

The Regional Municipality of York

Regional Council
Public Works
November 10, 2022

Report of the Commissioner of Public Works

Bill 23, Schedule 10, *Supporting Growth and Housing in York and Durham Regions Act, 2022*

1. Recommendation

Staff continue to review Bill 23, Schedule 10, *Supporting Growth and Housing in York and Durham Regions Act, 2022*, provide recommendations to the Province on amendments to the legislation to ensure it accommodates York Region's growth needs and a viable infrastructure solution.

2. Summary

On October 25, 2022, the provincial government introduced Bill 23, the *More Homes Built Faster Act, 2022* which proposes significant legislative and regulatory changes that aim to advance the province's goal to increase housing supply in Ontario.

Schedule 10, *Supporting Growth and Housing in York and Durham Regions Act, 2022* is intended to expedite planning, development and construction of a proposed York Region sewage works project. This project is intended to expedite improvement, expansion and extension of the York Durham Sewage System to convey sewage to the Duffin Creek Water Pollution Control Plant. This proposed approach would replace the Upper York Sewage Solutions (UYSS) project, determined through Provincial direction in 2009 and recommended in 2014.

The proposed Act would require York and Durham Regions to work together to do everything in their powers to enlarge and improve the existing York Durham Sewage System (YDSS) to convey sewage from communities in the Upper York service area (Aurora, East Gwillimbury and Newmarket) to the Duffin Creek Water Pollution Control Plant in Durham Region for treatment and discharge into Lake Ontario.

The proposed Act would also require prescribed municipalities to work together to do everything in their powers to implement the Lake Simcoe phosphorus reduction project once certain provisions of the proposed Act are proclaimed. Prescribed municipalities would be required to develop, construct and operate a new treatment facility that will remove phosphorus from drainage water that flows from the Holland Marsh and ultimately into Lake Simcoe.

Private Attachment (1) to this report will be considered in private session as it relates to litigation involving the Region and legal advice that is subject to solicitor-client privilege.

Key Points:

- Bill 23, *More Homes Built Faster Act, 2022* was introduced on October 25, 2022, passed Second Reading on October 31, 2022 and was referred to the Standing Committee on Heritage, Infrastructure and Cultural Policy who are holding public hearings in November.
- Schedule 10, *Supporting Growth and Housing in York and Durham Regions Act, 2022* aims to replace the UYSS project with infrastructure in the YDSS where-by wastewater will be treated at the Duffin Creek Plant.
- The York Region Wastewater Advisory Panel completed their report in September 2022, however, the Panel's report does not form part of the legislation.
- York Region staff will need to provide input on legislation through the Environmental Registry of Ontario posting to ensure it accommodates York Region growth needs and a viable infrastructure solution.

3. Background

Council affirms support for Upper York Lake Simcoe Solution

In January 2021, [Council affirmed](#) their support for the Lake Simcoe Solution as documented in the Upper York Sewage Solution Environmental Assessment. A solution the province directed York to add to the terms of reference in 2010 and York studied for 5 years. York Region concluded that it is the best solution and a great opportunity for the Lake Simcoe watershed. A Provincial staff review supported these conclusions in 2016, however, with no approval now 6 years later.

A very similar resolution in support of the project was approved by Durham Region Council in December 2020.

Bill 5, *The York Region Wastewater Act*, received Royal Assent in October 2021

In June 2021, the provincial government introduced Bill 306, the *York Region Wastewater Act, 2021* that effectively prevented any decision by the province on the Upper York Sewage Solution Environmental Assessment application. The provincial government announced it would establish an Advisory Panel to advise the government concerning all additional wastewater capacity options to accommodate anticipated future growth in York and Durham Regions. Bill 306 died on the Order Paper and was subsequently replaced by Bill 5. Bill 5 mirrored the objectives of Bill 306 with additional measures to remove the ability of the Minister to make a decision and prohibiting the Region from taking any action. Bill 5 received Royal Assent in October 2021.

