



THE REGIONAL MUNICIPALITY OF NIAGARA
PUBLIC WORKS COMMITTEE
AGENDA

PWC 7-2022

Tuesday, August 9, 2022

9:30 a.m.

Council Chamber

Niagara Region Headquarters, Campbell West

1815 Sir Isaac Brock Way, Thorold, ON

To view live stream meeting proceedings, visit: niagararegion.ca/government/council

	Pages
1. <u>CALL TO ORDER</u>	
2. <u>DISCLOSURES OF PECUNIARY INTEREST</u>	
3. <u>PRESENTATIONS</u>	
4. <u>DELEGATIONS</u>	
5. <u>ITEMS FOR CONSIDERATION</u>	
5.1. <u>PW 5-2022</u> Excess Soils Management Policy	3 - 9
5.2. <u>PW 26-2022</u> Tender Award of 2022 Strengthening and Resurfacing Program - Part 2 No. 2022-T-92	10 - 16
5.3. <u>PW 30-2022</u> Regional Road 71 (Sir Isaac Brock Way / St. David's Road) Multi-Use Path Transfer of Jurisdiction	17 - 22
6. <u>CONSENT ITEMS FOR INFORMATION</u>	
6.1. <u>PWC-C 22-2022</u> Blue Box Transition Update	23 - 29

7. OTHER BUSINESS

8. CLOSED SESSION

8.1. Confidential PWC-C 23-2022

A Matter respecting Potential Litigation and Legal Advice Subject to Solicitor-Client Privilege under s. 239(2)(e) and (f) of the Municipal Act, 2001 - Bid Disqualification; PW 26-2022 Strengthening and Resurfacing Program-Part 2 Tender Council Report

9. BUSINESS ARISING FROM CLOSED SESSION ITEMS

10. NEXT MEETING

The next meeting will be held on Tuesday, September 13, 2022 at 9:30 a.m. in the Council Chamber, Regional Headquarters.

11. ADJOURNMENT

If you require any accommodations for a disability in order to attend or participate in meetings or events, please contact the Accessibility Advisor at 905-980-6000 ext. 3252 (office), 289-929-8376 (cellphone) or accessibility@niagararegion.ca (email).

Subject: Excess Soils Management Policy

Report to: Public Works Committee

Report date: Tuesday, August 9, 2022

Recommendations

1. That the Excess Soils Management Policy, attached as Appendix 1, **BE APPROVED** and **ADDED** to the Corporate Policy Manual.

Key Facts

- The purpose of this report is to seek approval of the Excess Soils Management Policy and its addition to the Corporate Policy Manual.
- As noted in C-A-001-001 Corporate Policy Framework – Administrative Processes and Review, changes to corporate policies require the approval of Regional Council.
- The Ministry of Environment, Conservation, and Parks (MECP) proposed the On-Site and Excess Soil Management Regulation, now regulated in Ontario under O.Reg. 406/19 to promote sustainable excess soil management by reducing the volume of reusable excess soils disposal at landfills, reducing the truck traffic associated with hauling excess soils to these landfills, and instead to identify sites looking for excess soil for the ultimate beneficial reuse.
- The purpose of the Excess Soils Management Policy is to ensure compliance with O.Reg.406/19, and associated documents, and to make sure that there is a consistent approach to the management of excess soil by all departments responsible for the generation of excess soil.

Financial Considerations

There are no financial considerations associated with this report.

Analysis

In Ontario, all construction projects that generate excess soils are regulated under O.Reg. 406/19 On-Site and Excess Soil Management. The goal behind the regulatory framework is to promote sustainable excess soil management by reducing the volume of reusable excess soils disposal at landfills, reducing the truck traffic associated with

hauling excess soils to these landfills, and instead to identify sites looking for excess soil for the ultimate beneficial reuse.

As a significant generator of excess soils through various capital construction projects, Niagara Region must comply with O.Reg.406/19 and ensure that there is a consistent approach to the management of excess soil by all departments responsible for the generation of excess soil.

The Excess Soils Management Policy will apply to all Niagara Region staff, consulting firms, and contractors who are working on projects where excess soil is generated and unable to be managed on-site, as well as project areas accepting fill material.

