



August 24, 2020

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Environmental Assessment Branch
Environmental Assessment and Permissions Division
Ministry of Environment, Conservation, and Parks
135 St. Clair Ave. W.
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Ms. Robinson:

RE: York Region Response – Municipal Class EA Proposed Major Amendment

York Region thanks the Province for continuing modernization efforts on the *Environmental Assessment Act* under Bill 197 and for consulting with stakeholders on the major update to the Municipal Class Environmental Assessment (EA) process. This letter and attachment outlines key comments and recommendations from York Region staff on the proposed process to help ensure a balance of environmental protection and timely delivery of critical infrastructure. The attachment contains specific recommendations on the proposed schedules and Municipal Engineers Association guidance.

Due to the consultation timeframe, these recommendations will be communicated to Regional Council after submission. Should Council have any additional comments, staff will forward them to the Province for consideration.

Region staff hopeful Environmental Assessment modernization approach will speed-up approvals and contribute to economic recovery

York Region staff appreciate the Province taking action under Bill 197 to address challenges with the EA process. While staff are optimistic about the helpful changes, details of implementation to be set out in the regulation will determine whether this modernization initiative will result in meaningful improvements.

York Region staff anticipate challenging times ahead given our current economic slowdown, resulting in similar economic challenges experienced in the Province in years past. From 2000-2008 York Region experienced high levels of growth and the Region invested heavily in infrastructure to accommodate this high growth rate. When growth slowed due to the 2008 recession, development charge forecasts were not realized and

the Region took on significant debt. Rising costs to deliver capital projects and delays in receiving approvals under the EA process were key factors that drove debt to unsustainable levels. The current COVID pandemic has already resulted in an unprecedented economic shock surpassing the 2008 downturn. It will be critical that modernization of EA and Class EA processes result in substantive change that eases economic burden on municipalities so that forecasted targets under the Growth Plan can be achieved.

Accelerated timelines are beneficial provided they can be consistently achieved

Region staff strongly support accelerated timelines proposed for the EA process. The potential for large projects to be delivered in three years, instead of the current Ministry estimation of six years, represents a significant shift. York Region is now 11 years into the Upper York Sewage Solutions project, nearly double the time identified for a typical project based on Ministry estimates. With current timelines not being achieved, it is unclear at this stage how the Ministry will achieve the anticipated three-year timeline. It is recommended that the Ministry provide provisions under the regulation to help address appeal delays.

Third-party oversight required to ensure accountability for achieving proposed timelines

Achieving timelines is critical because delays in approval timelines impact York Region's ability to deliver planned growth capacity to support development. Protracted delays in receiving approval for the Upper York Sewage Solutions project is impacting York Region's ability to achieve growth targets under the Provincial Growth Plan and constraining growth capacity for 80,000 residents and up to another 70,000 for employment.

As an integral part of this modernization effort, it is critical that the Ministry be publicly accountable for achieving defined timelines. Shorter timelines will not address challenges with delayed approvals if the new timelines can be extended or not consistently achieved in all cases. Greater accountability is recommended for achieving timelines through oversight by a third-party, such as the Provincial Land and Development Facilitator (within Ministry of Municipal Affairs and Housing) or the Auditor General. This would help ensure that development can proceed in a timely manner to help restart Ontario's economy.

Limiting Part II Order Requests has the potential to provide significant relief

York Region staff applaud the Ministry for taking steps to address the Part II Order Request process. Where unsubstantiated concerns drive Part II Order Requests significant delays can result, such as the case of the Duffin Creek Outfall project. There

were 75 Order Requests submitted on the Schedule C Class EA for the project alleging the Duffin Creek Plant was responsible for *Cladophora* algae along the waterfront abutting the Town of Ajax. This led to a Minister's Order to develop a Phosphorus Reduction Action Plan that was beyond the original purpose of the works proposed within the original Class EA. York and Durham Regions spent more than \$8 million responding to issues surrounding the EA related to issues with minimal environmental benefits, representing a very low cost/benefit for this work. To provide perspective, needed capital expenditures for the outfall upgrade project were projected to be less than \$5 million. The Minister's decision on the Part II Order requests was finally received six years after this outfall Class EA was completed.

