

**MUNICIPAL ACT, 2001  
STAKEHOLDER INFORMATION  
SESSION #2**


MUNICIPAL SERVICES BOARDS, MUNICIPAL SERVICES CORPORATIONS,  
AND THE LAKE HURON/ELGIN AREA WATER SUPPLY SYSTEMS

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PARTNER AND SOLICITOR  
SISKINDS LLP

A professional headshot of Paula Lombardi, a woman with blonde hair, wearing a dark blazer over a light-colored collared shirt. She is smiling and has her arms crossed. The photo is set within a rounded rectangular frame on a light blue background decorated with water droplets.

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### WORKSHOP OBJECTIVES

- CONFIRM THE PROBLEM AND WHAT WE HOPE TO ACHIEVE
- HIGHLIGHT OPTIONS UNDER THE MUNICIPAL ACT
- DISCUSS CURRENT RECOMMENDATION & POTENTIAL OPTIONS
- DISCUSS CONCERNS AND EXPECTATIONS OF STAKEHOLDERS
- NEXT STEPS

The slide features a light blue background with a decorative border of water droplets. The text is centered and presented in a clean, sans-serif font.

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## TRANSFER ORDER - GOVERNANCE

- ESTABLISHED THE BOARD(S) OF MANAGEMENT
  - ROLE, RESPONSIBILITIES AND OBLIGATIONS
  - APPOINTMENT OF MEMBERS (NO FIXED TERM, SERVE AT THE PLEASURE OF MUNICIPALITY)
  - VOTING STRUCTURE, QUORUM
  - ADMINISTRATION (ESTABLISHMENT OF BYLAWS AND POLICIES, DELEGATION OF AUTHORITY)
  - AUTHORITY TO CHANGE ADMINISTRATION/MANAGEMENT ARRANGEMENTS
  - APPROVES OPERATING & CAPITAL BUDGET, RESERVE FUNDS, CONTRACTS, RATE
  - DISPUTE RESOLUTION PROCESS
  - “MAY HAVE A BANK ACCOUNT”, “MAY ENTER INTO CONTRACTS”  
(IMPLIED ‘CORPORATE’ LEGAL STATUS)

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## TRANSFER ORDER - ADMINISTRATION

CITY OF LONDON IDENTIFIED AS “ADMINISTERING MUNICIPALITY” TO PROVIDE SERVICES AS REQUIRED AND DIRECTED BY THE BOARD(S)

- REGIONAL WATER SUPPLY DIVISION, SECONDED AND REPORTS TO THE BOARD(S)
- PROVISION OF FINANCIAL/OTHER SUPPORT SERVICES (FEE FOR SERVICE)
- MUST ISSUE DEBT WHEN DIRECTED BY THE BOARD(S)

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## TRANSFER ORDER - ADMINISTRATION

REGIONAL WATER SUPPLY DIVISION (SECONDED), AS THE BOARDS' ADMINISTRATION, RESPONSIBLE FOR:

- ALL MANAGEMENT AND ADMINISTRATION OF REGIONAL WATER SYSTEM
- LONG-TERM PLANNING, ENGINEERING/CONSTRUCTION, ASSET MANAGEMENT
- OPERATION, MAINTENANCE & REPAIR (CONTRACTED SERVICE)
- COMPLIANCE, RISK MANAGEMENT, SECURITY
- FINANCE PLANNING AND MANAGEMENT
- INFORMATION TECHNOLOGY, DATA MANAGEMENT
- EXTERNAL SERVICES (LEGAL, ETC.)

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## TRANSFER ORDER – MUNICIPAL RELATIONSHIP

- CITY OF LONDON DESIGNATED “BARE TRUSTEE” ON BEHALF OF THE REGIONAL WATER SYSTEMS
- EACH BENEFITING MUNICIPALITY HAS AN **UNDIVIDED BENEFICIAL INTEREST** IN THE RESPECTIVE REGIONAL WATER SYSTEM
  - “TENANT IN COMMON” WITH ALL OTHER MUNICIPALITIES
  - NO SHAREHOLDINGS
  - NO APPORTIONMENT OF TREATMENT CAPACITY/SUPPLY

