- you know, small families with small children just starting and the children get to a certain age and then they have to move out and they are busy parents so they really don't have time to deal with community related stuff. So in that light, I am just looking at [REDACTED] and knowing [REDACTED] will have very poor access, traffic access in and out of Bathurst quay as a result of this project. And [REDACTED] have concerns with ambulances getting in and out of Queen's Quay and Bathurst during the summer peak events already. So there are quite a few concerns there in Bathurst quay regarding this project. [REDACTED] actually a stakeholder in the Queen's Quay project but [REDACTED] not included in the stakeholder list.

Q24. Specifically, the Bathurst quay neighborhood association?

Bathurst quay is the area and the Bathurst Quay Neighborhood Association is a banding of some residents that are active, which does not yet include fulsome representation from many of the new condo building owners. Condo owners tend to not be as active in their new communities on an individual basis and have mistaken notions in the early years when they move in that a Condo Board can actually represent their community concerns. So Bathurst quay- meanwhile, all York Quay buildings were individually contacted.

Q25. Do you think that was an oversight or on purpose?

I think initially the project was - well one of my concerns is that the project limits and the scope of the project and the timeframe of the project evolved as the project was going on over this stop and start process that we had with respect to Queen's Quay. So in that light, initially, the east and west limits of the site of the revitalization were presented as much shorter and the time frame that was reviewed was also much shorter, within the 5-10 year horizon. As the project evolved- ok now we're supposed to be looking at things from the 30-50 year horizon, including out to the Portlands mainly, and as an engineer, I would tend to think that we should be looking at the 30-50, even the 100-year horizon. We're building infrastructure and making land use decisions like tall buildings don't get torn down very easily right? So any mistakes that are made we live with them for generations. So the long-term time frame, I think was the appropriate one and the plan limits of the study expanded and Bathurst Quay at the time should have been included. The entire length of Queen's Quay should have been included because one of the advantages- the whole point of the project is to beautify the south street line and provide increased capacity for pedestrian and cycle usage along the new blue edge waterfront trail which goes along the entire length of Queen's Quay past the music garden right out past the National Yacht Club and whatnot. So it is part of that - the entire waterfront trail, so why would you not want to look at a section

from Stadium Road to Bathurst? Or everything west of Spadina really? From a waterfront planning perspective, why would you not want to look at that little gap in there? Meanwhile you're looking way out to the east to a theoretical landscape.

Q26. So they were remiss in not including Bathurst?

Yes. And then refusing to include [REDACTED] when [REDACTED] brought it up in 2008. Actually I should note that [REDACTED] wasn't actively involved in the waterfront community at that point in time.

Q27. Did somebody request to be included in the stakeholder list?

Yes. In fact they invited [REDACTED] to the Bathurst Quay Neighborhood Association meeting, which [REDACTED] attended sometime in the summer of 2008 and [REDACTED] participated in the meeting.

Q28. And was there an official request that came from that or what happened?

The point of getting [REDACTED] out was to have all of these concerns with respect to that intersection included and embedded in the Queen's Quay revitalization study. So whether that was a written request, I don't know. The community absolutely wanted to be included. And I personally made it clear every time I spoke to people at these public information centers.

Q29. So when you wrote your PIIO did you get any legal advice?

No. that is actually an important point. When I put it together, I looked at the notice, and I was outraged by this traffic report I just showed you, and reflected on it and realized "[REDACTED] getting swindled here; something is getting rushed through the door." And then shortly after announcing this report there was an announcement that Ripley's aquarium was going to get built down here. A year-round tourist destination attracting unknown thousands of numbers of trips to this facility, not considered in the Queen's Quay Revitalization traffic model. So I knew we need to continue and finish this report. So in that light I went to the web and did a quick search to try and find some information on submission requirements and didn't find a hell of a lot on how to write, or what is required or even the process for it really. Just general, "here is this step in the EA process" but actually what happens to the PIIO, who reviews it, what specific corrective follow up is there on these types of submissions was not clearly available. So I was really going in blind on it. And I didn't have too much time because I personally was limited to a 2-week window prior to the submission deadline in which to write that fairly lengthy letter with lots of detail in it.

Q30. So after you wrote the letter and sent it off to the Minister, did Waterfront Toronto contact you or was there any attempt to resolve any of the issues that you brought up in the letter?

No. And you know I really wasn't planning on copying them on it as I did want to remain anonymous but it says you should copy them on it and they will find out about it eventually and its public record. I really didn't want to involve them at all with it. I just wanted the minister to have a look at the concerns, see that inadequate number of alternatives were generated, groupthink had taken place, premeditated

outcome was recommended etc., and direct that a more fulsome- that the Class EA be completed to the fullest extent as required. But that was not the case.

Q31. So you submitted the letter, and then you heard back from the minister with their official response, but you heard nothing in between?

Nothing in between.

Q32. Were you satisfied with the minister's response?

Completely unsatisfied and bewildered. Perplexed even.

Q33. Do you believe that there was some political influence involved in the EA process?

That's right, and that narrowed pre-emptively the number of alternatives that were reviewed, including the Do Nothing Alternatives with respect to vehicular cross-section and reversibility of the project if needed, and this affected the refinement of the evaluation criteria which lead people to arrive at the solution that they did without fully considering the 100-year infrastructure solution.

Q34. Would you have wanted them to have taken more time to review their alternatives?

Yes, there are bits of my letter that note that. Where I thought that we were in such a rush to get this thing out, why don't we have a rethink and review and you know I had attached some information to the letter that basically shows that from Stakeholder Meeting Number 1 through to Stakeholder Meeting Number 3 and then PIC1 through PIC3 nothing changed. So you know, what happened? We should stand back and have a look at it, figure it out, and have a sober second thought.

Q35. What were you hoping to achieve by requesting the Part II Order?

That the Class EA actually be completed.

[Interviewer: So you wanted them to open it back up?]

Yes, and drill down through the issues that the study team had raised themselves.

Q36. Did you get what you wanted by requesting the part II O?

Not at all, in fact I am looking forward to chatting with you about what do you think I should do because I still would like to follow up on this stuff, because this is a classic case of outrageous behavior by three levels of government, three arms of government and I would like to learn more about it. To me what this look like here is a lot of political individuals who are making an arbitrary decision and justifying it by saying that there was a comprehensive EA study process completed. Thereby insulting the engineering expertise that they have on their own staff.

## Case Study 2 - Transcript 1

Interview: Staffperson, April 15, 2013, 1:30pm

Recording device: declined

Confidentiality reminder: Before we begin, I want to remind you that no identifying information about you, about the project proponent, the project team, or any other person mentioned during this interview will be published in my thesis or any other reporting on my research written by me.