Advisory Panel formed in January 2022, and submitted its final Report to the Province in September 2022

The York Region Wastewater Advisory Panel (Panel) was established by the province and formed in January 2022. The Panel initiated discussions with relevant stakeholders over the winter and spring of 2022. The Panel completed its review and consultation over the summer 2022 and [their report](#) was submitted to the Minister of the Environment, Conservation and Parks in September 2022. The Panel's report assessed four different servicing options for the Upper York service area (Aurora, East Gwillimbury, Newmarket) and provided advice to the Minister on a recommended solution.

Advisory Panel recommends wastewater servicing for Upper York service area through York Durham Sewage System and Duffin Creek Plant

Of the four options, the Advisory Panel recommended connecting the Upper York service area to the York Durham Sewage System (YDSS) and Duffin Creek Plant by up-sizing a new sewer with a series of pumps stations, forcemains and sewers. The Panel described this as best satisfying the need for additional sewage servicing capacity necessary to accommodate future population and development growth in both York and Durham Regions.

The international regulatory implications of interbasin transfer requirements associated with the new Lake Ontario servicing approach through the YDSS to the Duffin Creek Plant will need to be assessed.

Bill 23, Schedule 10, *Supporting Growth and Housing in York and Durham Regions Act, 2022*

Bill 23, Schedule 10, *Supporting Growth and Housing in York and Durham Regions Act 2022*, requires York and Durham Regions to do everything in their respective powers to develop, construct and operate the "York Region sewage works project". The project refers to elements of the York Durham Sewage System based on various sewage works proposed in the 2022 York Region Water and Wastewater Master Plan. The proposed legislation does not make reference to the York Region Wastewater Advisory Panel report.

4. Analysis

YORK REGION WASTEWATER ADVISORY PANEL

York Region Wastewater Advisory Panel Report significantly relies on information provided by York Region staff

The York Wastewater Advisory Panel submitted its report in September 2022 and a public link to the Panel report was published on October 25, 2022, the same day Bill 23 was introduced in the provincial legislature. Staff will be reviewing this report and appendices over the coming weeks to understand and evaluate the panel's recommendations.

The Advisory Panel completed its work over the period of January 2022 to September 2022. This included consultation with relevant stakeholders, a review of information provided by these parties and the Panel's analysis. York Region provided significant information to the Panel related to the Upper York Sewage Solutions Environmental Assessment, the 2022 York Region Water and Wastewater Master Plan and history of the York Durham Sewage System and Duffin Creek Plant.

Staff to perform detailed review of Advisory Panel Report Based on Preliminary Assessment and identified gaps

York Region staff will be completing a full review of the Advisory Panel report. At this time, an initial assessment has been completed. Results of the initial assessment are that the servicing recommendation and cost estimates in the report are strictly conceptual and based on information provided by the Region without confirmatory field studies and detailed engineering.

The report does not perform any standard feasibility, constructability or operability review and does not consider system impacts. Further, the cost estimate for the recommended servicing option did not include costs for treatment at the Duffin Creek plant and did not acknowledge any of the system complexities in the north including pumping against an elevation of about 100 metres (a height about twice the height of Niagara Falls) and the proper infrastructure needed. In summary the total cost of the recommended panel solution is likely to be much higher than indicated in the panel report.

The panel analysis was completed over a very short time-period and would not meet standard delivery times for a large infrastructure planning assignment of this nature. The legislation does not reference the panel report or any details of the recommended solution. The Bill would require the Regions of York and Durham to develop a viable solution. To do so, the Region would be required to assess and engineer a viable York Durham Sewage System solution including pumping, conveyance and treatment elements, and provide realistic cost estimates with proper verification. The province should be providing even more cost and schedule certainty given the profound delays attributable to their inaction.

BILL 23, SCHEDULE 10, SUPPORTING GROWTH AND HOUSING IN YORK AND DURHAM REGIONS ACT, 2022

This proposed legislation would benefit from comments from York Region

Staff reviewed Schedule 10 of Bill 23, *Supporting Growth and Housing in York and Durham Regions Act, 2022* and are preparing comments on the proposed legislation based on their system background and expertise to ensure it accommodates Regional growth needs and provides a viable infrastructure solution. Areas of input and change required by the Region are summarized in Table 1 and are not exhaustive.