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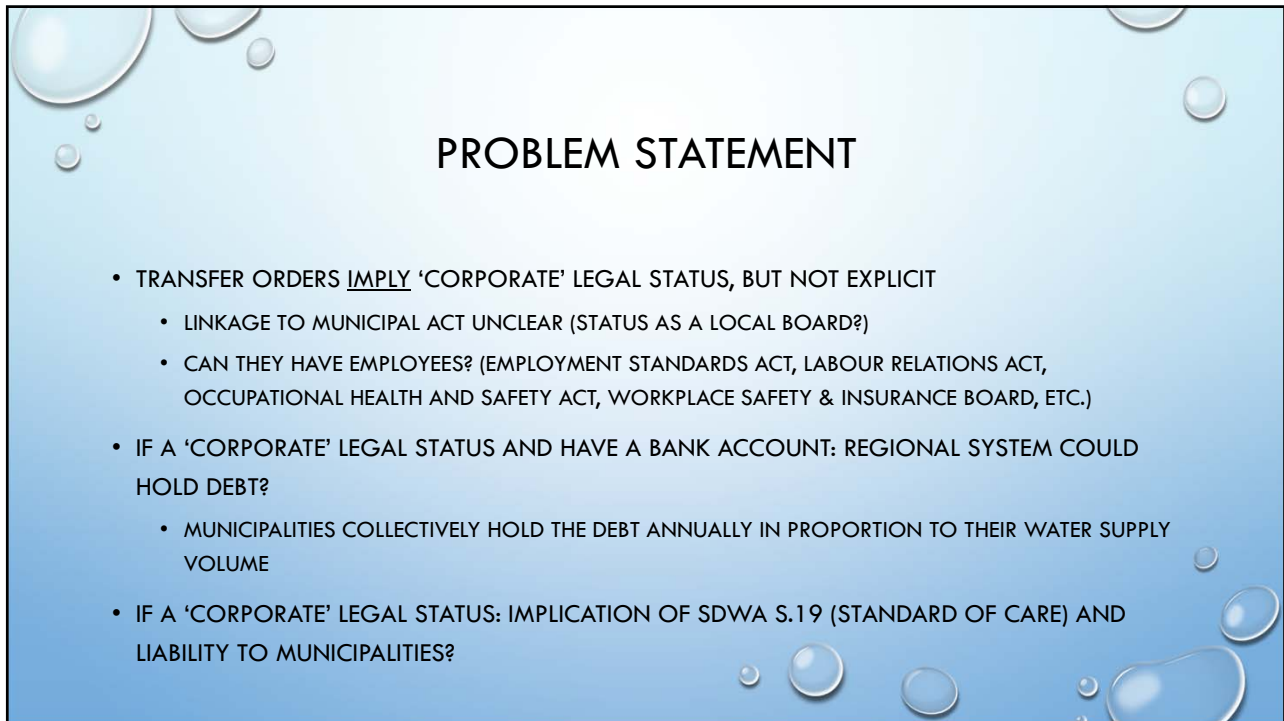


## REGIONAL WATER SYSTEM

- HAVE THEIR OWN BUDGET, RESERVE FUNDS, RATE
- HAVE THEIR OWN BYLAWS, POLICIES
- FINANCIAL PLANS
- ASSET MANAGEMENT PLANS
- MASTER WATER PLANS
- MANAGEMENT SYSTEMS (EMS, DWQMS, IMS)
- IDENTITY MANAGEMENT (LOGO, WEBSITE, STANDARDS)

[HTTPS://HURONELGINWATER.CA](https://HURONELGINWATER.CA)