Q1: Would you say that this project was a routine or a typical project in your municipality?

A: This project was not typical. It was unique in that it was the first time a Class EA was used for transit by the Region. Up until that point, transit EAs had to be done as individual EAs. It was also unique because of the potential for unique corridor impacts. There were changes to road alignments to add left turn lanes, new u-turns, changes to address parking issues b/c of the addition of the median transit right of way. The main concerns of stakeholders were related to parking (including loss of parking on adjacent lands), access (direct access to adjacent lands), and property (land takings).

Q2: How would you characterize the degree to which stakeholders were given opportunities to provide feedback on the project?

A: Feedback opportunities were extensive. The level of consultation was considered to be "very high." In addition, the Town of Newmarket was very interested in the evolution of Davis Dr and development of the Newmarket Growth Centre, so they did additional public consultation for that. The Region went "above and beyond" in terms of consultation opportunities, and this was directly tied to municipal interest and the uniqueness of the project in terms of introducing rapid transit.

Q3: Would you say that they were given fewer opportunities than normal, a normal number of opportunities, or more opportunities than normally given to provide feedback on a municipal class ea study in your municipality?

A: More than normal.

Q4: What elements were accounted for in the decision to give stakeholders this level of feedback opportunity?

A: Interest by local municipalities and recognition of the significance of the proposed change in two corridors (Yonge and Davis). This was not your "typical road widening where you have service there already and it will just get bigger; but you are bringing an entirely new service into the corridor in a way that was not before" seen. We recognized that "rapid transit has a way of transforming a corridor in a way that a road widening doesn't." The Region's drivers for this EA were the "land use evolution" in the Region, brought about by policies such as Places to Grow, Regional and local Official Plans, and policies encouraging urban development in the form of corridors and nodes. The policy "evolution has been towards a more city-building model."

Q5: Did you anticipate any push-back against the transit plan or growth direction?

A: We did not anticipate push back. Previous experience suggested that the introduction of better travel choices was for the most part well-received. We anticipated a good reception based on other transit EAs for the rest of the network, as the EAs for South Yonge and Highway 7 were both well received by the public.

Q6: Prior to designing the public consultation program, was there any internal discussion about the types of concerns that may be raised by the public or by stakeholder groups during the EA?

A: "We realized that there would be challenges to this corridor that were different from we had experienced before; particularly along Davis Dr" due to the narrowness of the right-of-way. Davis Dr is also more restrictive due to the existing built-form. Currently most of the properties are occupied by commercial uses and smaller businesses along Davis Dr. The Part II Orders requested seemed to be grouped by site, especially where [REDACTED], however otherwise they came from seemingly random locations tied to site specific concerns.

Q7: Was there any thought towards keeping the Davis Dr EA and the North Yonge Transit EA separate?

A: It made sense to keep the Davis Dr and Yonge EAs together, to study as one project, as they were both related to the same corridor and had similar traffic issues. So despite the issues around Davis Dr, it made sense to lump the two together.

Q8: If types of likely concerns were discussed internally prior to commencing the EA, did the results of this discussion influence the design of stakeholder feedback opportunities at all?

A: We would have done the level of consultation we did regardless of issues anticipated. York saw the consultation opportunities as "more than just going through the EA process, it was also education for the public about VIVA service and the land use evolution that was going on. Newmarket was quite keen on consulting on the Newmarket growth centre and the evolution that they saw and the integration of rapid transit into the Newmarket growth centre."

There was less concern amongst other municipalities since the right-of-way was less constrained elsewhere. Although they were very interested, they didn't see the corridor changing as immediately as Newmarket saw Davis Drive would. Newmarket expected land uses along Davis Dr to evolve "pretty quickly" as a result of transit.

Q9: Where did the money come from for the EA and for the proposed works?

A: The EA was a regional initiative, however funding for transit came from Metrolinx, which includes corridor upgrades. The enhanced streetscape works in Newmarket and elsewhere were included in the transit upgrade strategy. "We realized that the upgrades weren't just from curb to curb but building face to building face."

Q10: Would you say that the questions and concerns raised by stakeholders and stakeholder groups during the EA were typical of the types of questions raised for this type of project in this municipality?

From [REDACTED], access was the biggest issue. If they were used to having direct access to their properties with a left turn from an unsignalized driveway, the centre-lane right-of-way represented a

change from that and they weren't sure how that would work or how it would affect [REDACTED] and how [REDACTED] would react. "The majority of the comments were related to access"

This was similar to comments received on other transit EAs, and it was as controversial as previous EAs, however there was no Part II Order mechanism for the past transit EAs because they were all individual EAs. It is worth keeping in mind, however, that for individual EAs people still have an opportunity to comment on the EA and on the Ministry's Review of the EA.

Q11: Were there any extenuating circumstances that made stakeholder consultation more difficult than usual?

A: There were no sensitive natural environment areas or anything like that involved. "It was typical [REDACTED] type interests, which I think were, if not the majority of the Part II Order requests, most were [REDACTED]."

Q12: Did the stakeholder(s) who requested the Part II Orders make their concerns clear to the project team prior to the 30-day review period?

A: Some of them had made comments during the EA so we understood them and their issues and we met some of them when they requested meetings. The Part II Orders were not necessarily foreseen, but with enough experience you get a feel for when you will get them. "I do expect them on any project – it's always a possibility... at the end of the day you are not going to satisfy every stakeholder, there will always be impacts that could be mitigated but at the time of the EA they may not be completely resolved." The MOE wants to see in the EA that environmental impacts have been identified and addressed with mitigation measures. But the details of these measures don't necessarily need to be finalized until after the EA is complete (eg. Post EA conservation authority permit process and land acquisition process).

Q13: Did the Part II Orders result in a delay in project commencement?

A: No significant delay resulted from these Part II Orders. They did not throw off the schedule; however the project schedule did not include immediate design and construction activities as the transit project was not yet funded at the time of the EA, "we were a bit ahead of the curve." "Part II Orders in the past for bypasses, freeway crossings, transit-ways, other big projects might not result in delays. For those who have more typical projects with funding committed and tight deadlines, I'm not sure if there would be timing impacts from Part II Orders for those, but for mine, the timelines are longer."

Q14: If so, did the project team attempt to address these concerns prior to issuing the notice of completion?

A: "When we met with stakeholders we tried to explain what we were doing and what the project was and how it would work. Where feasible, we incorporated mitigation measures, such as for access, or other issues. If not feasible, we would show them how the proposed transit way would operate and try to allay their concerns by showing them how it works elsewhere." People were receptive and interested in the rapid transit and how it would operate and what it meant for them in the longer term. For property owners, most saw an annoyance associated with the short term impacts such as construction, but had a sense of the long-term benefit for their properties in terms of higher use and higher density.