It is also important to note that as a government agency, municipalities have a greater focus on environmental impacts as compared to other proponents. Municipalities have a responsibility to their citizens to protect their environment and ensure that infrastructure is not detrimental. Municipalities, including York Region, have demonstrated this commitment to environmental protection time and time again, with a proven record of addressing true environmental impacts while balancing this need with their financial responsibilities.

Ministerial Orders to elevate a project should be audited to ensure accountability

While limiting the Part II Order Request process helps reduce the potential for frivolous Part II Order Requests in the future, it does not prevent a Duffin Creek-type experience from occurring again as the Minister retains power to order a Class EA project to proceed through the full EA process. Although "bump-ups" may need to occur in some cases, these circumstances should be quite rare. Furthermore, the associated Ministerial order should articulate significant environmental concern that could occur within the scope of the proposed undertaking, not related to existing background conditions. It is strongly recommended that objective and auditable criteria be developed for when the Minister would be able to consider a bump up that is scoped to only significant environmental impacts. It is also recommended that all Minister's Part II Orders be reviewed by the third-party auditor identified previously in this response to ensure the process is used as intended.

Consider how to separate debates on growth from concerns about environmental protections for infrastructure

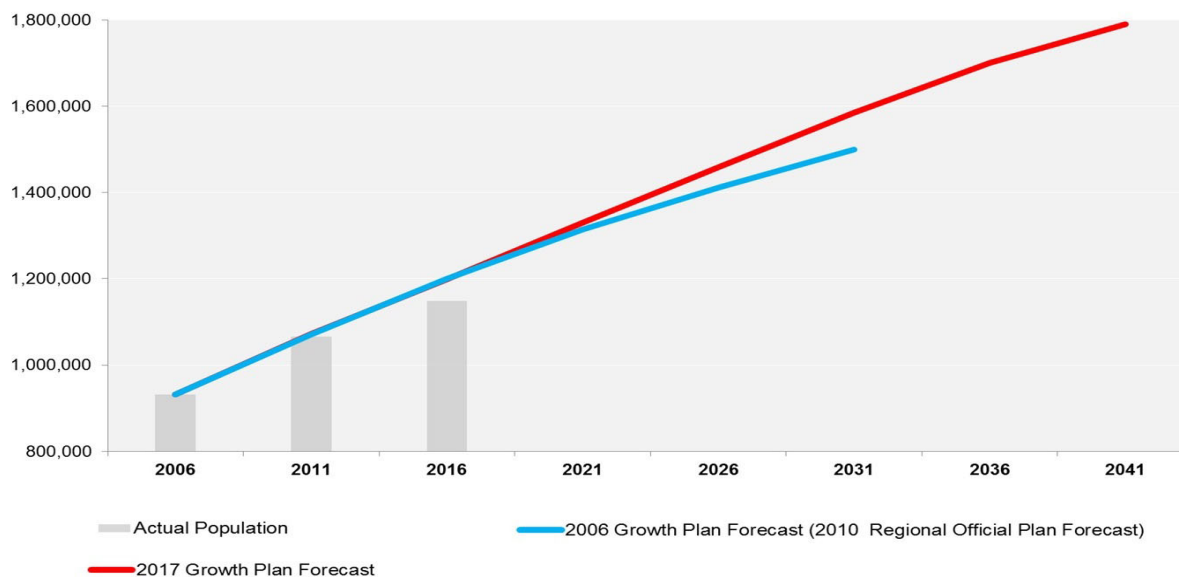
There also needs to be a greater consideration of growth concerns and how they relate to environmental concerns. Growth is dealt with under the Growth Plan, Official Plan, and Master Plan processes. However, in many cases objections to the infrastructure needed to service this growth is re-debated as part of EA process. This locks municipalities in protracted debates under separate processes for the same issue, generally leading to adaptive engineering and delays in delivering infrastructure in a cost effective manner. Checks and balances are critical to avoid continued politicization of EA processes and use of the EA process to re-debate approved growth.