Alternatives Reviewed

Not Applicable

Relationship to Council Strategic Priorities

The recommendation in this report align with the following Council Strategic Priority:

- Responsible Growth and Infrastructure Planning

By adopting this policy, Niagara Region is ensuring that all capital construction projects protect Niagara's natural environment through the responsible management of excess soils.

Other Pertinent Reports

Not Applicable

Prepared by:

Graeme Guthrie, C.E.T.
Manager, Capital Projects
Transportation Services
Public Works Department

Recommended by:

Bruce Zvaniga, P.Eng.
Commissioner of Public Works
Public Works Department

Submitted by:

Ron Tripp, P.Eng.
Chief Administrative Officer

This report was prepared in consultation with Frank Tassone, Associate Director, and reviewed by Carolyn Ryall, Director, Transportation Services.

Appendices

Appendix 1 Excess Soils Management Policy

PW 5-2022

Appendix 1

Policy: Excess Soils Management Policy

Policy Category	Name of Policy
Administrative	Excess Soil Management Policy

Policy Owner Chief Administrative Officer

Approval Body Regional Council

Approval Date

Effective Date

Review by Date

1. Policy

That Niagara Region staff, and consultants or contractors retained by Niagara Region, manage excess soil generated by construction activities in compliance with the requirements of O.Reg.406/19 - On-Site And Excess Soil Management (The Regulation) made under the *Environmental Protection Act*, R.S.O, 1990, c. E.19.

2. Purpose

The Regulation sets out a regulatory framework aimed at (i) clarifying the responsibility of those projects that generate excess soil; (ii) establishing clear requirements governing the sampling and analysis of excess soil; and (iii) tracking of excess soil from the time of excavation to the time it is deposited at a receiving site. The goal behind the regulatory framework is to promote sustainable excess soil management by reducing the volume of reusable excess soils disposal at landfills, reducing the truck traffic associated with hauling excess soils to these landfills, and instead to identify sites required for excess soil for the ultimate beneficial reuse.

To ensure a consistent approach to applying the requirements of The Regulation, by all departments responsible for the generation of excess soil, Niagara Region will develop, maintain, and update a corresponding procedure outlining Niagara Region's approach for the implementation of The Regulation.

An Excess Soils Steering Committee will be created, and shall comprise of representatives from Construction Energy & Facilities Management, Legal Services, and Public Works (Transportation, Waste management, and Water and Wastewater).

3. Scope

This Policy applies to all Niagara Region staff, consulting firms, and contractors who are working on projects where excess soil is generated and unable to be managed on-site, as well as projects accepting fill material.

Policy Category	Name of Policy
Administrative	Excess Soil Management Policy

3.1. Roles and Responsibilities

3.1.1. Project Managers

Project Managers shall be responsible for ensuring that any construction project for which he/she has responsibility complies with this Policy and accompanying procedures.

3.1.2. Chief Administrative Officer

The Chief Administrative Officer will ensure that new, or updated, procedures related to this Policy are approved as required.

3.1.3. Legal Services

Legal Services shall provide guidance, as required, on the applicability of O.Reg 406/19 to a particular project.

3.1.4. Excess Soils Steering Committee

The Excess Soils Steering Committee shall meet on an as needed basis to review and recommend updates, and or changes to this Policy or corresponding Procedure(s).

4. References and Related Documents.

4.1. Legislation, By-Laws and/or Directives

- Environmental Protection Act, R.S.O. 1990, c. E.19
- O.Reg.406/19: On-Site and Excess Soil Management
- MECP document Rules for On-site and Excess Soil Management

4.2. Procedures

- C-A-000 Excess Soil Management Procedure

5. Related Policies

6. Document Control

The electronic version of this document is recognized as the only valid version.

Policy Category	Name of Policy
Administrative	Excess Soil Management Policy

Page 3 of 3

7. Approval History

Approver(s)	Approved Date	Effective Date

Revision History

Revision No.	Date	Summary of Change(s)	Changed by

Subject: Tender Award of 2022 Strengthening and Resurfacing Program - Part 2
No. 2022-T-92

Report to: Public Works Committee

Report date: Tuesday, August 9, 2022

Recommendations

1. That Contract 2022-T-92, 2022 Annual Roads Strengthening and Resurfacing Program – Part 2, **BE AWARDED** to the lowest compliant bidder, Walker Construction Ltd., at their bid price of \$7,282,210.58 (including 13% HST; excluding Provisional Sections 6, 7, 8, 9, 10 and 11).

