

The Regional Municipality of York

Regional Council
Transportation Services
March 18, 2021

Report of the Commissioner of Transportation Services

Update on the Provincial and Federal Environmental Assessment Process for the Bradford Bypass Project

1. Recommendation

1. Council endorse the recommendation of the referred February 25, 2021 report in response to the Impact Assessment Agency of Canada request for input to assess the designation request for the Bradford Bypass Project or, provide alternate direction to meet the response timeline of March 19, 2021.
2. The Regional Clerk circulate this report to the Ontario Ministry of Transportation, Simcoe County, and the local municipalities.

2. Summary

On February 25, 2021, Council was presented with a proposed response to the Impact Assessment Agency of Canada (IAAC) as the Region's input to inform the IAAC's analysis of the designation request for the Bradford Bypass Project under the federal *Impact Assessment Act*. The report was referred to the March 18, 2021 Council meeting (and has been included on this agenda), and staff were requested to provide further information outlining the positions of key stakeholders and the federal Impact Assessment process.

The *Impact Assessment Act* is intended to provide a streamlined federal process, improve coordination with provincial processes as applicable and minimize duplication of effort reviewing a proposed project. The review is based on information submitted on behalf of the requester (in this case, Ecojustice) and received from others who have been asked to comment (such as the Region), including the project proponent (in this case, MTO). The IAAC is the single federal agency that administers all Impact Assessments for any federally designated project.

The proposed response to the IAAC is included as Attachment 1 (referred from the February 25, 2021 report). A map of the Bradford Bypass Project is included as Attachment 2. The federal Impact Assessment process is described in this report and timeline outlined in Attachment 3.

Key Points:

- The federal Minister of the Environment and Climate Change Canada is expected to issue a decision on the designation request for the Bradford Highway Bypass Project under the federal Impact Assessment Act by May 4, 2021
- Municipalities crossed by the Bradford Bypass Project have expressed support for the project
- The Bradford Bypass Project provides a continuous east-west link between Highway 400 and Highway 404 in the areas of north King, East Gwillimbury and south Georgina, which otherwise lack any continuous east-west roads, between Davis Drive/Highway 9 and Lake Simcoe
- Although the provincial Individual Environmental Assessment (EA) was approved in 2002, the Ministry of Transportation Ontario (MTO) is still required to undertake a Class EA
- Timelines for the federal Impact Assessment process vary, depending on numerous factors, but would likely require several years to complete
- Following direction from Council, staff will forward the Region's input to the IAAC by the March 19, 2021 deadline

3. Background

In February 2021, a report and proposed response to the IAAC was referred to the March 18, 2021 Council meeting

On February 25, 2021, Council was presented with staff's proposed response to the Impact Assessment Agency of Canada (IAAC) as the Region's input to inform the IAAC's analysis of the designation request for the Bradford Bypass Project under the federal *Impact Assessment Act*. The report was referred to the March 18, 2021 Council meeting and staff were requested to provide further information outlining the positions of key stakeholders, the federal Impact Assessment process and any implications associated with the age of the original Environmental Assessment for the project.

Staff advised IAAC that York Region would not be unable to provide input by the originally-requested March 3, 2021 deadline. In response, the IAAC identified interest in receiving input from the Region, and noted the deadline for input could be extended to no later than March 19, 2021, as the federal Minister of the Environment and Climate Change is expected to issue a decision on the designation request by May 4, 2021.

Municipalities crossed by the planned highway or near the proposed alignment have expressed support for the Bradford Bypass Project

On [August 16, 2016](#), a joint communication in support of the Bradford Bypass Project was sent to the Minister of Municipal Affairs Ontario from:

- York Region
- County of Simcoe
- Town of East Gwillimbury
- Town of Georgina
- Township of King
- Town of Newmarket
- Town of Bradford West Gwillimbury
- Town of Innisfil

4. Analysis

Staff has prepared the following description of the provincial Environmental Assessment process and the federal Impact Assessment process for Council consideration.

Although the Environmental Assessment for the Bradford Bypass Project was approved in 2002, a Class Environmental Assessment process is still required

The Ministry of Transportation Ontario completed an Individual EA for the Bradford Bypass Project concurrent with the EA for the Highway 404 extension in 1993 and was granted approval for both by the Ontario Ministry of the Environment, Conservation and Parks (MECP) on August 28, 2002.

In 2004, the Province designated the approved alignment for the Bradford Bypass Project as a Controlled Access Highway Corridor under the *Public Transportation and Highway Improvements Act*, thereby protecting the route from development until the highway is constructed.

