



May 24, 2019

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Ms. Wyndham-Nguyen:

RE: York Region Response – Modernizing Ontario’s Environmental Assessment Program – *Environmental Assessment Act* – ERO 013-5102

York Region thanks the Province for consulting with stakeholders on *Modernizing Ontario’s Environmental Assessment Program* under the *Environmental Assessment Act*. This letter identifies key challenges with the current environmental assessment program and the changes needed to address them. Proposed changes will help ensure the environmental assessment program meets its environmental protection goals, while supporting timely delivery of critical infrastructure. The attachment to this letter contains specific recommendations from York Region staff based on the questions posed in the discussion paper and Bill 108 (ERO 013-5102).

Due to the short consultation timeframe, it was not possible to bring this response to York Region Council for endorsement prior to submission; however, should Council have any additional comments, staff will forward them to the Province.

As the Province has identified in Bill 108, there is a housing affordability crisis in the Greater Toronto Area. Region staff agree that one of the key tools to alleviate this crisis is increasing affordable housing supply. The Region is required to achieve both population and growth targets under the *Places to Grow Act, 2005*. However, the Region has consistently encountered barriers in achieving these targets due to challenges related to bringing online the water, wastewater, and roads infrastructure required to support growth. Addressing the unnecessarily cumbersome environmental assessment processes and adhering to process timelines will be critical to servicing planned growth.

Changes urgently required to deliver servicing capacity

York Region has advocated for changes to the environmental assessment process for a number of years and applauds the Province for taking a leadership role to modernize the process. York Region staff also commend and support the Municipal Engineers Association of Ontario proposals to improve the Municipal Class Environmental Assessment (Class EA) program, to help ensure that streamlined projects can be delivered in a timely manner.

Municipalities have a responsibility to residents and businesses to ensure effective environmental protections are in place

Similar to the Province, municipalities have a responsibility to their residents and businesses to effectively safeguard their natural environment – to protect and ensure its sustainability for present and future generations through activities such as sourcewater protection. The Region takes its environmental protection responsibilities very seriously, as committed to in the Region's Vision 2051 and the Regional Official Plan.

Balancing the needs of infrastructure and the environment is also engrained in the Region's Strategic Plan and workplace culture. Over the last decade, York Region has completed more than 50 individual environmental assessments and Schedule B and C Class EAs. As such, Region staff possess leading-edge expertise in completing the appropriate level of analysis and decision making required to advance these projects. As such, the Province can have confidence that low-risk municipal projects eligible for streamlining will be completed in a manner that effectively protects our natural environment.

Environmental assessments should not be used as a tool to delay or stop projects for reasons not related to environmental protection

Region staff support the use of environmental assessments as one of many tools to protect the environment. However, the approach taken in these assessments can be outsized compared to the associated environmental risk for smaller projects and has, at times, been used as a tool to stop or delay larger projects from being built for reasons weakly linked to environmental protection. **It is recommended that the environmental assessment process should:**

- **Not be applied in a manner that creates delays or adds frivolous additional requirements to projects through Part II order requests that significantly increase project costs for limited or no environmental benefit.**
- **Not be required for low-risk projects and routine activities (such as maintenance, snowplowing and de-icing operations, streetscaping, active transportation facilities, intersection improvements and transit stations). These activities should be exempt from requirements of the Act.**
- **Not be used as a tool to influence or object to *Planning Act* decisions such as population or employment growth and development applications.**

- **Not be a tool to determine the appropriateness or compensation for land expropriation, which is more appropriately addressed through the *Expropriations Act*.**

Environmental assessment processes should focus on mitigating risk to the environment from activities necessary to service communities

Environmental assessments can be a valuable tool to ensure projects effectively balance infrastructure needs and potential environmental impacts. However, the Region has faced numerous issues related to the level of assessment for low-risk projects, and timeliness for Part II Order request decisions. These challenges have resulted in impacts to delivery of critical infrastructure, with little to no environmental benefit.

To ensure better alignment between the level of assessment and the level of environmental risk associated with a project, **it is recommended that environmental assessments:**

- **Be limited to projects that have potential to result in significant environmental impacts**
- **Ensure the level of assessment is proportional to the environmental risk associated with the undertaking**
- **Support achievement of broader provincial goals, including those in the *Places to Grow Act, 2005, Made-in-Ontario Environment Plan, the Affordable Housing Strategy, and other key provincial policy documents and proposals***

Current environmental assessment process impediments can be addressed in three key steps

Environmental assessments are supposed to be reviewed and approved or denied by the Ministry within 90 days. However, in York Region's experience, environmental assessment decisions are often delayed by four or more years (see case studies outlined in this letter on pages 4-6). This results in:

- Delays in servicing demands associated with growth, constricting housing supply and driving up housing prices.
- Increasing the costs of infrastructure, creating pressure and uncertainty in the municipal budget processes

Part II Order Case Study: Duffin Creek Outfall

In December 2010, York Region and Durham Region jointly initiated a Schedule C Municipal Class EA. This proposal would not increase the treatment capacity of the plant, only to address the rather its purpose was needed only for changes to the existing outfall to achieve a guideline mixing ratio.