Develop streamlined EA regulation for growth-related infrastructure

York Region staff strongly support proposed changes to the Class EA process and Schedules as this will provide some interim relief to challenges delivering infrastructure. Timely delivery of infrastructure is key to provide the vital servicing capacity required to support growth. To support better delivery of infrastructure in the future, it is recommended that the Province develop a regulation under the revised *Environmental Assessment Act* to streamline growth-related municipal infrastructure. York Region and many other GTA municipalities have aggressive targets imposed under the Provincial Growth Plan as demonstrated in Figure 1. To achieve 2041 growth forecasts, York Region alone needs to invest \$6.5B in infrastructure over the next 20 years to service this forecasted growth. This will need to be higher yet with the revised 2020 Growth Plan that has allocated the highest volume of growth in the entire Greater Golden Horseshoe to York Region. The Region cannot achieve these growth targets unless infrastructure like the Upper York Sewage Solutions project is approved and built in a timely manner.

Simply put, municipalities cannot afford continued cost increases and delays that come with delivering infrastructure required to service the required level of growth. Accelerating delivery of municipal infrastructure also provides exponential economic benefits by providing jobs in development and service industries, along with increased housing stock that can help make housing more affordable.

Figure 1: York Region population forecast to 2041



Increasing costs for infrastructure due to EA process and conditions is unsustainable

York Region has experienced significant cost increases for both capital and ongoing operation of municipal infrastructure. Although there are a number of reasons for these cost increases, the EA process has been a significant factor. The EA process often

leads to significant adaptive engineering, increasing the cost and complexity of a project. For example, project costs for the Upper York Sewage Solutions project has increased to \$640M, with the four-stage treatment and a phosphorus offsetting program. It will be one of the most advanced sewage treatment facilities in North America, yet an approval has not been received. Another example was the Duffin Creek outfall Class EA project where Durham and York Regions had to complete significant additional work under the EA process including a Phosphorus Reduction Action Plan that significantly increased the cost of the project. EA processes need to be managed to avoid driving up the cost of projects and creating implications for development charges and tax rates.

In addition to increasing upfront capital costs, conditions are often included in approvals such as ongoing reporting that creates a perpetual cost burden for municipalities. If facilities demonstrate in the first few years of operation that they are operating effectively and not encountering issues, then ongoing reporting provides limited benefit. In many instances, there are other mechanisms to ensure infrastructure is built and operated within the rules e.g. Ministry inspections, Environmental Compliance Approval technical review process and enforcement of emissions and discharges, with Provincial ability to issue orders to comply if there are issues. For example, York Region's Southeast Collector Trunk Sewer project EA approval included a large number of conditions. These conditions include annual performance reports representing 45 days of staff time and \$50,000 in consulting fees annually. This reporting is providing little to no benefit ten years after the project was completed. Similar conditions were included in the Durham York Energy Centre EA approval, requiring annual diversion and other reporting that duplicated ECA approval conditions. It is recommended that perpetual, conditions or conditions that are already governed by other provincial regulations or enforcement mechanisms for capital projects be avoided under the new modernized process.

Limit conditions of approval to the proponent only, with consideration given to how services are delivered in two-tier municipalities

Given York Region's two tier municipal structure, conditions imposed on the Region through the EA process can have complex implications and require delivery by the local municipality under the *Municipal Act, 2001*. For example, the Nobleton Water Resource Recovery Facility EA required the local municipality to enforce a wastewater connection bylaw to eliminate septic systems. This was extremely challenging politically since the approval was not owned by the local municipality, but rather the Region, who do not have powers to force a local municipality to act. It is critical that all conditions of approval be limited to the purview of the proponent and not include requirements for other actors. This is especially important in the case of two-tier service delivery. .

New requirements for landfills cannot be extended to other projects

Bill 197 introduced a requirement to obtain the support of host municipalities for landfills, which aligned with many municipalities who had requested this. However, this has the potential to create a dangerous precedent for other politically-sensitive infrastructure. It

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is strongly recommended that these requirements not be extended to other projects as this has the potential to undo many of the benefits provided through EA modernization.