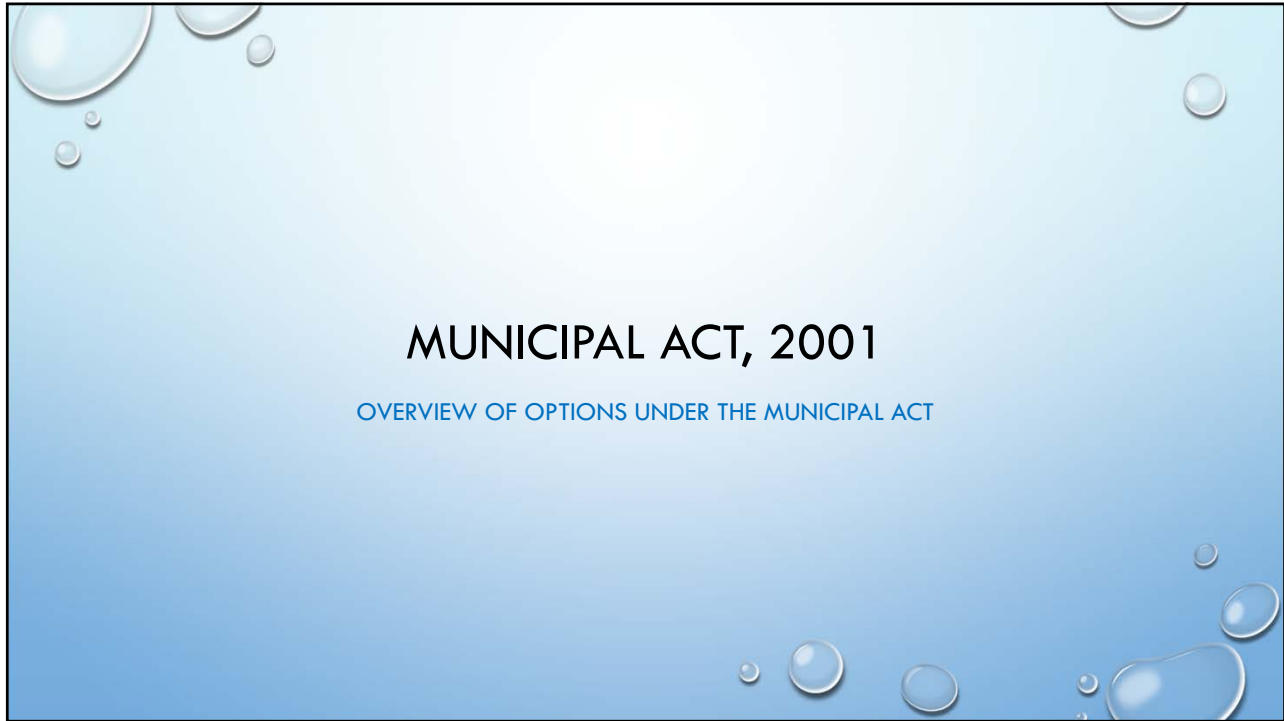
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## PROBLEM STATEMENT

- TRANSFER ORDERS IMPLY 'CORPORATE' LEGAL STATUS, BUT NOT EXPLICIT
  - LINKAGE TO MUNICIPAL ACT UNCLEAR (STATUS AS A LOCAL BOARD?)
  - CAN THEY HAVE EMPLOYEES? (EMPLOYMENT STANDARDS ACT, LABOUR RELATIONS ACT, OCCUPATIONAL HEALTH AND SAFETY ACT, WORKPLACE SAFETY & INSURANCE BOARD, ETC.)
- IF A 'CORPORATE' LEGAL STATUS AND HAVE A BANK ACCOUNT: REGIONAL SYSTEM COULD HOLD DEBT?
  - MUNICIPALITIES COLLECTIVELY HOLD THE DEBT ANNUALLY IN PROPORTION TO THEIR WATER SUPPLY VOLUME
- IF A 'CORPORATE' LEGAL STATUS: IMPLICATION OF SDWA S.19 (STANDARD OF CARE) AND LIABILITY TO MUNICIPALITIES?

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## MUNICIPAL ACT – OPTIONS FOR THE LAKE HURON & ELGIN AREA WATER SYSTEMS

The Ontario Municipal Act  
S.O. 2001, C.25

and

The Boards of Management for the Lake Huron and Elgin Area Water Supply Systems

*A discussion paper related to the legal status of the Boards of Management for the Lake Huron Water Supply System and the Elgin Area Water Supply System and the potential to consolidate the regional water systems under the Municipal Act, 2001.*

June 2020

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Lake Huron & Elgin Area Water Supply Systems

**Existing Structure**  
(Transfer Order: Municipal Water & Sewerage Systems Transfer Act, 1998)

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graph TD
    LH[Lake Huron Water Supply System Joint Board of Management] --> RWS[Regional Water Supply Division  
A Division of the Corporation of the City of London  
(Administrative Services)]
    EA[Elgin Area Water Supply System Joint Board of Management] --> RWS
    
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**Water Supply System:**

- Each benefiting municipality has an (as)of(d)g beneficial ownership (as interest in common)
- Assets held by (TRUST) by the City of London, in its capacity as Administering Municipality per Transfer Order

**Board of Management:**

- Members (and alternate Members) appointed by benefiting municipalities
- Governing authority over water system
- Authority to:
  - Obtain approvals
  - Contracting for services
  - Entering into agreements with individuals, corporations and other governments
  - Operating bank accounts and other transactions
  - Approving the annual operating budget and capital budget
  - Setting the rate for water charged to benefiting municipalities
- May delegate specific administrative functions to another party

**Legal Status:**

- Unclear: Transfer Order implies "body corporate" status but is not legally clear
- Appears that it may be considered a Local Board, by definition, under the Municipal Act (note: a Local Board is a body corporate) but is not explicitly clear