Nonetheless, long-term benefit doesn't mean that you won't have outstanding issues with short term impacts and that is likely what we experienced.

Q15: If so, do you feel as though the project adequately addressed these concerns?

Yes. We could not have done more than what we already did to avoid the Part II Orders. "The process provides them with the right to voice their opinion and I respect that."

Q16: Would you say that you "saw the Part II Order coming?" In other words, were you surprised by the Part II Order request, or could you have reasonably anticipated it?

A: "I wasn't surprised that there were some but I never make a guess as to how many." This was not an unusually large amount of Part II Orders. "I keep myself in a state of readiness during all submissions."

Q17: How did the Part II Order request affect your project in terms of budget or schedule?

A: It did not affect the schedule.

Q18: Are you likely to do anything specific in the future to avoid Part II Order requests?

No. in this case it wasn't something that was tied to sensitivity such as natural environmental feature or a cultural heritage. Operational issues such as parking, access, land compensation are more typical. "A Part II Order is just part of the EA process; if I were to think about Part II Order requests that concern me they would be issues that may be from technical agencies, such as a Conservation Authority. Those types of agency issues should never get to the stage where the EA has been filed and the agency is raising concerns about a project or a process." Agencies have specific technical requirements. If we need permits and approvals, we need to demonstrate that the technical requirements are understood at the EA stage as this is critical to move forward.

### General Comments

I do not believe that people requested Part II Orders so much due to NIMBYism but more because people were directly impacted by the proposed works. Sometimes the disconnect between proponent and stakeholder was due to the stakeholder not understanding project specifics, such as how left turn movements would be working with the new transit arrangement, etc.

In terms of the usefulness of the Part II Order mechanism, I believe that if you follow the formally-stated guidelines for the reasons for requesting a Part II Order, it is a useful mechanism, but MOE staff encourage resolution where proponents and stakeholders don't see eye-to-eye once the Part II Order has been submitted. However, they don't make resources available for this dispute resolution, and they encourage the resolution process to be proponent driven.

The Class EA process is better than the individual process in terms of timing, as it is proponent-driven and requires less formal government review/oversight. The Part II Order request, even if denied by the MOE, provides an opportunity to resolve outstanding issues.

Some issues are best addressed during post EA phases of a project. Could be detailed design issues or property acquisition issues. At the EA stage the Ministry is interested to see that the net impacts have been identified and the proponent is aware of the impacts, but these issues don't have to be entirely resolved at the EA stage if there are appropriate post EA processes.

Case Study 2 – Transcript 2

Interview: Stakeholder 1, via telephone, April 25, 2013, 9:30am

Recording Device: Accpeted (presented verbatim)

Confidentiality reminder: Before we begin, I want to remind you that no identifying information about you, about the project proponent, the project team, or any other person mentioned during this interview will be published in my thesis or any other reporting on my research written by me.

Q1. Can you tell me, do you feel as though the region of York had enough information in order to be able to make the decisions that it made as part of the design of this alignment for this transit line?

A. Yes. You see this was a purely linear expropriation for a distance of [REDACTED] on the [REDACTED] [REDACTED] so the question is how many people are you going to knock out, you know that kind of stuff?

Q2. And would you have preferred that they had chosen an alternate alignment to reduce the impacts?

A. [REDACTED] let me just give you some background.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] And so going back to your question, what was your question in relation to this?

[Interviewer: If you would have preferred if they would have selected an alternate alignment?]

Well, um, let me just bounce this off you but the initial alignment [REDACTED], ok? And my problem was that I fought them out saying that you can still [REDACTED] [REDACTED], just move to the other side of the road and you got a lot of vacant land, you know? And so that caused [REDACTED] and eventually they went back to the linear alignment and they said by the way we need more and we got all sorts of reasons to frame sufficient expropriation on your land that will knock out your building, so get the hell out of there and we're going to take it over; the whole thing. So anyway, if we go into that one I don't think we're getting into the topic of your paper, the topic of your paper is: is there enough information provided to the expropriated people as to what is really going on right? How the expropriation process is working?

[Interviewer: Well I am looking at the EA process in general.]

I am sure in my ignorance, you know [REDACTED] I have never done an expropriation, but when the process started there was the EA, I was more concerned about – well nothing really because I was still worried about the expropriation I wasn't too concerned about the major impact that it would have

had on me so long as it [REDACTED]. And I really was not- I really thought it was going to be an environmental assessment as opposed to- it's an integral and crucial process to the expropriation which I, as a member of the affected public, thought was really more an initial process dealing with environmental issues, do you follow?

[Interviewer: Yes, I do understand]

So I really, I guess the result would have been the same, you know? You go in and you bitch about environmental issues and they say "well-" I mean the issue I would have had initially was "hey, you are coming too close [REDACTED] and by expropriating what you are, [REDACTED] save my land and move to the other side." I mean, so, was there really enough information? I misunderstood totally the initial expropriation process I had no idea that the EA would have had such impact on the amount of land that they could expropriate and that they could change the initial lining in the process of the EA. So in other words, if you look at the paperwork on the EA you will see there are two or three layout drawings as the process went on and then eventually the sledgehammer comes down and it says "you know, we are not just going to expropriate a little circle of land, we are going to knock out the whole parcel." You know it just didn't happen to me alone, it happened to [REDACTED], to other buildings [REDACTED].

Q3. If that is the case then, do you feel as though the municipality wasn't being totally upfront or not sharing all of the information that they had?

A. Oh no, the municipality was sharing all of the information that they had, but I am just saying that the expropriation process is a draconian process that really doesn't let people know exactly or how much of an impact it can have on people that are affected. So I started, I mean I am not pointing the finger at anybody saying that "you didn't do what you were supposed to do," I am saying you know you have a medieval act that allows you to chop peoples head off and if people are affected, they don't really understand that process is so draconian from the very beginning to the end.

Q4. So if another process were to take place through an EA that may result in more land takings, do you feel as though you could trust the municipality in the future to make good decisions?

A. I trust to municipality to comply with the law, I am just saying that the law is loaded in favor of the municipality. So you don't, very rarely do you win fighting city hall. That is one of the cases, yeah.

Q5. So that being said, do you feel as though the municipality gave you enough opportunity to object to what they were proposing?

A. Oh yes.

Q6. And do you feel like they heard your concerns or cared about them?

A. Well, the municipality had its interests to preserve, and they played by the rules.

Q7. Do you feel as though they addressed your concerns?

A. The way they addressed it is you know "you are going to be expropriated and you are going to be compensated, within the statutory provision."