Region staff look forward to continued engagement on EA modernization

Region staff thanks the Province for consulting with municipalities on the proposed changes to the Class EA process. Timely delivery of infrastructure is key to provide the servicing capacity required to support provincially directed growth. If you have questions regarding this response or would like to further discuss these recommendations, please contact Brent Marissen, Policy and Advocacy Senior Program Analyst, Environmental Services at Brent.Marissen@york.ca.

Sincerely,



Erin Mahoney, M. Eng.
Commissioner
Environmental Services
The Regional Municipality of York

Attachments (1): [YORK-#11480540-Attachment: York Region Specific Comments – Class EA Major Amendment - August 2020](#)

CC:

#11480539



Attachment: York Region Specific Comments – Class EA Major Amendment

This is the second part of a two-part submission. Specific comments have been split into four sections to correspond with the tables provided for the consultation:

1. General comments
2. Amendment Table 1: Proposed Changes to Road Schedules
3. Amendment Table 2: Proposed Changes to Water/Wastewater Schedules
4. Amendment Table 3: Proposed Changes to Municipal Class EA Manual (Parts A and D)
5. Amendment Table 4: Proposed Changes to Transit Schedules

Where comments have not been provided on proposed changes, Region staff support the proposed change.

1. General comments

Currently, proposed amendments to the Municipal Class EA program do not reference Bill 197. Since Bill 197 has received Royal Assent, it is recommended that further amendments be made to the Tables provided to reflect changes to the *Environmental Assessment Act*.

Since projects categorized as Schedule A and A+ are exempt under the Act, the description of expectations set out in the Class EA document should be reviewed and revised to ensure they are clear. In some areas, the term consultation is used to describe the Schedule A+ process. For example, Section A.3.1 notes “Consultation is a two-way communications process between the proponent and affected or interested stakeholders that provides opportunities for information exchange and for those consulted to influence decision-making”. The use of the term consultation in reference to the Schedule A+ process may create unclear expectations for proponents and from members of the public. It is recommended that sections referring to Schedule A+ be reviewed and wording such as “providing notice of implementation” or “advising of implementation” used instead. It is anticipated that the number of projects falling under Schedule A+ will increase significantly as a result of these changes so it is important the descriptions within the schedule are clear.

2. Amendment Table 1: Proposed Changes to Road Schedules

Number and Section	Staff Recommendation and Rationale
R2 Stockpiling of de-icing materials	<ul style="list-style-type: none"> It is recommended that 11 b) be amended to state “Initial stockpiling of de-icing material, where the de-icing material will be stored in an outdoor facility” to maintain consistency and ensure there isn’t an ongoing EA burden for municipalities.
R10 Construction of localized operational improvements	<ul style="list-style-type: none"> It is recommended that the proposed amendment be revised to also include intersections in the definition of a localized operational improvement. Proposed wording is included below, revisions are in red. 17 a) Construction of localized operational improvements at specific locations including intersections and roundabouts
R17 Construction or removal of sidewalks or multi-purpose paths or cycling facilities within existing or protected rights-of-way	<ul style="list-style-type: none"> It is recommended that consistent descriptions be used between the two phrases “new construction” and “construction” It is also recommended that it be clearly stated whether reconstruction activities are included in R17 or R12.
R18 Construction or removal of sidewalks or multi-purpose paths or cycling facilities outside of an existing right-of-way and R23 Construction of underpasses or overpasses for pedestrian, cycling, recreational or agricultural use	<ul style="list-style-type: none"> It is recommended the Ministry consider removing cost thresholds between different projects under 23 b) and 30. <ul style="list-style-type: none"> R18 – Item 23 b) –“New construction or removal of sidewalks, multi-purpose paths or cycling facilities including water crossings outside existing right-of-way and/or utility/rail corridors, which uses project cost as a trigger between A and B. R23 – Item 30 “Construction of new or reconstruction or alteration of existing underpasses or overpasses or bridges for pedestrian, cycling, recreational or agricultural use” that is schedule A+. In many areas of the Table, cost is noted not to be a meaningful trigger for environmental impacts, however it results in significant variation between projects for both these items.
R19 Utility removal, modification, or relocation	<ul style="list-style-type: none"> It is recommended that “for safety or aesthetic purposes” be removed from this item since the purpose of a utility removal, modification or relocation is not relevant to assessment of potential environmental impacts.