**Administration:**

- Corporation of the City of London designated as the "Administering Municipality" on behalf of the municipalities and the Joint Board
- Maintain accounts, budgets, etc. for the benefit of the water system which are separate from the Corporation
  - Keeping books, records and accounts
  - Liason with MOECC on matters of compliance
  - Liason with Operating Authority (currently the Ontario Clean Water Agency)
  - Negotiating agreements, subject to the approval of the Board
  - Preparing capital and operating budgets
  - Preparing rates
  - Billing and receiving payments
  - Making payments
  - Raising capital financing
  - Preparing and keeping minutes of Board meetings
  - Holding reserve funds
  - Operating bank accounts
  - Making day-to-day operation and maintenance decisions
  - Other such functions as determine and approved by the Board
- Regional Water Supply Division created to administer the system. Secondment of staff by arrangement, not explicit signed agreement.
  - Services purchased from the Corporation of the City of London and other third-party vendors
  - Acts as the administrative authority and oversees all aspects of the water system, reporting to and under the direction of the Board(s).
  - Delts/subsities currently held by each municipality in proportion to their annual supplied water volumes

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## OPTION 1: “DO NOTHING”

- LEGAL STATUS CONTINUES TO BE A SIGNIFICANT QUESTION
- BOARD OF MANAGEMENT CONTINUES TO GOVERN, BOARD MEMBERS APPOINTED BY MUNICIPALITIES
- UNDIVIDED BENEFICIAL OWNERSHIP (TENANT IN COMMON)
- CITY OF LONDON BARE TRUSTEE (ASSETS HELD IN TRUST)
- MUNICIPALITIES MUST HOLD PROPORTION OF WATER SYSTEM’S DEBT
- LEGAL LIABILITY EXTENDS TO MUNICIPALITIES AND COUNCILS, INCLUDING JOINT AND SEVERAL LIABILITY

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## “DO NOTHING” (EXISTING STRUCTURE)

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graph TD; LH[Lake Huron Water Supply System Joint Board of Management] --- RWS[Regional Water Supply Division]; EA[Elgin Area Water Supply System Joint Board of Management] --- RWS; RWS --- CL["A Division of the Corporation of the City of London (Seconded Administrative Services)"]
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- BOARD GOVERNING AUTHORITY
- MIGHT BE A “LOCAL BOARD” (MUN. ACT)
- ADMINISTRATIVE SERVICES VIA CITY OF LONDON
  - SECONDED STAFF (RWS DIVISION)
  - SUPPORT SERVICES (FEE FOR SERVICE)
- CONTRACTED OPERATION

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## OPTION 2: MUNICIPAL SERVICES BOARD

- LEGAL STATUS CONFIRMED “BODY CORPORATE” (S.194 - S.202, MA)
- BOARD MEMBERS APPOINTED BY MUNICIPALITIES, AND MAY BE A SKILLS-BASED BOARD
- MUNICIPALITIES MUST HOLD PROPORTION OF WATER SYSTEM’S DEBT
- LEGAL LIABILITY LIKELY EXTEND TO MUNICIPALITIES AND COUNCILS
- ABIDE BY PLANNING ACT, PROVINCIAL POLICY STATEMENTS, ETC.
- OPERATE AND PROVIDE SERVICE WITHIN MANDATE ESTABLISHED BY MUNICIPALITIES, INCLUDING REPORTING REQUIREMENTS
- MANDATORY CODE OF CONDUCT, RESTRICTIONS ON CLOSED MEETINGS, ETC. PER MUNICIPAL ACT

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## JOINT MUNICIPAL SERVICES BOARD

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graph TD; LH[Lake Huron Water Supply Joint Municipal Services Board] --- RWSA[Regional Water Supply Administration]; EA[Elgin Area Water Supply Joint Municipal Services Board] --- RWSA;
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- BOARD GOVERNING AUTHORITY
- REGULAR REPORTING TO MUNICIPALITIES
- CONFIRMED A “LOCAL BOARD” AND “BODY-CORPORATE” (MUN. ACT)
- ADMINISTRATIVE SERVICES BY EMPLOYEES AND/OR CONTRACTED SERVICES (FEE FOR SERVICE)
  - ONE BOARD HAS EMPLOYEES, CONTRACTED BY THE OTHER BOARD

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## OPTION 3: MUNICIPAL SERVICES CORPORATION