Q8. Do you feel those statutory provisions were fair?

A. I would have expected to be paid more, but the system is a really expensive process and it is within the parameters of reason so I can't bitch about it.

Q9. So do you feel like you had enough of a say in their decision making process?

A. Um, well I admitted to my sleeping on the wheel to begin with, but when I found out, they really listened; and they said, "get out of there." Let me just, again I think we are getting away from the theme of your paper but you have to understand that in the expropriation process the municipality through proper and good legal counsel, they do an expropriation based on by-law authorization that permits them to have so many public interest factors considered in the expropriation portion of the land that permits them to justify to expropriate more than is necessary. In other words, if it comes to the point where they say "well we have to chop off a portion of your building" then even if you say "ok take what you need but leave me the rest" they can just say "no, the rest is coming with it but we pay you for it, whatever, but the reason why we are going to get the whole piece of land, even more than what we need, is because it's in the public interest to expropriate you completely so that the compensation that you would get for the rest of the land is not going to be as high as you could get if we only chopped a portion of the land because that extra cost for what you could retain, and we are taking away is going to be compensated at a lower amount if we expropriate the whole amount." You know, under the Expropriation Act, and this in nothing under the act, the expropriated party is entitled to compensation for, what is the expression? Not just the fair market value but for the adverse affection for the remaining land. In other words, if I expropriate your whole house, I pay for the whole house, a fair market value of the house, ok? If I expropriate half of the house, I have to pay you for half the value of the house, plus the adverse impact that results on the remaining half portion of your property, which means that if you build a house or if you do have the remaining portion of the building, you can say, "not only do you have to pay me for what you have taken but you also have to pay for the adverse impact on what is left. I am going to be closer to the road, it's going to be noisy, it's going to be polluted, lot of fumes and so you pay me extra for that." I can't remember the term, it's under the Expropriation Act. So I really, I can't really bitch against the municipality, they just did what they could for the municipality and in this case they were really well represented, and people know what to claim. People know what to do through their legal counsel. The municipality does, and it's all basically delegated to the legal team that handles it. So that is why you see a lot of properties, and this doesn't only apply to me, but other people [REDACTED]; there were rectangular parcels of land and people said "well, take the land you need and I will move my house back into the backyard," you know? And tough luck, you are not going to get what you want. It's cheaper, its better, it's more advantageous for the municipality to expropriate the whole parcel.

Q10. So when you started talks with the municipality, was this before or after they had issued their notice of completion, before they finished the EA?

A. They contacted me, first of all I did go to a public showing of the new layout at the regional council and then eventually I was contacted officially by their committee that came with an offer.

[Interviewer: Was this before the EA was finalized that they contacted you?]

No it was after it was finalized.

Q11. When you went to this public consultation at council, were you given an opportunity there to voice your concerns?

A. This was not a public consultation at council- you know what, I don't know. I went there and I just looked at the stuff that was on display in the lobby and I don't know whether it was a council meeting. There might have been a public presentation done in one of the rooms but I can't remember.

Q12. So it was really just like poster boards set up around the room that you were able to browse, is that it?

A. Yeah, and you know, I mean, at that point the position was "well don't worry you will be compensated," you know?

Q13. So you noticed at that point that this was going through [REDACTED], basically?

A. Oh I already knew because, I can't remember, I think they circulated a map that showed the effects on your land. I just don't remember, they must have sent it by mail.

Q14. When you went to see these presentation panels, was there anybody from the city or from their consultants there available to answer your questions?

A. Oh yes, yeah there was also politicians, there were engineers available to answer questions.

Q15. So that was the point where they just smoothed things over and said don't worry we'll compensate you?

A. Well the people there were really talking about- for me, it would be the friendly politician and the friendly engineer saying "you know, we are not out screw you." But they were not spokespeople; they were just there to answer technical questions.

Q16. So [REDACTED] did you receive legal advice prior to submitting your part II order request?

A. No I did it on my own. I just felt that the ministry should take another look at it. And again we get into a lot of issues, we get into political issues, and health issues, and don't forget this expropriation was basically done to cater to the demands and requests of our hospital that has become a major cancer treatment place so that it could have expedited transportation to the hospital from the transportation activity on Yonge St. And if you ask me what I really think about this whole crap, I don't even want to go there.

Q17. You mean what you think of the transit in general?

A. The whole concept behind it. I mean they basically promoted expropriation based on the fact that at least 100,000 patients a year have to get transportation through that corridor to get chemotherapy done on a regular basis.

Q18. What the Region of York has written down in their report that came out of this EA was that the north Yonge St. corridor and the Davis Dr. corridor were part of their broader strategy to bring more transportation options to the people of northern York Region, including Newmarket and that whole area, so I wonder, do you agree with that statement, or do you think that they are maybe being a bit disingenuous?

A. No I really think that everybody has been honest, you know, like parliament. You know, you vote, you argue on one side, you argue on the other one and then the majority wins and I think this was probably a more or less unanimous consensus of the politicians and, again I don't want to go into who won and who lost. I mean I lost, and I don't care what anybody thinks about my thoughts, but not the vast majority but the total component of the other side felt that that was politically justified and they carried it out. It's not that it was 60-40, it was 100%.

Q.19 When you were at this public showing you mentioned that there were people there to answer your questions. Do you feel as though they adequately responded to your questions and concerns while you were there?

A. Oh yes, we just had disagreements, but you know, yes. Just for your information, after all this, and again this is beyond your paper, but I [REDACTED] "listen municipality you have room on the other side, don't come my way." [REDACTED]

[REDACTED]

[REDACTED] There was an inquiry held and that inquiry is always held as a matter of course, whether you have objections or not. The question is whether it is going to be a 2 hour thing or whether it is going to be a four day thing, you know? And there were some people that just said "you can't expropriate this much of mine," or "you shouldn't go this far with my property, look at what you can do on the other side." [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q.20 So, if that is the case then, can you tell me what were you hoping to achieve by submitting the Part II Order request for the EA?

A. I was trying to achieve that they should expropriate on the other side of the street.

[Interviewer: It sounds like you are saying that you wanted them to back off completely from your land, is that correct?]

Oh no, not completely. Just not as much.

[Interviewer: So you were hoping for some compromise?]

Yeah.

Q.21 And my last question is, do you feel as though you got what you wanted by requesting the Part II Order?

A. Did I get what I wanted? Well I got a little bit of time. But this was a really expedited process, so frankly, when it all started, when we started getting wind of the EA, I think the general public's feeling at that stage was that, hey, nothing really is going to happen for another five years, you know? But then it was just that everything was fast tracked into a few months, you know?