<p>R24 Road reconstruction or widening where paved areas will be for different purposes</p>	<ul style="list-style-type: none"> • It is recommended that proposed wording be revised to recognize that property impacts in many cases have already been considered through approved Official Plans. The need to acquire lands and mitigation for this impact is further addressed through the <i>Expropriations Act</i> and should not be a determining factor. • 31. Reconstruction or widening where the reconstructed road or other linear paved facilities (e.g. HOV lanes) will include additional lanes for vehicle travel but will remain at the same location. SHIFT ALL TO SCHEDULE B. Proposed revision is included below in red. Note – substantial alterations to road allowances, except as provided for in an approved municipal Official Plan or Secondary Plan, are Schedule C; see definition of same location under operation.
<p>R27 Construction of new roads or substantial alterations not approved through Planning Act</p>	<ul style="list-style-type: none"> • It is recommended that the proposed amendment be revised to include consideration of a municipal official plan or secondary plan. Proposed revision is included below in red: • 34 Construction of new roads or substantial alteration of existing roads or other linear paved facilities (e.g. HOV lanes) that are not approved through the Planning Act or in an approved municipal Official Plan or Secondary Plan (see items 14a and 14b)

3. Amendment Table 2: Proposed Changes to Water/Wastewater Schedules

Recommendation	Rationale
<p>W8, W13, and W15 Extend or enlarge water/wastewater systems including works</p>	<ul style="list-style-type: none"> • It is recommended that “establish” remain in the definition for all three sections. There can be circumstances where a distribution system is ‘established’ and connected to an existing system that is owned by the other tier municipality. In these circumstances the system would not be seen as an “extension” or “enlargement”. As a result, removing the existing term “establish” could be problematic.
<p>W17 New holding tank</p>	<ul style="list-style-type: none"> • It is recommended the definition be reworded to clarify that this requirement only applies to sewage and does not include greywater holding tanks.
<p>W20</p>	<ul style="list-style-type: none"> • It is recommended that the proposed amendment state that this relates to

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LID features	stormwater activities.
W29 Replacement of water intake pipe for surface water source	<ul style="list-style-type: none"> It is recommended that the amendment include replacement of an existing outfall for a water treatment facility.
W30 Establish facilities for disposal of process wastewater	<ul style="list-style-type: none"> Staff have noted that all of the Region’s groundwater facilities are in source protection vulnerable areas; there are likely similar cases in other municipalities, as well. As a result, if there is an existing sanitary sewer in front of the facility, the provision of a simple service line would require the project to be a Schedule B instead of a Schedule A+. Requiring service lines to be Schedule B seems beyond the intent of the source water protection provisions, it is recommended that all projects be considered A+. It is also recommended that consideration be given to the nature of the hauled material before determining whether it should be a Schedule B or A+. For example, dewatered backwash from oxidation and filtration treatment with adsorptive media for iron and manganese removal also likely wouldn’t warrant a Schedule B EA from a risk perspective.
W55 Water crossings	<ul style="list-style-type: none"> It is recommended that replacement of water or wastewater infrastructure crossing a water course be considered Schedule A+ whether open cut or trenchless.
W58 Construct berms along a watercourse for purposes of flood control in areas subject to damage by flooding	<ul style="list-style-type: none"> It is recommended that “construct” be amended to “installed” to ensure consistency throughout the table. If they are intended to be different actions, it is recommended that these actions be clearly defined.
W69 Installation or replacement of standby power equipment	<ul style="list-style-type: none"> It is recommended that these definitions be expanded to include alteration/replacement to account for modifications made to existing standby generators for maintenance purposes.