In approving the 2002 EA, the Ministry of Environment Ontario (now MECP) included 15 conditions and required:

The Proponent during the design and construction of the undertaking shall comply with the Ministry of Transportation's Class EA for Group A Projects

The Class EA will follow the approved provincial planning process under the Ministry of Transportation's Class EA for Provincial Transportation Facilities. The Preliminary Design and Class EA Study for the Bradford Bypass Project will consider refinements and enhancements to the approved 2002 route, along with development and assessment of alternative design concepts based on technical and environmental factors, in consultation with Indigenous communities, public stakeholders, municipalities and government agencies.

The MTO issued a Notice of Commencement for the Preliminary Design and Class EA Study in September 2020. The current Provincial EA process for the Bradford Bypass project is expected to be complete by early 2023.

Even if the Bradford Bypass Project is not designated under the federal *Impact Assessment Act*, the MTO would still have to comply with provincial EA requirements.

The Province has also publicized the potential of a regulation to streamline the provincial Environmental Assessment process for this project

Last year, as part of a streamlined implementation process, MECP proposed a regulation to streamline the EA process for the Bradford Bypass Project. The stated purpose of the proposed exemption would be to eliminate duplication of work already completed by the MTO through the 2002 EA, which included the 15 conditions of approval. The objective of the proposed regulation, as noted on the Environmental Registry posting, is to support the maintenance and implementation of critical roadway infrastructure in Ontario and ensure that appropriate consultations occur, and protection of the environment remains a priority.

The exemption, if granted, is expected to save the MTO up to one year of additional work that would otherwise duplicate previous completed EA work. The proposed exemption would require MTO to fulfill all 2002 EA conditions of approval with exception of the condition requiring a further Class EA process during the design and construction of the highway.

The exemption would allow the project to be implemented as approved in the 2002 EA process. The exemption is proposed to include conditions that require the MTO to:

- Notify interested stakeholders and Indigenous communities of proposed changes to the project, provided those changes are within the study area assessed in the approved 2002 EA
- Continue Indigenous community consultation, including submitting an Indigenous Consultation Plan to the Ministry of the Environment, Conservation and Parks

The proposed regulation was open for comment from July 8 to August 22, 2020 through the Environmental Registry of Ontario. No additional information on approval or specific regulations is currently available. For more information, please see the [Environmental Registry of Ontario site](#) regarding this proposed exemption.

The Impact Assessment Agency of Canada is the single federal agency that administers all Impact Assessments for any federally designated project

The *Impact Assessment Act* is intended to provide a streamlined federal process, improve coordination with provincial processes as applicable and minimize duplication of effort reviewing a proposed project. The IAAC is a federal body accountable to the Minister of the Environment and Climate Change and is the single agency that administers all impact assessments for designated projects.

There are two triggers that would result in a project becoming designated to undergo a Federal Impact Assessment Process

The most common trigger resulting in a project being subject to the requirements of the *Impact Assessment Act* occurs if elements of a project match a description listed under the

Physical Activities Regulations (“[Project List](#)”). Once this occurs, compliance with the Impact Assessment process is automatic. The descriptions included on the Project List reference categories of projects determined to have the greatest potential for adverse and complex effects under areas of federal jurisdiction that would benefit from additional review, over and above the typical review required to obtain federal permits and authorizations.

Since the Bradford Bypass Project does not impact any federal lands or properties, the MTO does not believe the project triggers the *Impact Assessment Act* based on the first trigger.

The second trigger for a project to undergo an Impact Assessment is discretionary. It requires the federal Minister of Environment and Climate Change to agree that a specific project is required to comply with the *Impact Assessment Act* even though the project does not match a description on the Project List. The Minister can, with or without a specific request, designate a specific project based on the project components that fall under federal jurisdiction (e.g. fisheries, aquatic habitat, species-at-risk, climate change, rights of Indigenous peoples, federal lands, etc.).

For project designation requests, such as submitted for the Bradford Bypass Project, the review of the project is coordinated by the IAAC. The review is based on information submitted on behalf of the requester (in this case, Ecojustice) and received from others who have been asked to comment (such as the Region), including the project proponent (in this case, MTO). The Minister then decides whether to order the project be subject to the *Impact Assessment Act* pertaining to areas and potential impacts under federal jurisdiction.

Should the Minister order designation of a project, the project cannot be initiated until completion of the federal Impact Assessment process

If the Minister orders the designation of the Bradford Bypass Project, the project cannot be initiated, and no federal permits or authorizations can be issued until completion of the federal Impact Assessment process.

There are several stages to the Federal Impact Assessment process

A general outline of the federal Impact Assessment process for a designated project is included as Attachment 3.

There are generally five stages to the federal Impact Assessment Process: Planning, Impact Statement, Impact Assessment, Decision-Making, and Post Decision.