- LEGAL STATUS CONFIRMED “CORPORATE”. MUST BE PUBLICLY OWNED (S.203, MA)
- BOARD MEMBERS APPOINTED BY MUNICIPALITIES, AND MAY BE A SKILLS-BASED BOARD
- CORPORATION MAY HOLD DEBT
- INSULATION OF MUNICIPALITIES AND COUNCILS TO LEGAL LIABILITY
- ABIDE BY PLANNING ACT, PROVINCIAL POLICY STATEMENTS, ETC. PER MUNICIPAL ACT
- OPERATE AND PROVIDE SERVICE WITHIN MANDATE ESTABLISHED BY MUNICIPALITIES (SHAREHOLDERS DECLARATION), INCLUDING REPORTING REQUIREMENTS
- HOLD REAL PROPERTY AND OWN ASSETS
- NOT REQUIRED TO HOLD MEETINGS IN PUBLIC. MUST ABIDE BY MFIPPA

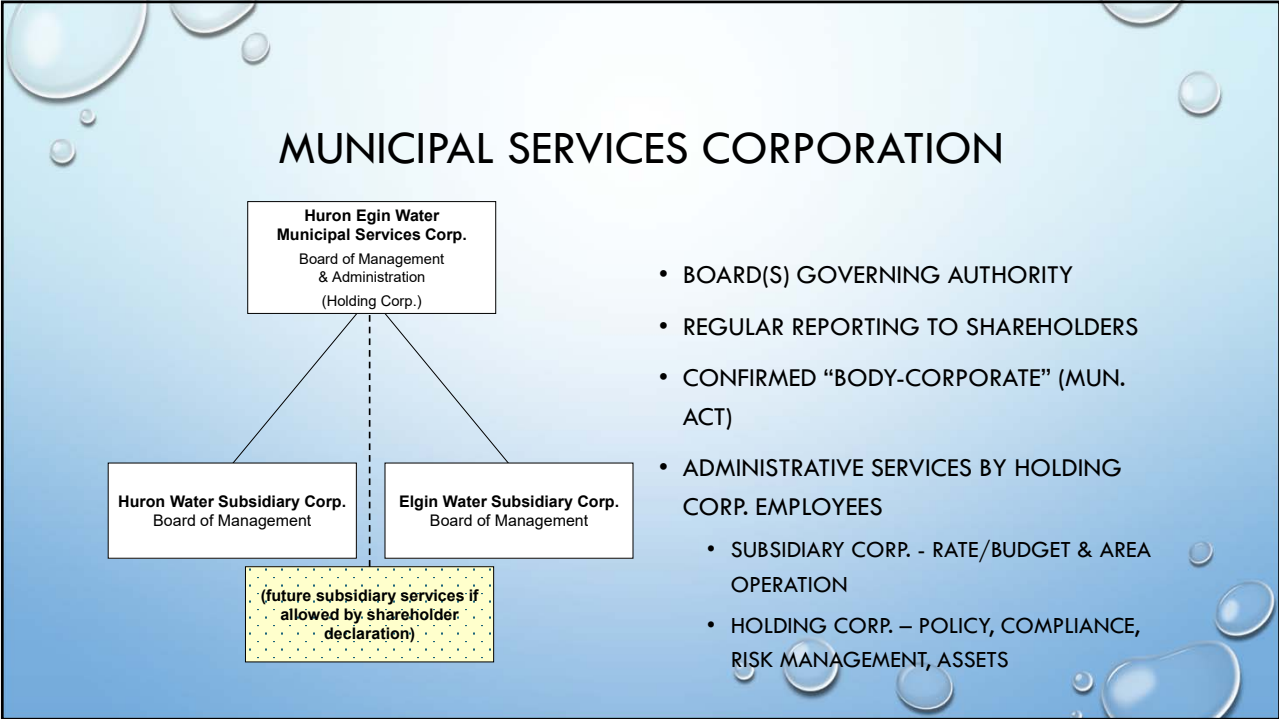
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## MUNICIPAL SERVICES CORPORATION

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graph TD; LH[Lake Huron Water Supply Municipal Services Corp.] --- RWSA[Regional Water Supply Administration]; EA[Elgin Area Water Supply Municipal Services Corp.] --- RWSA;
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- BOARD GOVERNING AUTHORITY
- REGULAR REPORTING TO SHAREHOLDERS
- CONFIRMED “BODY-CORPORATE” (MUN. ACT)
- ADMINISTRATIVE SERVICES BY EMPLOYEES AND/OR CONTRACTED SERVICES (FEE FOR SERVICE)
  - ONE BOARD HAS EMPLOYEES, CONTRACTED BY SECOND BOARD