In 2013, a Class EA was filed and received 75 Part II Order Requests alleging the Duffin Creek Plant was responsible for Cladophora algae along the waterfront abutting the Town of Ajax.

Citing a need for further information to make a decision, in 2016, the Minister issued an Order to prepare a Phosphorus Reduction Action Plan.

The scope of this order was entirely beyond the original purpose of the works proposed within the original environmental assessment. Despite this, the Regions retained independent experts and submitted the study in January 2018, which demonstrated achievable phosphorus reductions well under current provincial and international standards for the Great Lakes.

More than a year later, the Region continues to wait for a decision.

Current challenges can be addressed by taking three key steps to modernize the environmental assessment process in Ontario:

1. **Exempt Schedule A and A+ projects as proposed under Schedule 6 of Bill 108:**

In the immediate term, it is recommended that the Ministry exempt Schedule A and A+ projects under the Municipal Class EA from the Part II order process to alleviate project delays and reduce backlogs.

2. **Achieve 90-day service standards for Ministry review/decisions:** Review and make decisions on environmental assessments within existing 90 day service standard. This would help ensure that municipalities can effectively leverage use of streamlined processes, such as Schedule B and C Municipal Class EA projects and *O. Reg. 101/07 Waste Management Projects* through exemption from Part II order process.

3. **Streamline processes for water, wastewater, and roads:** Develop a streamlined process for water, wastewater, and roads infrastructure that mirrors *Ontario Regulation 231/08: Transit Projects and Metrolinx Undertakings*. This helpful change would significantly increase the pace of delivery of the critical municipal services required to support growth, especially in the Greater Toronto Area.

Step 1: Staff support exemption of Class EA Schedule A and A+ projects from the Act

Based on Region staff experience and expertise, it is **recommended that the Province implement the proposal under Section 15.3 of Schedule 6 of Bill 108 to exempt Municipal Class EA Schedule A**

and A+ projects from the Act, as these types of projects present a low risk to the environment.

In addition, responding to Part II order requests on Schedule A and A+ projects take up valuable Ministry time frequently for little or no environmental benefit. Exempting these projects will allow the Ministry more time to thoroughly assess environmental impacts associated with higher-risk projects.

Clearly identify the process and criteria for Part II order requests under the Act and streamline process for Schedule B and C projects to help meet timelines

The Province has provided service standards to issue a decision on Part II order requests; however, in the past, this provincial timeline has often not been met, resulting in significant project impacts to municipalities, including York Region. In 2016, the Ontario Auditor General identified that decisions on Part II order requests are delayed 110 days, on average. These delays have resulted in significant economic and social impacts for projects required to service growth.

While exempting Schedule A and A+ projects will help reduce the quantity of Part II order requests, more needs to be done immediately to remedy this issue. It is recommended that two additional steps be taken by the Province:

A: Revise Bill 108, Schedule 6, Section 16 to include clear criteria on the types of requests that are eligible for Part II order requests. Part II order requests are sometimes submitted for issues that are not directly related to the potential environmental impacts from the project or as an attempt to re-open an issue from another process such as a decision from the Land Review Tribunal. It is recommended that the Part II order process be solely focused on issues directly related to environmental protection in a manner that respects existing decisions and processes.

B: Revise Bill 108, Schedule 6, Section 15.3(4)3 to delegate decision-making to the Director on the Part II Order process. This Director delegated process must be completed within specified time limits and be limited to considering only Part II Order requests meeting required criteria. More efficient administration of this Part II Order request process will likely lead to more approvals being issued in a more timely manner. York Region has experienced significant delays on Schedule B and C projects, such as the Duffin Creek outfall environmental assessment.

These three steps are described in greater detail in the following sections.

Step 2: Part II order requests often result in considerable delays and project cost increases that can be more than a project's proposed capital cost

Although streamlined environmental assessment processes exist, such as the Municipal Class EA process, this does not always result in faster delivery of projects. Instead, there are frequent delays on these projects due to the Part II order request process,

often for little environmental benefit. The Duffin Creek Outfall case study included in the sidebar provides a prime example.

Part II order requests on the Duffin Creek Outfall Class EA resulted in a Minister's Order requiring the preparation of a Phosphorus Reduction Action Plan. This study and the scope of the order were entirely beyond the original purpose of the works being proposed within the original environmental assessment. Despite the fact that the Regions completed all required steps and complied with all requests and Orders, a decision still has not been issued by the province more than a year later and more than five years after submission of the environmental assessment.