In the Planning stage, the proponent, in this case, MTO, submits an initial project description to the IAAC. The initial description is reviewed, public and Indigenous consultation occurs, issues are identified, and the IAAC determines if the project is to proceed to the next stage based on potential impacts.

The Impact Statement stage requires the proponent to complete studies and consultation as directed by the IAAC. The IAAC will scope out the factors to be assessed and determine which studies are required to be completed by the proponent based on the type of project and the information submitted to the IAAC. The studies will assess the negative and positive effects of a project based on a broad range of environmental, health, social, and economic

factors, the extent to which the project contributes to sustainability, the potential for adverse impacts on Indigenous peoples or Indigenous rights, the effect on the federal government's commitments on climate change, proposed mitigation measures and residual effects.

The Impact Assessment stage involves a review completed by either the IAAC or a Review Panel (involves public hearings). After the review is completed, a report is prepared, which may also include potential conditions, and sent to the federal Minister of Environment and Climate Change.

At the Decision-Making stage, the Minister decides whether the project is in the public interest and should be authorized to proceed or refers the matter to the federal Cabinet for decision.

If the designated project is permitted to proceed, the Post Decision stage involves the IAAC verifying compliance and follow-up on any identified monitoring programs.

Timelines for the Federal Impact Assessment process vary, depending on numerous factors, but would likely require several years to complete

Discrete timelines for the various process stages are set by regulation. Based on this, it can require several years to complete an Impact Assessment process. Timelines are variable since a significant part of the overall timeline is based on the time required by a proponent, in this case the Province, to complete studies and consultation. Estimated timelines to complete the Impact Assessment process are shown in Attachment 3.

Four elements differentiate the federal process from the Provincial process for the Bradford Bypass Project

Staff have identified four elements that differentiate the federal Impact Assessment process from the Provincial Environmental Assessment process. The elements are as follows:

1. Federal Impact Assessments can only be initiated for designated projects. A project becomes designated either based on the characteristics of a specific project matching a description on the federal Project List or as a result of the exercise of ministerial designation by the Minister of Environment and Climate Change in coordination with the IAAC.
2. Through the provincial process, MTO is required to address input from all stakeholders, based on the identified project scope. Through the federal Impact Assessment, additional stakeholders and scope could be identified, based on areas of identified federal interest for the Bradford Bypass Project.
3. Work to meet the needs of the federal Impact Assessment is undertaken jointly by the proponent by completing the required studies and by the federal government through the IAAC, which conducts the actual impact assessment. The IAAC coordinates with the proponent to determine the best approach to ensure a collaborative and efficient assessment is completed.

4. The Impact Assessment process can take several years to complete although timelines vary since a significant part of the overall timeline is based on the time required by the proponent to complete studies and consultation. The current Provincial EA process for the Bradford Bypass project is expected to be complete by early 2023.

Council can endorse the proposed Impact Assessment Agency of Canada response or provide alternate direction

Based on the additional information provided in this report, and the varied responses from stakeholder municipalities for this project, Council have numerous options that can be considered. Council can endorse the proposed response to the IAAC as per the February 25, 2021 report, or, provide staff with alternate direction. The IAAC has requested that any response be provided by March 19, 2021.

5. Financial

As a Provincially led project, there are no direct costs to the Region for the construction of the Bradford Bypass Project; however, the York Region Transportation Master Plan includes the Bradford Bypass Project as part of the future transportation network required to meet the future population and employment growth projected by the Province. Should the status of the Bradford Bypass Project change, the Region will need to review implications to the Region's transportation plan.

6. Local Impact

The Region and the local municipalities benefit from provincial investment in the highway network in the Greater Toronto Area. The planned Bradford Bypass Project is included in Regional and local transportation master plans as an important component of the transportation network required to service projected future growth for population and employment.

The Bradford Bypass Project provides a continuous east-west link between Highway 400 and Highway 404 in the areas of north King, East Gwillimbury and south Georgina, which otherwise lack any continuous east-west roads between Davis Drive/Highway 9 and Lake Simcoe.

7. Conclusion

This report seeks Council direction on comments to be submitted to the Impact Assessment Agency of Canada to inform their analysis of the designation request under the federal *Impact Assessment Act* for the Bradford Bypass Project.

Subject to Council direction, staff will provide a response to the Impact Assessment Agency of Canada by the March 19, 2021 deadline.

For more information on this report, please contact Brian Titherington, Director of Transportation and Infrastructure Planning at 1-877-464-9675 ext. 75901. Accessible formats or communication supports are available upon request.

Recommended by:



Paul Jankowski
Commissioner of Transportation Services

Approved for Submission:



Bruce Macgregor
Chief Administrative Officer

March 17, 2021
Attachments (3)
12655680