Table 1

Servicing Capacity to 2051	The Province has released revised housing projections. The Bill relies on the 2051 growth assumptions from the Region’s 2022 Water and Wastewater Master Plan to reference the infrastructure identified in the north and central portions of the Region to meet demand. These growth assumptions need to be re-analyzed in light of the revised housing projections.
Proposed YDSS Projects	The Bill should name all specific projects required to accommodate growth needs to 2051 and permit any changes that may be necessary to provide required servicing. These projects and related changes should be accommodated by the proper exemptions. This should include expansion of the Duffin Creek Plant and the new Primary Trunk sewer.
Requirements before construction may start	Before being able to apply for the approval required to start construction, reports that include the work required, costing, approvals required, mitigation measures, and Indigenous consultation must be completed. These reports must be satisfactory to the Minister. There is uncertainty with the time and cost it may take to complete these tasks. The timing and work required to complete these reports has yet to be determined.
Cost Management	The Bill does not address the \$100 Million spent to date by the Region or the potential for increased costs to be incurred by the Region
“Project land” Control	If land is designated by Provincial Cabinet Order to be “project land” for the required works, there are restrictions, protective measures, inspection rights, safety measures and other controls that may be imposed to help facilitate the project. However, there is no certainty these controls will ever be used to create better certainty in project delivery.
Lake Simcoe phosphorous reduction project (Holland Marsh Polder Treatment plant)	The Advisory Panel report specifically recommends the Ontario Clean Water Agency (OCWA) design, build and operate the Holland Marsh Polder Project which involves treatment of agricultural wastewater drainage. The Bill indicates that the Region, and one or more of the lower-tier municipalities in York Region and the County of Simcoe could be delegated this responsibility. This project could be better addressed as an amendment to the <i>Lake Simcoe Protection Act</i> with the participation of all 22 municipalities within the watershed and designed, built and operated by OCWA.

5. Financial

York Region's 2022 10-year capital budget includes \$506 Million for the Upper York Sewage Solutions Project, which at the time of budget preparation, anticipated a completion date in 2029. This budget and timeline were under review during preparation of the proposed 2023 multi-year budget. Bill 23 will significantly impact capital budgeting for this project and many of the related projects anticipated in the Water and Wastewater Master Plan. Staff will be positioned to provide preliminary cost estimates when servicing for the Upper York service area is finalized.

6. Local Impact

Servicing growth in Aurora, East Gwillimbury and Newmarket remains a priority for York Region. Regional staff will continue to work with the province and Durham Region to identify areas of improvement for Bill 23, Schedule 10, *Supporting Growth and Housing in York and Durham Regions Act, 2022* and will respond to Environmental Registry of Ontario (ERO) posting 019-6192. York Region will recommend changes to the Bill to address the servicing needs of our local municipalities with greater reliability.

7. Conclusion

Staff continue to review Bill 23, Schedule 10, *Supporting Growth and Housing in York and Durham Regions Act 2022* and will provide comments to the province to address York Region's growth needs and a viable infrastructure solution. This will include providing a written response and/or presenting at public hearings in November being held by The Standing Committee on Heritage, Infrastructure and Cultural Policy and responding to ERO posting 019-6192. Staff will report back to Council on staff comments that were submitted.

Staff will review and comment on the York Region Advisory Panel report and review its recommended option.

Staff will continue review impacts of Bill 23 to the 2022 Water and Wastewater Master Plan and develop a viable serving solution consisting of all required pumping, conveyance and treatment elements, along with an engineering cost estimate and schedule for implementation of this solution, including required Minister's approvals.

For more information on this report, please contact Mike Rabeau, Director Capital Planning and Delivery at 1-877-464-9675 ext. 75157. Accessible formats or communication supports are available upon request.

Recommended by:



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Approved for Submission:



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Private Attachment 1 - Bill 23 – Confidential Legal Advice