Key Facts

- The purpose of this report is to seek Council approval on the award of Tender 2022-T-92, 2022 Annual Roads Strengthening and Resurfacing Program – Part 2, to the lowest compliant bidder, Walker Construction Ltd.
- A Request for Tender publically posted on June 13, 2022, closed on July 7, 2022 with a total of three (3) bid submissions, one of which was disqualified. The lowest compliant submission received was from Walker Construction Ltd., in the total tendered amount of \$8,128,500 (excluding taxes).
- As staff are not recommending awarding the Provisional Sections 6, 7, 8, 9, 10 and 11 at this time due to available budget remaining, this results in an award in the total amount of \$6,444,434.14 (excluding taxes).
- In accordance with Schedule B of the Niagara Region Procurement By-law 02-2016 as amended on February 28, 2019, Council approval is required for all awards valued in excess of \$5,000,000 excluding taxes.
- During the 2022 budget deliberations, the 2022 Annual Roads Strengthening and Resurfacing Program was approved at a budgeted value of \$12,500,000. The business case identified that 2022 road section candidate selection would be based on the updated 2021 Pavement Management Study and that staff would also recommend a list of provisional road sections that may be added to the program should surplus funding be realized through the competitive bid process.

Financial Considerations

In 2022, Council approved a budget for 20001618 (2022 Annual Roads Strengthening and Resurfacing Program) of \$12,500,000 including construction, engineering, inspection and internal staff time.

The Investing in Canada Infrastructure Program (ICIP) is a cost-shared infrastructure funding program between the federal government, provinces and territories, and ultimate recipients. Niagara Region received approval for \$300,000 grant funding from this program applied to project 20001347 to implement Complete Streets on Regional Road 38 (Martindale Road) under the 2022 Strengthening and Resurfacing Program – Part 2.

Total combined project budget, including ICIP grant funding, is \$12,800,000.

The 2022 Annual Roads Strengthening and Resurfacing Program has been split into two parts (1 & 2, respectively).

Part 1 tender closed on May 26, 2022, with the lowest compliant bidder being Rankin Construction Inc., in the amount of \$4,942,925 (including 1.76% non-refundable HST). Part 2 candidates were reviewed against the remaining budget and tendered separately in June 2022, with the lowest compliant bidder, Walker Construction Ltd., at their total tendered price of \$6,557,856.18 (including 1.76% non-refundable HST); excluding Provisional Sections 6, 7, 8, 9, 10 and 11.

The works for both Part 1 and Part 2 will be completed within the approved budget allocation of \$12,500,000 (project 20001618) plus \$300,000 (project 20001347) for a total of \$12,800,000. Please refer to Appendix 1 for a full budget breakdown.

Analysis

Funds were identified in the 2022 Capital Budget, Roads Rehabilitation-Roads Resurfacing. Staff initiated internal detailed reviews of the Transportation Pavement Condition Index to identify candidates for the 2022 Annual Roads Strengthening and Resurfacing Program and to prepare contract documents and drawings.

Regional Staff have continuously reviewed alternatives and construction processes to move the project along in a progressive manner with the least disruption to the surrounding residents and businesses.

A Request for Tender to obtain tenders for the 2022 Strengthening and Resurfacing Program - Part 2 was publically posted on June 13, 2022, closed on July 7, 2022 with three (3) electronic bid submissions received through the Bids & Tenders bidding system on Thursday July 7, 2022, two of which were deemed compliant with the requirements of Tender Number 2022-T-92. The total tendered amounts (excluding 13% HST; including all Program and Provisional Sections) are as follows (in ascending order):

Walker Construction Ltd.	\$ 8,128,500
Brennan Paving	\$ 9,222,576

This tendering process in the current market conditions suggests that the tendered unit prices submitted by the lowest compliant tenderer, Walker Construction Ltd., are competitive and compare favourably with the Region's estimate of \$6,309,120 (including 1.76% non-refundable HST). Staff recommends that the low tender submitted by Walker Construction Ltd. be accepted.