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## BOARD OF DIRECTORS

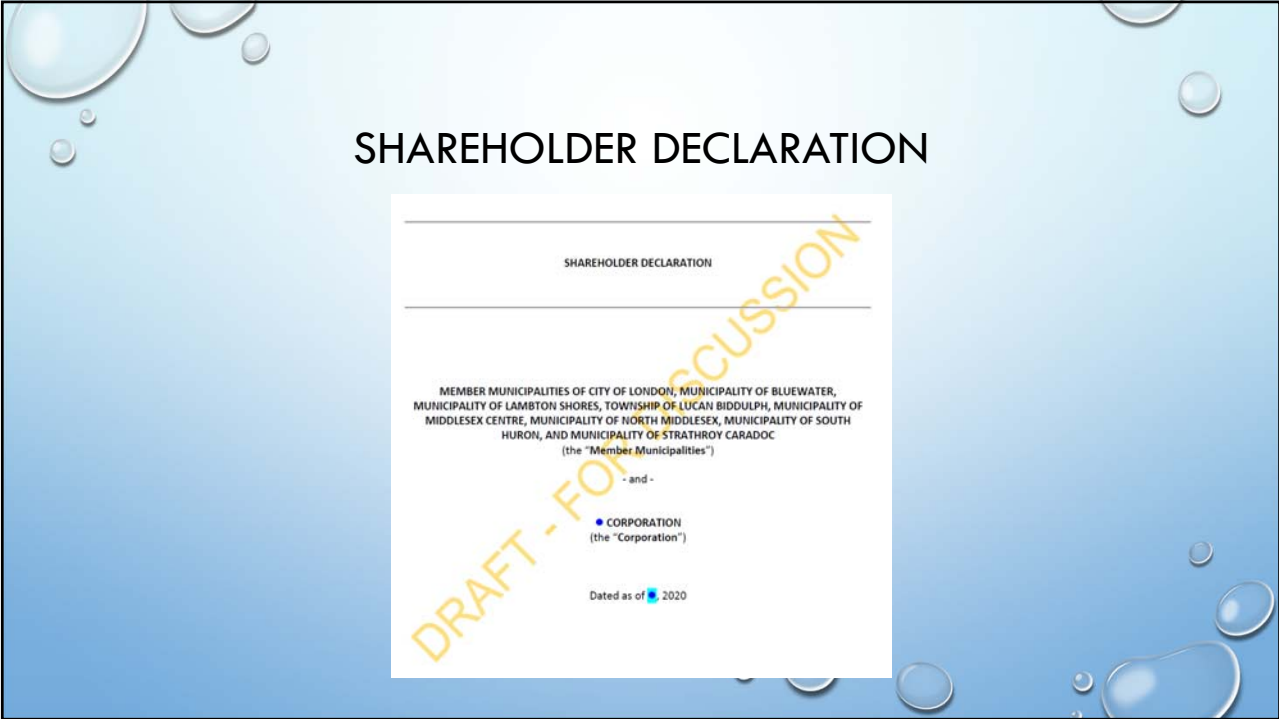
<p><u>MUNICIPAL APPOINTEES:</u></p> <ul style="list-style-type: none"> <li>• EACH MUNICIPAL COUNCIL APPOINTS PERSON(S) – NO SPECIFIED TERM</li> <li>• MAY BE ANYONE, INCLUDING ELECTED OFFICIALS</li> <li>• BOARD DIRECTOR ACTS IN THE INTEREST OF THE SYSTEM, NOT THE APPOINTING MUNICIPALITY</li> </ul>	<p><u>SKILLS-BASED