[Interviewer: So you feel they pushed it through?]

That has negative implications. In fairness to the Region, it is that they were efficient once the decision was made. They won the empire and they deserve it. I don't want to be a sore loser, but they did a hell of an efficient and professional job in accomplishing what the mission was.

[Interviewer: It sounds like it comes down to "I fought the law and the law won"]

Yes.

### Case Study 2 – Transcript 3

Interview: Stakeholder 2, via telephone, April 30, 2013, 10:00am

Recording device: accepted (presented verbatim)

Confidentiality reminder: Before we begin, I want to remind you that no identifying information about you, about the project proponent, the project team, or about the specifics, including the City of the project will be published in my thesis or any other reporting on my research written by me.

Q1. [REDACTED] requested the Part II Order as a result of concerns with [REDACTED] [REDACTED] in front of [REDACTED] correct?

A. Yes, mostly traffic issues, yes.

Q2. So do you feel that you were given enough information by the municipality as part of the EA?

A. Yeah, they gave us access to- there was a website that spelled out exactly how the median was going to be built, from where to where, and we had access to that; so we went online and looked at it and we

got all that information so the information was readily available to us and to our planners. So no issue on what they were trying to do.

Q3. How was the potential traffic concerns identified, was that something that [REDACTED] brought up?

A. No, [REDACTED]. So [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] are to the south and there is another guy to the north. I cannot recall whether it was the guy to the north or [REDACTED] who sort of alerted us to the fact that "hey they are building a median right [REDACTED], right in front of [REDACTED] and none of our customers are going to be able to turn in anymore." So if they are heading south they won't be able to turn in anymore, so that was the issue.

Q4. Given that you had access to this information, that you were able to go and have a look at it, do you feel as though, at the time, you were able to trust the municipality to make the right decision about how to design the changes to the roadway?

A. Yes, they hired a major engineering firm, who I am familiar with, so I was pretty confident; do you mean the engineering of the road improvements?

[Interviewer: No I mean in terms of ensuring that they are aware of and address all of the potential impacts of the work that they were proposing to do.]

I mean I don't think that that was their - I am not sure how the process works, honestly it is sort of beyond me, that is why [REDACTED] to deal with this kind of thing, but fundamentally, the impression I get is that the municipality figures out what it wants to do from the municipality's point of view, and then they disclose all of the information to the affected parties and if you have concerns you raise them yourself. I don't think that they go out of their way to figure out what everybody's concerns may or may not be, and I wouldn't expect them to, frankly. I would expect that they would do what is best for the municipality, that is what they are hired and paid to do, and if you have your own concerns, that there is a process in place to address them, more-or-less, and you would hire the right people and deal with your own issues on that basis.

Q.5 Do you feel as though you were given adequate opportunities to raise those concerns?

A. Oh absolutely. I mean I am glad that there was a mechanism, this part II Order, I knew nothing about it so [REDACTED] and they gave me a little summary telling me, you know, what the odds were that this thing would be addressed the way I wanted to address it, you know, what was realistic in terms of expectations for me to get them to change their design, and what weren't realistic expectations. They recommended some legal firms to help process our request and so that we have lawyers that are aware of what our concerns are, and if we are not happy with the way things are being addressed down the line, you know, we have got somebody with some history. So you know we went ahead on that basis



and [REDACTED] helped draft the letters to the Minister, and I guess them and the lawyers helped draft the Part II Order, of course we reviewed it all and were happy with it. So I am happy that there is such a mechanism, and that it got out there, at the same time, after we did send that out then we were met with local municipal politicians I guess, actually probably the staff from the town of Aurora, planning staff, [REDACTED] and people from Viva were there as well and we had a meeting right on the site and we were able to walk the site with them and explain our concerns and hear what their thoughts were. So that happened, I think that happened before then we got the letter from the Ministry saying that while they weren't going to grant us our order, they were going to make sure that our concerns were very carefully considered at the design stage when it got to that point. So I think that is the order of things. And so we are still waiting for- [REDACTED], and so we are still waiting for their design team to address it.

Q.6 Prior to issuing the part II Order request, did you feel as though you were given a say in their design process?

I think that there were some public meetings and stuff that I didn't go to just because I wasn't aware of them. I think the first time I was aware of all of this was after they had their public information session. Now that is probably my fault as much as anyone's.

Q.7 Well it is the municipality's job to ensure that they adequately inform stakeholders. Did they come to you directly to tell you about the potential property impacts or was that not until after?

No they did not.

[Interviewer: They didn't come to you at all?]

No we initiated our concerns first.

Q.8 So how did you become aware of the EA study?

[REDACTED] said by the way they are building a median and its going to screw up our access and it's probably going to screw up your property values, so we think you ought to do something about it. So that is when I sort of said what? And I talked to [REDACTED], who looked into it and said yeah there is a transit median going right down the middle of Yonge Street all the way from Richmond Hill up to Davis Drive and all the way over to the hospital it's going to go right, definitely it's going to go in front of your property and then we had access to the website to see what it was doing. So I think it was [REDACTED] concerns. So they may have alerted [REDACTED], right, as opposed to me. It's always, I guess, easy to figure out who the owner of a property is.

[Interviewer: It's not always that straightforward]

No, I mean they should know us, but, you know, we [REDACTED] so I think if they had saw our name, they would have known who that was. You know, in some cases I don't know if they even start that process, because they must give notice to everyone on the street and if [REDACTED]

[REDACTED], they expect [REDACTED] I don't know. I wonder how much research they do to determine who the real property owner is.

[Interviewer: Well they have that information]

Well the property tax department certainly knows, I can tell you that as they send me the bill.

Q.9 So I take it that based on when this was alerted to you, you had concerns that this would negatively affect your property?

Yes, we did and we sent a letter to the minister along with the part II Order request, and we expressed our concerns that without any way to turn into our [REDACTED], it was going to cause a lot of traffic concerns. We are such a [REDACTED]; we expected that they could create a signalized intersection somewhere in there, to let people into our property. And that is what we really wanted was another intersection into the property, another signalized intersection, and that would have satisfied us because we realize that there is going to be a transit lane going up the middle of [REDACTED] and it makes sense from a public point of view, I mean we have no objection to it, it is probably a great idea, but you know, we felt like, for us, there should have been another intersection put in. All we really got out of them was a promise that they would look at that or, failing that, there is [REDACTED]

[REDACTED] So there is actually an intersection that goes to the north but it doesn't, it is not a [REDACTED], so there's no left-turns into our property but they were saying "we could, maybe we'll modify that to allow people to get in from there." and of course my point was well great, but that is not our property. And as long as I got [REDACTED] that is ok, traffic can go through [REDACTED], but hard for the government to assume that there is [REDACTED] in place, and that they will stay in place forever. So that was my only concern is I would prefer another intersection into my property, but I take what I get at this point.

