Memorandum to: Directors of Education
School Business Officials
Secretary/Treasurers of School Authorities

From: Nancy Naylor
Deputy Minister of Education

Subject Construction Activity During COVID-19

As part of the government's ongoing efforts to stop the spread of COVID-19, on April 3, 2020, the Province updated the list of essential businesses that can remain open. This measure is necessary to protect the health of the people of Ontario, while ensuring that necessary goods and services remain available. The updated essential businesses list can be found here. The sector should be reviewing the list with the government's stated purpose in mind.

The Ministry of Education ("the ministry") received several inquiries from the education sector with respect to the applicability and impact of the new list on school board capital construction and renewal projects. The ministry's position is that school construction projects currently underway would generally constitute non-essential services and therefore must be paused, unless the construction activity satisfies one of the following criteria allowed under the current order:

- Construction and maintenance activity necessary to temporarily close construction sites and to ensure ongoing public safety; and
- Maintenance and repair activity strictly necessary to manage and maintain the safety, security and sanitation of school facilities.

Given the extraordinary circumstances facing us all, the ministry is taking the step of offering its position on whether school construction projects constitute "critical provincial infrastructure" so as to fall within the class of essential businesses that are generally permitted to continue at this time. The ministry is not providing boards with legal advice, and boards are encouraged to consult with their legal counsel. Please note that the ministry's view is not determinative of the law as only the courts can authoritatively interpret the law.

As school boards are best situated to understand their own local and particular circumstances, the ministry is asking that school boards consider whether their construction projects are able to continue in light of the Emergency Order. As noted above, this may mean that boards will need to consult with their own legal counsel, as appropriate, to determine how the Emergency Order applies to each specific school construction project currently underway. We understand the Council of Ontario Directors of Education (CODE) is seeking a legal opinion to ensure a consistent approach is adopted across the province.

To the extent that the current Emergency Order may cause delays in projected completion of projects, we ask that you prepare contingency plans in the circumstances that school, child care and EarlyON projects are paused and not completed as planned, especially for more urgent projects that are anticipated to be completed within the next year.

For capital work that will proceed under the allowable provisions of the list, the government is also advising essential workplaces to put the necessary measures in place to protect the health and well-being of their employees and the public, including physical distancing and hand-washing. Please refer to the following link for the updated list of Essential Workplaces and other supporting information for COVID-19: https://www.ontario.ca/page/stopping-spread-covid-19. Visit Ontario's website to learn more about how the province continues to protect Ontarians from COVID-19.

If you have any questions or require additional information, please contact: Didem Proulx, ADM, Capital and Business Supports Division (416) 885-2946, Paul Bloye, Director Capital Program Branch (416) 325-8589 or Andrea Dutton, Director Capital Policy Branch (416) 325-1705.

Thank you for your ongoing cooperation.

Sincerely,

Nancy Naylor
Deputy Minister

c: Chief Administrative Officers, Consolidated Municipal Service Managers (CMSMs) and District Social Services Administration Boards (DSSABs)
Directors and/or General Managers, CMSMs and DSSABs
Tony Pontes, Council of Ontario Directors of Education (CODE)