BOARD:</u></p> <ul style="list-style-type: none"> <li>• MUNICIPALITIES ESTABLISH PROCESS TO APPOINT PERSON(S) – SPECIFIED TERM</li> <li>• MAY BE COMBINATION OF ELECTED OFFICIALS AND INDIVIDUALS (SPECIFIED)</li> <li>• BOARD DIRECTOR ACTS IN THE INTEREST OF THE SYSTEM, NOT THE MUNICIPALITIES</li> </ul>
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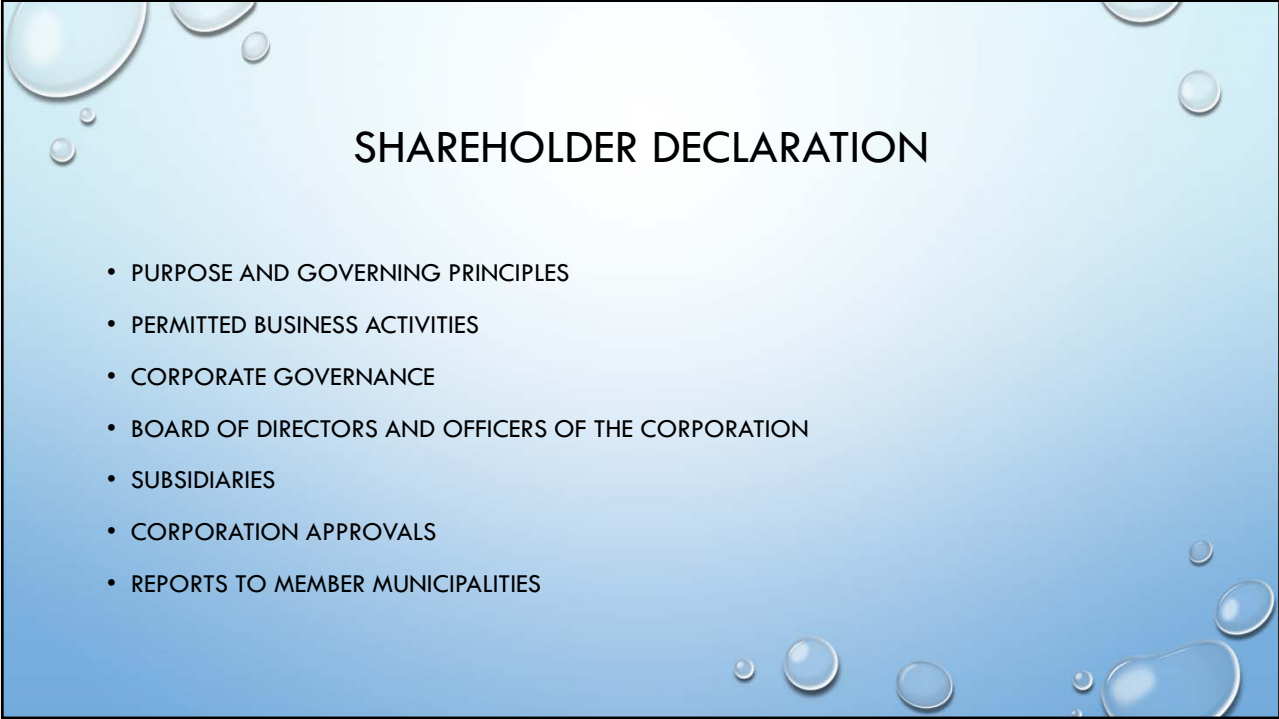
## SHAREHOLDER DECLARATION