In addition to the five years of delays on this project, more than \$8 million has been spent by the Regions to respond to issues surrounding the environmental assessment when the capital expenditures for the outfall upgrade project is projected to be less than \$5 million. This demonstrates the unsustainability of the current environmental assessment process. Municipalities need to be able to effectively leverage streamlined environmental assessment processes in order to meet the growth targets outlined in the *Places to Grow Act, 2005* at a reasonable cost to ratepayers.

Step 3: Streamlined environmental assessment processes for water, wastewater, and roads projects would help accelerate servicing capacity

Based on Region staff experience with the environmental assessment process, a different provincial approach is required. **York Region and Regional Public Works Commissioners of Ontario have repeatedly recommended that a regulation be enacted to expedite water, wastewater, and roads infrastructure that mirrors Ontario Regional 231/08: Transit Projects and Metrolinx Undertakings.**

Regulation 231/08 recognizes timely delivery of transit infrastructure as a priority for the Province and provides a streamlined process to fulfill environmental assessment requirements limited to six months. A 30-day review period is required; however, if there is an objection to the proposed project, the Minister must provide notice to the proponent within 65 days indicating whether the project may proceed, and whether any further conditions must be fulfilled. This type of expedited process would provide a structured assessment process while helping municipalities deliver capacity to service growth much more quickly than under the current environmental assessment process.

Individual environmental assessment process for Upper York Sewage Solutions project still not complete after ten years, with significant increases in project costs and impacts to community growth and development

The individual environmental assessment (IEA) process also constrains growth and offers considerable process uncertainty and economic risk, as demonstrated by the Upper York Sewage Solutions case study in the sidebar. This project would unlock significant housing capacity in the northern portion of York Region but approval of the IEA has been delayed by four years according to approval timelines. The Region has invested over \$75 million on the Upper York Sewage Solutions project to date, including land acquisition and design advancement, with \$26 million of this cost directly related to the environmental assessment process. Total capital costs for this project have also escalated through the environmental assessment process to a currently-anticipated \$640 million.

As of May 2019, the Province still has not fulfilled their Duty to Consult requirements. While the Region respects the Province's Duty to Consult, the approach taken by the Province was not planned effectively, resulting in a significantly delayed approvals process for the Upper York Sewage Solutions project. This has effectively locked growth potential of 80,000 new residents in York Region for an undetermined period. Continued delays on this project will jeopardize the Region's ability to accommodate planned growth and creating financial risks for the Region.

Project costs have increased significantly due to the need for adaptive engineering design for unknown approval conditions and timelines, extended environmental monitoring, property maintenance, interim infrastructure solutions, changing technology and regulations, and interest and escalation costs.

IEA Case Study: Upper York Sewage Solutions

The Upper York Sewage Solutions individual environmental assessment was initiated in 2009. In 2010, the Minister approved the Terms of Reference. After more than five years of extensive scientific study and engagement with Indigenous peoples and stakeholders, the report was submitted for approval in July 2014 with an expected approval in February 2015.

The provincial review completed a year late in January 2016 concluded that the Region had properly completed the environmental assessment process and complied with the Act. In the Fall of 2016, following a review of the Region's engagement efforts with Indigenous peoples, Provincial staff confirmed that the Region had met all requirements for the IEA under the Act and was ready for Cabinet approval.

In December 2016, the Region was informed that, despite consultation completed by the Province during the environmental assessment, the Province had to undertake additional consultation to effectively fulfil their Duty to Consult requirements with Indigenous peoples and advised that this process would further delay project approval.

As of May 2019, the province still has not completed its Duty to Consult obligations and has not provided approval to proceed with Upper York Sewage Solutions locking growth potential of 80,000 new residents.

Continuation of the status quo is unsustainable

Case studies in the sidebars are just a few of many examples that exist related to the impacts of the current provincial environmental assessment process. Continuation of the status quo is untenable.

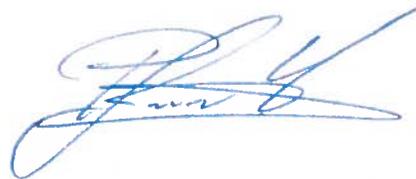
Region staff thanks the Province for consulting with municipalities on the proposed changes to the *Environmental Assessment Act* and urge action on the recommendations included in this response. Unless infrastructure can be delivered in a timely manner, municipalities across Ontario will continue to face challenges in providing the servicing capacity required to support growth. In doing so, together we can create a province with strong and growing communities that are truly open for business.

If you have questions regarding this response or would like to further discuss these recommendations, please contact Mike Rabeau, Director of Capital Planning and Delivery, Environmental Services at Mike.Rabeau@york.ca or Salim Alibhai, Director of Capital Planning and Delivery, Transportation Services at Salim.Alibhai@york.ca.

Sincerely,



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Attachments (1):

CC:

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