If a private sector proponent is undertaking the planning of an infrastructure project, that after completion will be assumed by the municipality, are they subject to the requirements of the EA Act?

This is a complex question that requires a careful answer.

The first part of the question that needs to be considered is “Who is really the proponent?”

The proponent for the project could be;

- the Developer (private sector) since the Developer is undertaking the work;
- the Municipality since they will eventually be owner and operator (note - the Municipality could require the Developer to complete the MCEA process on behalf of the Municipality)
- Co-proponents where both act as proponent but the responsibility for the MCEA is assigned to the Developer (a training module on this topic is available on the MCEA web site.)

It is the municipality’s choice regarding proponency – either the Developer, the Municipality or co-proponents. The municipality should carefully consider the implications before determining proponency.

Developer is Proponent – If the Municipality chooses to have the Developer be the proponent then Ontario Regulation 345/93 applies and provides an exemption to the EA Act for private developers undertaking work unless the project is a Schedule C project and provides services for residential development. So the Developer may proceed with projects unless the project is classified in the MCEA as a Schedule C project that is servicing residential. The regulation does not include any requirements for approval under the Planning Act or public consultation.

Municipality is Proponent - If the Municipality chooses to be the proponent or co-proponent then the project is subject to the EAA and will fall under the appropriate schedule in the MCEA.

Once the Municipality has elected to be the proponent or co-proponent for the project, the second part of the question is “How should the project be classified?”

The next step is to identify the project in the schedules of Appendix 1 of the MCEA – the project could be a schedule A, A+, B or C. However, often projects that are to be completed by a Developer and would otherwise be a Schedule A+ or B are classified in

the MCEA as Schedule A projects because they are included as “conditions of a Planning Act approval” (see Appendix 1 watermains - item 6, wastewater item 17, roads item 23). Prior to accepting a Schedule A classification because the project is a “condition of approval”, the Municipality should carefully consider wording of the condition of approval and the potential impacts of the project. If the condition of approval is a **general statement** such as to “install municipal water services” then it would **not** likely be appropriate to re-classify a Schedule B project to Schedule A as the condition of approve is general in nature and does not specify a specific solution. Furthermore, as proponent, the Municipality could refer to the first paragraph of Appendix 1 in the MCEA where it states;

“The types of projects and activities listed are intended generally to be categorized into Schedule A, A+, B and C with reference to the magnitude of their anticipated environmental impact. In specific cases however, a project may have a greater environmental impact than indicated by the Schedule and in such instances the proponent may, at its discretion, change the project status by elevating it to a higher schedule.”

However, it is worth noting that if the “condition of approval” **is specific** (for example - install a watermain here connecting point A to point B”) then the project **should** be classified as Schedule A as it would not be appropriate follow a Schedule B process when it would not really be possible to consider alternatives since the solution was already specified in the conditions of approval.

Municipalities have choices and should carefully consider the potential impacts while crafting “conditions of a Planning Act approval”, determining proponency and selecting the appropriate MCEA classification.