Q.10 Prior to submitting the part II Order did you contact the municipality to let them know what your concerns were?

Yes, that is why we had a meeting. We certainly had a meeting with the local politicians and staff at our site, so I think that happened around the same time as the - I think our problem with the part II Order was that we were running up against a deadline. Remember I told you we missed the public meeting. There was a deadline of January 13th, 2009 or something so we had to meet that deadline and I think we were up against it so I am not quite sure of the order of things, but we certainly met with the local politicians for sure. We would have called the mayor; the property owner to the north would have called the mayor and our local councilor.

Q.11 So the part II Order really was meant to buy you some time then?

No the reason for it was, so why did we do it? It put them on notice that there was an issues and it provides an ability to negotiate an acceptable solution [REDACTED] so

that is why I did it. It puts them on notice that there is an issue and it allows us to negotiate with them. As it turns out, it kind of worked from the point of view that they sent us back a letter saying that you're not going to get your Part II Order; [REDACTED] told me "that's not going to happen. They're not going to grant you- the part II Order, may not be granted, they said a very low probability it would be granted." And I don't know the process very well, you'd probably know it better than I but it seems like it would put a halt to things, generally speaking, and create a lot more planning issues for the municipality so it must be difficult to get those things accepted.

[Interviewer: Yes, the minister gets hundreds of these part II Orders every year, but none of them are ever granted. But sometimes the minister will take a good hard look at the EA documentation and then come back to the proponent with conditions. So the minister may say "before we say that this is OK we need you to do the following six things or whatever."]

Ok so he came back to us and I have this two page letter that he understands our issues, that we, that I think the way they would redesign it is that they would do u-turns at an intersection, say you were trying into - you're going [REDACTED], you couldn't make a left turn into our property, therefore you would have to go to the next intersection and do a u-turn, and u-turns would be allowed, and there would be a way of doing it and then come back, and we said great, let's see you do that with a [REDACTED] on it. It's a [REDACTED], and that's what we get. So it's nice to say but it cannot be done. And people do come from the [REDACTED] because the trucks coming from the [REDACTED] would have to go right through the [REDACTED] and it's extremely congested and extremely difficult and there's not enough turn space in some of the intersections in the [REDACTED], to get through, so they prefer to come from the [REDACTED]; so this sort of means they can't, you know they have difficulty, I don't even know if they can do a u-turn, I don't know if it's possible to do a u-turn, so we were saying how do you do this?

Q.12 So it sounds like, had the municipality not considered this there would have been some much more widely-reaching impacts in that trucks may actually have to start going through the town of aurora, which in an unintended consequence.

Yes, that's right.

Q.13 Do you don't think that they foresaw that potential impact?

Um, I don't think they did, like I said, I don't think they consider everybody's concerns but maybe I'm wrong, maybe they're supposed to, but- or they didn't consider it carefully enough. I mean but we got this letter back from the minister that said that he is confident, even though he's not granting it, he's confident that they're going to work on our concerns and that they're going to look - there's a good potential to re-signalize the intersection on the north side to allow turns in. And as I said to you before, that's great so long as the property is an [REDACTED], both of them are [REDACTED]. But for now I mean that's where they've left it. I don't think we're going to get another intersection. It probably doesn't work from a traffic point of view. It's too many intersections in a row, like too many signals in a row are a little difficult, so I think if I had to say something was funny, the intersection now goes into [REDACTED] and I think there was a lot of pressure on the local municipality to put that intersection

in. It was put in just before this process started, not too long before. But I wonder if there is a lot of rich [REDACTED], but there is a very powerful people [REDACTED] [REDACTED] and obviously put a lot of pressure on the local municipality to put in an intersection there. It's probably not the brightest place to put an intersection, a signalized intersection would have been better placed somewhere else I think. But it's there now and it's very difficult to bend it so that it also allows access into our site. But they're going to try and do it I guess.

Q.14 Would you say then that you got what you wanted by requesting the Part II Order?

I would say maybe. I would say just maybe, I don't know because we haven't got the intersection improvements yet. I got what I wanted in terms of I got their attention, I got to say what I wanted to say, I alerted them to the issue and I mean if there's major problems down the road I can always say guys we told you so. So I don't know if that helps but you know, I mean I have two minds about the whole thing. I mean at some point this is [REDACTED]. The land is worth a lot of money, and at some point there is a higher and better use for it than [REDACTED], I'm thinking, well if you can't be [REDACTED], because of the way they have changed the road construction, then it is a strong planning argument for me to go back to them and say well give me a better use then.

Q.15 Oh right, so this would be a good argument for zoning amendments?

Redevelopment, yes. At the same time I have [REDACTED] [REDACTED] then I am happy too. But if it doesn't work for them down the road then I'm a flexible guy I'll go and say well let's look at a different use that doesn't require [REDACTED]. You know, so it wouldn't be a grocery store, but it would be some type of a mixed use retail residential type thing I'm sure down the road. But it probably will be because it's right [REDACTED]. If it's on a major transportation corridor, and this is public transit that they're building out front, then it makes good sense to have some residential use there. [REDACTED] So I guess things change and this'll maybe force that change a little bit down the road but I guess I have two minds about the whole thing. If they are going to do it anyways, it would be awfully nice - well it is a [REDACTED] they're going to have to do something for those turns. So I guess the [unintelligible], if they actually do the intersection improvements the way they say then I think the [REDACTED] will be content at this point. And I'll be happy but we don't know yet because it's still to be determined whether they're going to do any of those improvements. The intersection is there so even if they build their median, and I see they're not doing much, I can then start fussing and asking them to look at it again.

Q.16 Are you concerned then that if you don't get what you want you're going to lose [REDACTED]?

Yes. The use would be impractical. I would have to say that you gotta [REDACTED] [REDACTED], there's no better way, then it's going to make it very difficult if they cannot turn into that site. You cannot do u-turns, [REDACTED], and you know they're going to have to allow it or allow me to change the use.

Q.17 So you would be satisfied with either of those scenarios?

I would be. [REDACTED]  
[REDACTED] I am content with it while it lasts, [REDACTED]  
[REDACTED] it works for me now, but if it has to change then it has to change. [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] So where it is now is kind of where it is now. It's been there forever and it's tolerated. But it's not easy to get approval for a change. [REDACTED]  
[REDACTED]

Q.18 So that really would result in some negative business impacts then [REDACTED]?

I think so yes.

Q.19 Did they request that or participate in the submission of the part II order process at all?