SAMPLE OVERVIEW

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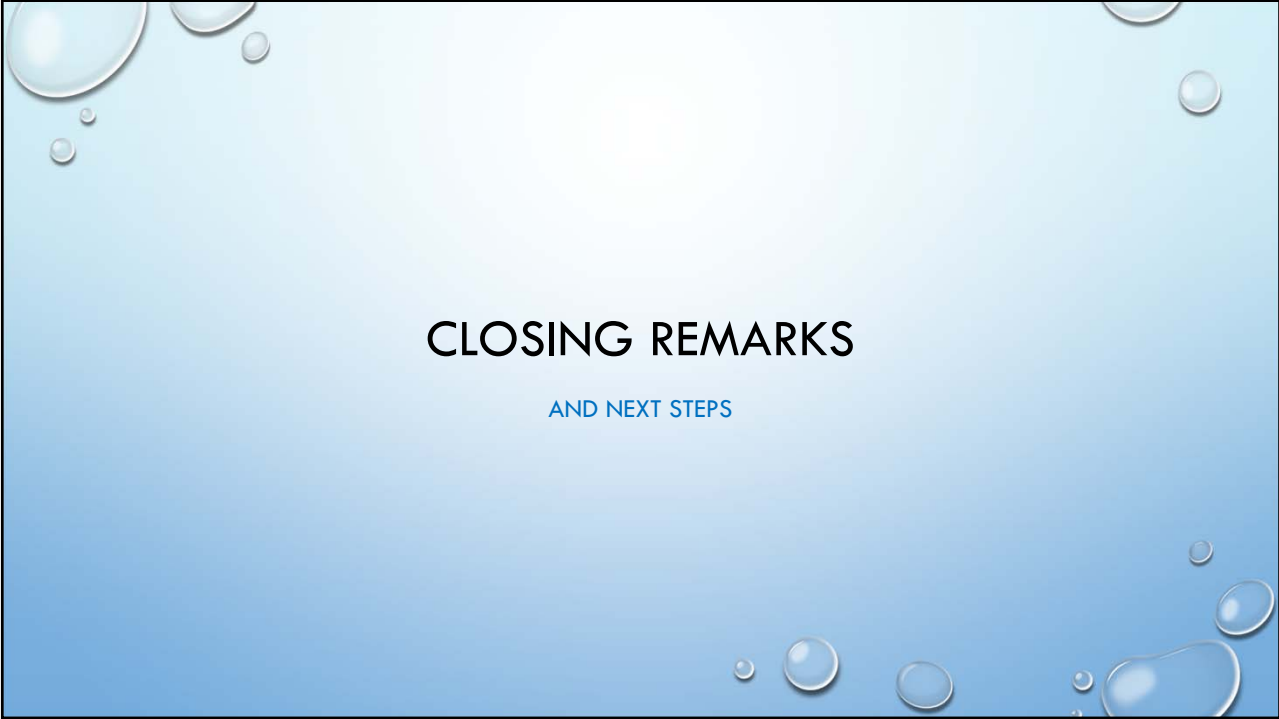
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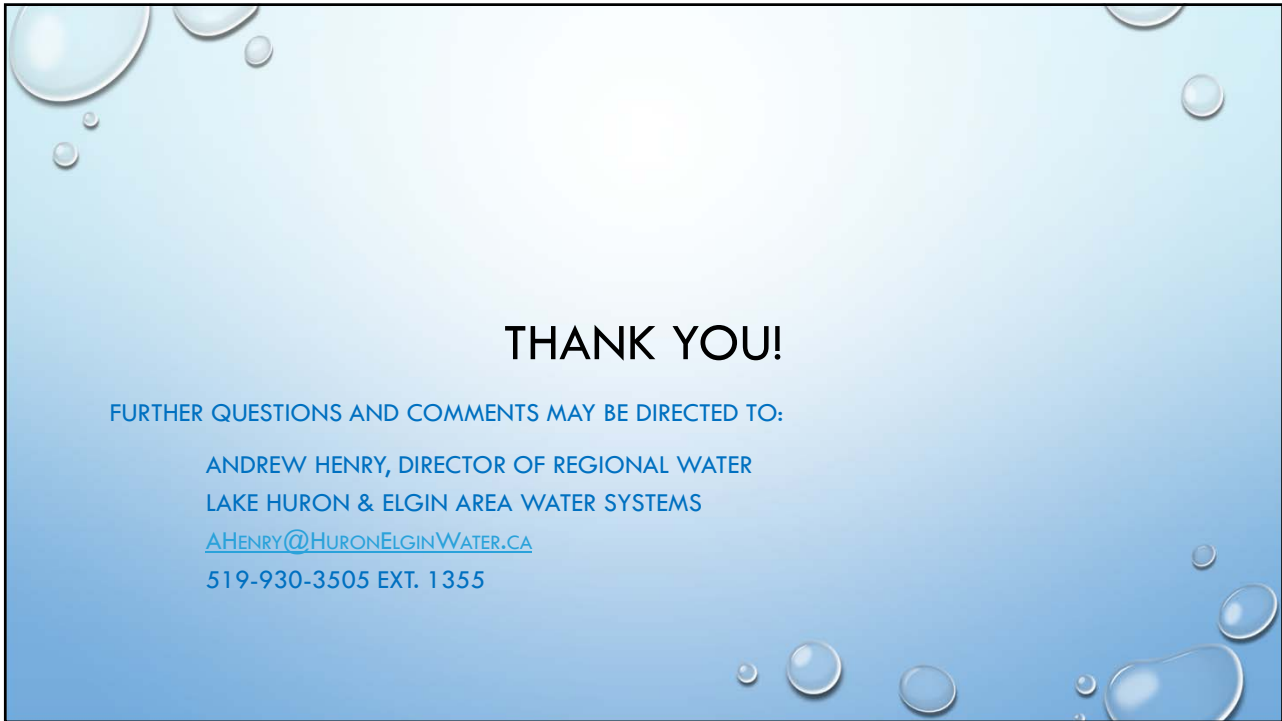
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## NEXT STEPS

- MUNICIPAL SERVICES CORPORATION(S) OR MUNICIPAL SERVICES BOARDS?
- PRESENT RECOMMENDATION TO COUNCILS
- FOR MSC:
  - DEVELOP BUSINESS CASE(S)
  - PUBLIC PARTICIPATION MEETINGS
  - SHAREHOLDER DECLARATION(S)
- FOR MSB:
  - MUNICIPAL SERVICES BOARD AGREEMENTS
- TRANSFER ASSETS AND FINANCES

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## THANK YOU!

FURTHER QUESTIONS AND COMMENTS MAY BE DIRECTED TO:

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