4. Amendment Table 3: Proposed Changes to Municipal Class EA Manual (Parts A and D)

Recommendation	Rationale
#2 – Executive summary	<ul style="list-style-type: none"> • Page 2 states that “While Schedule A and A+ projects are exempt from the EA Act, this does not relieve the municipality from acting as a responsible level of government and consulting with the local community” • It is recommended this be revised to refer only to Schedule A+ projects, as Schedule A projects do not have any mandatory points of contact. Detailed comments on this are provided in Section 1 of this response. • Currently Schedule B guidance states that during the screening process a proponent ensure “affected public and relevant review agencies are aware of the project and have their concerns addressed”. It will not be possible to address all concerns during the Schedule B process, it is recommended that the word “addressed” be replaced with “identified and considered” to better reflect the reality of completing projects and avoid misunderstandings.
#11 – A.1.4 Phase-in	<ul style="list-style-type: none"> • It is recommended that guidance be provided regarding what information from the <i>Freedom of Information and Privacy Act</i> is required
#12 – A1.5.1 Monitoring of Municipal Class EA	<ul style="list-style-type: none"> • It is recommended that this section clarify whether Schedule A and A+ notices are to be sent to the Ministry as these are not typically “Notices of Commencement” but rather “Notices of Construction”.
#16 – A.1.7 MECP codes of practice and climate change	<ul style="list-style-type: none"> • While Region staff support consideration of climate change in the Class EA process, since this step is completed prior to the design phase there may insufficient information at this stage to discern between alternative solutions. It is recommended that alternative solutions be identified at this stage but that an assessment of climate change mitigation/adaptation be deferred until the design phase.
#17 – A.2.1.1 Level of complexity	<ul style="list-style-type: none"> • It is recommended that the Table provide examples of anticipated documentation where some aspects of Schedule C are considered for a Schedule B project to prevent confusion around what might be considered sufficient.
#32 – A.3.5.1 Development of a Public Consultation	<ul style="list-style-type: none"> • It is recommended the listed recommendations on documentation for consultation with Indigenous communities also include direction from or

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Plan and Consultation Records	discussion with the Province on consultation to help prevent delays on projects.
#34 – A.3.5.3 Public Notices	<ul style="list-style-type: none"> Under the contents section of mandatory minimum requirements, it states that the notice must include the “Schedule of the Class EA being followed (A+, B, C)”. It is recommended that Schedule A+ be removed as it is no longer being subject to the Act and having it referenced here with B and C may result in confusion. Suggested content for an A+ notice can be included in the section describing A+ projects.
#35 – A.3.8 Review of the Environmental Study Report/Project File Report	<ul style="list-style-type: none"> Given lessons learned during the pandemic with most major community spaces closed, it is recommended that municipalities be permitted to post electronic copies only and allow requests to be made for a hard copy. Information on how to obtain a hard copy could be included in the public notice for a project.
#38 – A.4.3 Revisions and Addenda to Environmental Study Report	<ul style="list-style-type: none"> Proposed amendments to provide an example of how a phased project may be considered under the lapse of time provisions will be helpful. It is recommended that the Ministry clearly articulate a definition for ‘commence construction’ to provide surety for proponents.

5. Amendment Table 4: Proposed Changes to Transit Schedules

Recommendation	Rationale
T9 Schedules of Municipal Transit Projects under the Class Environmental Assessment	<ul style="list-style-type: none">• It is recommended that proposed wording be revised to recognize that property impacts in many cases have already been considered through approved Official Plans. The need to acquire lands and mitigation for this impact is further addressed through the <i>Expropriations Act</i> and should not be a determining factor.• Proposed revisions have been included in red: Key considerations when screening potential effects are outlined in Appendix 3 and include requiring property in excess of what is identified in an approved municipal Official Plan or Secondary Plan, affecting watercourses, affecting fisheries, affecting significant natural heritage features (e.g. woodlots and wetlands), or having impacts which are considered significant to your community.

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