No. I think the owner of the property has to do it. I did it and they were aware of what I was doing, I kept them in the loop, and you know we issued it for our own sake and the [REDACTED]  
[REDACTED] So he participated from that point of view.  
And as I recall now, [REDACTED] that alerted me to the fact that this was happening. [REDACTED]  
[REDACTED]  
[REDACTED] so the mayor was alerted to our issues and [REDACTED] said we should issue the Part II Order just to make sure that we're on record, to make sure that they deal with us and they actually did so I don't know though what the process is now. So I don't know, you know, now that you've sort of got me thinking about this again, I'm no doubt going to call [REDACTED] to find out at what stage we ought to be making sure that they consider our intersection improvement. Like, where are they in the design right now. So I'll [REDACTED] start looking into it to make sure that we don't miss some sort of deadline or you know I don't want them to start constructing the damn thing in front of us and then it's too late to change the design you know? I don't have any confidence that the government is going to come to me and say OK [REDACTED], we talked about the signalized intersection and now is the time for us to consider it because I don't think they are that organized.

Q.20 Organized or proactive?

Well yeah I, or that, yeah. I don't have any faith that if I don't ask, you know if I just do nothing I'm sure they do nothing. Right? they did send me a letter promising that they're going to continue to work with me and blah blah blah, but you know, it's sort of a namby-pamby-type letter it doesn't say they're going to be proactive in the whole thing, it just says that they'll work with me. So they assume I'm going to take the lead role in finding out where they're at in pushing for this intersection improvement.



know that the questions they are going to be raising are "will you be widening the road, are you going to increase the speeds or more traffic and whatnot" so we understand those concerns that are very typical for road projects. We anticipate those kinds of questions and are prepared to answer if there are questions about it. In this case, for King Street it was not a widening project, it was just a reconstruction of the two lanes so when we prepared the public consultation material I don't remember exactly what it looked like, but we would have emphasized that it is not a widening project and only reconstruction of two lanes that will remain the same.

Q5: Would you say that the questions that were raised by stakeholders during consultation activities were they the typical types of question that you would have expected for this type of project in the region of peel?

A: Mostly. We also were changing the cross section to an urban from a rural cross section because the area was growing and developing and there were subdivisions being built, there was already one subdivision in place and there were plans for other things to happen, and we needed to urbanize and provide pedestrian facilities and things like that along the corridor. There were questions raised about, I think we used the technical term and people may not have understood, so there were questions about what do you mean about urbanization and what are you going to do when you are saying that you are changing the cross section of the road so that was something that was raised by a few people. A couple of people sent emails to me asking what do you mean by urbanization and things like that.

Q6: When people were asking these questions, what was the tone? Were they questioning or saying "no you can't do this"?

A: More of an inquiry, what does it mean when you say urbanization? At least a couple of people said that and that is what I remember. There were people who said we are not clear on what urbanization means, can you clarify that?

Q7: Was there anything that made the consultation efforts for this more or less difficult than would be typical? Extenuating circumstances or sensitive groups or anything?

A: No I don't think so, no.

Q8: You received one Part II Order for this project. Did the person who submitted this request make their concerns known prior to the 30-day review period?

A: They had and we had responded to those concerns and we felt that we had addressed those concerns because we did not hear back until the last day of the 30-day review.

Q9: When those concerns were originally voice by the requestor, how did you respond?

A: We responded through a letter, I am not sure if there was a phone call, but the letter addressed all of ■■■ concerns. One was about salt spray on the trees, then noise, and vibrations I think were the 3 main concerns that ■■■ raised and then we basically provided information on the noise part that the road is not being widened so it is not anticipated to increase traffic beyond the capacity that is has existing capacity so we did not do a noise study for that. In terms of salt spray the region has a salt management plan so we gave them information on the salt management plan and how the region intends to deal with the salt spray on trees and things like that. We felt that we had addressed all ■■■ concerns.

Q10: In the part II Order request the requestor asked for some kind of a physical barrier to keep salt of his trees on [REDACTED] property. Is that something that you considered or did that seem unreasonable?

A: Again, this is like balancing between how the region deals such a request. The requests were two parts. One was noise and the other was failure to protect the trees. In terms of noise, if there was an impact because of noise then the region would have put a barrier to protect because that is a regulated requirement, in terms of protecting the trees, which are on the private side of the property, I think if we start entertaining or considering such requests we might be obliged to do things for every property in the region which is unreasonable and it is not fair to do it for one person and not do it for the request from some other person. So we would not, if the trees are on the private side, and they are being, and again the impact was because of the salt, which was not validated I guess, first of all, and I think we had plans, because we urbanizing the road cross section, that the salt would drain, that any splashing would drain off the side of the road and go back onto the road and into the sewer system that we were putting in. So it was improvement on the existing condition anyways. We felt that the barrier wouldn't have changed anything.

Q11: And this was explained [REDACTED] in your response to [REDACTED] request?

A: I would think so. I do not recollect, but I think we would have definitely said that, [REDACTED] concern about salt spray, we were managing salt, we were reducing salt spray on all the roads, not just this particular road but all across the region we have a plan to reduce salt consumption basically because we understand that it creates pollution and it damages the environment and whatnot so there is a plan and we are constantly implementing the plan to manage salt.

Q12: Clearly [REDACTED] didn't accept the explanation. Did you feel as though the issues raised were the real issue? Because the Part II Order request will require certain issues to be present before the Ministry even considers it.

A: I think to be fair [REDACTED] [REDACTED] who submitted the part II Order I guess, it might be an issue for [REDACTED], and it is a real issue for [REDACTED] but [REDACTED] [REDACTED] look at the vantage point of the municipality, and I think [REDACTED] concerns were more limited to [REDACTED] particular property and not in general public I guess. There was no impact created by the project that we were doing, I guess, that is how I would put it. They may be real issues for [REDACTED] but I think from a project perspective, we felt that we are not changing anything for [REDACTED] that is going to impact [REDACTED]. I think the MOE's decision would probably reflect that because they agreed that we are not changing anything in terms of the project that is going to impact [REDACTED].

Q13: The MOE did not impose any condition on your EA did they?

A: No I don't think so.

Q14: So you wrote [REDACTED] a letter and there may have been a phone call, was there anything else being done to address [REDACTED] concerns? Any changes to your plans or thought put towards this at the detailed design phase or anything like that?

A: I have not dealt with the detailed design phase, but I don't think so. There might have been some minor revisions and they may not have been specific to [REDACTED] concerns though, so hard to say. But during



the EA we did not change anything per se because we didn't feel that there was any impact on [REDACTED] property. The concerns [REDACTED] expressed, specifically the noise and the salt spray.

Q15: One of the questions associated with noise was that [REDACTED] worried that these improvements would result in more truck traffic. Is that something that is possible, in your experience? When you upgrade a road, do people choose it over their typical routes?

A: There are two things: I don't think there was an alternate route in this case, first of all, that people would choose one over the other. It is an existing truck route, so trucks will be using that. And there was no alternate that if this was better that people would choose this route over the other. I think at least in the area that this road is, and it's such a small section, if it is a longer section, I think that philosophy would apply that people would choose it, but it's such a short, it is just 1.5 km so there was no real alternate to this that people were going to choose one over the other.

Q16: In general how well was the proposal to change to an urban cross section received by other people that you may have spoken to at the PIC or otherwise?

A: I think many people appreciated it because as I said, there was a new subdivision built, people and kids were walking to school, there is a school that students walk to in the neighborhood and they would have wanted sidewalks and everything. There were no sidewalks before, as a rural cross section has gravel shoulders and a ditch and no pedestrian facilities or street lights or anything. And there was a subdivision built within the limits that we were upgrading. So basically people appreciated that they would have a safe place to walk and kids could walk to school and things like that.

Q17: Given that [REDACTED] did voice [REDACTED] concerns prior to the notice of completion, would you say that you saw this Part II Order coming, or were you surprised by it?

A: As I said, we felt that we had addressed [REDACTED] concerns, and I did not expect a Part II Order, but when we received it I guess we kind of thought, "OK, it wasn't expected to be honest, but it was the same person." I have received part II Orders in other projects too, but they were like a certain surprise. At least in this case we knew what [REDACTED] concerns were prior to receiving the part II Order. That is how I would put it. It was not totally surprising, but we knew the concerns [REDACTED] so we could respond quickly to the MOE because the MOE needs responses so we had already had the same- like we did not even change much of our response, I guess. What the letter we had sent to [REDACTED], we kind of duplicated that and packaged it up with the table that MOE wants in the response, basically sent it out again.

Q18: Did this PIIO result in any impacts on the schedule or the budget of the project?

A: Very limited. I would not say it changed much because we had a decision within three to four months so fortunately but there are other projects I could say that it actually impacted the budget and the schedule involved because the Part II Order was not resolved for about a year or year and a half. Not in this one though. The MOE, as I said, the concerns may have been real for [REDACTED] but from a project perspective, the MOE kind of considered our approach and accepted that yes, this is probably the best you can do, so we got a quick turnaround from them.

Q19: Given your experience with Part II Orders, both with this particular one and other ones in the past, is there anything that you as a PM would be likely to do in the future to avoid part II Orders requests?

A: For sure. We try our best to reach out to most of the people. I think the other two Part II Orders that I am talking about were more from the developers' perspective. So I think that is something that, you are trying to reach out to developers if they are in the area and try to work with them through the project rather than late in the game and we encourage them, if they have concerns in terms of the project or access or widening or property taking or whatnot, I think we try and explore- or discuss those things upfront more, especially with the development community because I think that sometimes the planning side of it and the engineering side of it, I think we need to talk more with each other and that is where we have found difficulties but I think we are improving on that and we are engaging with the developers up front on the projects now.

Q20: So when you say the planning side and the engineering side, do you mean?

A: The planning application, I am talking about the land use planning applications, development planning applications so they have their own course of action and they process the applications and things like that and then the EA is running parallel to it and there is sometimes a lack of discussion between the two and EA develops a preliminary engineering design and that conflicts with the planning objectives or whatnot or the way they have laid out their subdivision or their access and things like that.

[Interviewer: So practical versus policy disconnect?]

They are also doing their own work in terms of access and property and planning their subdivision and things like that, so it is still implementation of the policies I guess, but if you don't talk to each other about what we are planning to do, I guess there is sometimes a conflict. Like if they have an access here but we feel that the access is unsafe because of the widening I guess then we need to talk about it. Or if there is more property taking required because of the widening and that is not informed to the developer then there might be concerns that come out later in the project. This has always been a challenge in terms of property I guess the requirements, because the developer is trying to use his land to the maximum and sometimes you need to go beyond the right of way because of grading or engineering issues that exist.

[Interviewer: So it is a matter of ensuring that everybody has the same level of information?]

Yes.

**Appendix D – University of Waterloo Office of Research  
Ethics clearance to commence research undertaking**

Weller, Leah

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From: ORE Ethics Application System <OHRAC@uwaterloo.ca>  
Sent: Tuesday, April 02, 2013 9:28 AM  
Subject: Ethics Clearance (ORE # 18864)

Dear Researcher:

The recommended revisions/additional information requested in the ethics review of your ORE application:

Title: Understanding the reasons for Part II Order requests in Ontario Municipal Class Environmental Assessments ORE #: 18864  
Faculty Supervisor: Paul Kay ([pkay@uwaterloo.ca](mailto:pkay@uwaterloo.ca))  
Faculty Supervisor: Robert Gibson ([rbgibson@uwaterloo.ca](mailto:rbgibson@uwaterloo.ca))  
Student Investigator: Leah Weller ([lsweller@uwaterloo.ca](mailto:lsweller@uwaterloo.ca))

have been reviewed and are considered acceptable. As a result, your application now has received full ethics clearance.

A signed copy of the Notification of Full Ethics Clearance will be sent to the Principal Investigator or Faculty Supervisor in the case of student research.

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Note 1: This ethics clearance from the Office of Research Ethics (ORE) is valid for one year from the date shown on the certificate and is renewable annually, for four consecutive years. Renewal is through completion and ethics clearance of the Annual Progress Report for Continuing Research (ORE Form 105). A new ORE Form 101 application must be submitted for a project continuing beyond five years.

Note 2: This project must be conducted according to the application description and revised materials for which ethics clearance has been granted. All subsequent modifications to the project also must receive prior ethics clearance (i.e., Request for Ethics Clearance of a Modification, ORE Form 104) through the Office of Research Ethics and must not begin until notification has been received by the investigators.

Note 3: Researchers must submit a Progress Report on Continuing Human Research Projects (ORE Form 105) annually for all ongoing research projects or on the completion of the project. The Office of Research Ethics sends the ORE Form 105 for a project to the Principal Investigator or Faculty Supervisor for completion. If ethics clearance of an ongoing project is not renewed and consequently expires, the Office of Research Ethics may be obliged to notify Research Finance for their action in accordance with university and funding agency regulations.

Note 4: Any unanticipated event involving a participant that adversely affected the participant(s) must be reported immediately (i.e., within 1 business day of becoming aware of the event) to the ORE using ORE Form 106.

Best wishes for success with this study.

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