Alternatives Reviewed

Niagara Region Transportation Engineering Staff completes a pavement condition index (PCI) that is reviewed annually. Resurfacing of roads is only sufficient until the roads have deteriorated beyond a recognized standard of fair quality, after such time full reconstruction of the road becomes more likely. Full road reconstruction is far greater in cost than road resurfacing; therefore, selecting roads at the appropriate time is essential to best management practices with regards to pavements.

The yearly Strengthening and Resurfacing program is a cost effective initiative to the longevity of our highly trafficked roads as road sections are fully resurfaced with additional spot repairs to base damages. The Niagara Region Strengthening and Resurfacing program spans the timing from operations maintenance to full road reconstruction and is one step in the full life cycle of asphalt pavements.

All roads have been reviewed for their adequacy for inclusion into the resurfacing program versus other means of road rehabilitations. Roads that are being resurfaced in the Part 2 contract can be viewed in Appendix 2.

Due to the above, the roads selected for this program must be resurfaced at this time to avoid further, more costly rehabilitation strategies. Further delay of resurfacing could result in full road reconstruction with higher budgeting and time impacts. This approach is consistent with the right treatment at the right time approach and ensures that rehabilitations are being conducted in the most cost efficient manner.

Relationship to Council Strategic Priorities

Resurfacing is an essential part of maintaining the Region's road network, this vital program is very closely tied to strategic priority 1 "Moving people and goods". Region staff has put forward considerable effort to ensure that the Roads Resurfacing program is administered in a fashion that promotes the greatest impact to our road system and ensures that the budgeted dollars get spent as efficiently as possible. This efficiency results in our budget dollars going farther and providing a better experience for all modes of road users.

Other Pertinent Reports

None

Prepared by:

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Project Manager
Transportation Engineering
Public Works Department

Recommended by:

Bruce Zvaniga, P. Eng.
Commissioner of Public Works
Public Works Department

Submitted by:

Ron Tripp, P.Eng.
Chief Administrative Officer

This report was prepared in consultation with Frank Tassone, Associate Director Transportation Engineering, Michelle Rasiulis, Manager Purchasing Services, Dan Ane, Manager Program Financial Support, Brian McMahon, Program Financial Specialist, and reviewed by Carolyn Ryall, Director Transportation Services.

Appendices

Appendix 1 Total Estimated Project Cost

Appendix 2 Listing of Regional Roads to be Resurfaced under Part 2

Total Estimated Project Cost - 2022 Roads Strengthening and Resurfacing Program - Part 2

<u>Total Estimated Project Cost (20001618)*</u>	Council Approved Budget	Budget Increase/ Reallocation	Revised Council Approved Budget	Expended & Committed as of 07/12/22	Forecast	Budget Remaining
Project Element	(A)	(B)	(C) = (A) + (B)	(D)	(E)	(F) = (C)-(D)- (E)
(a) Construction						
i. 2022-T-23 2022 Strengthening and Resurfacing - Part 1	4,800,000	142,925	4,942,925	4,942,925	-	-
ii. 2022-T-92 2022 Strengthening and Resurfacing - Part 2**	7,200,000	(850,482)	6,349,518	-	6,349,518	-
(b) Project Contingency	350,000	(192,444)	157,556	-	157,556	-
(c) Consulting Engineering Services						
i. Contract Administration & Inspection	-	600,000	600,000	583,173	16,827	-
ii. Geotechnical Service-Quality Control	-	200,000	200,000	119,314	80,686	-
(d) Project Management (In-House) and Operations	150,000	100,000	250,000	87,019	162,981	-
Total Estimated Project Cost (20001618)	12,500,000	-	12,500,000	5,732,432	6,767,568	-
<u>Total Estimated Project Cost (20001347)*</u>						
(a) Construction						
i. 2022-T-23 2022 Strengthening and Resurfacing - Part 1	-	-	-	-	-	-
ii. 2022-T-92 2022 Strengthening and Resurfacing - Part 2**	300,000	(90,000)	210,000	-	208,338	1,662
(b) Project Contingency	-	90,000	90,000	-	91,662	(1,662)
Total Estimated Project Cost (20001347)	300,000	-	300,000	-	300,000	-
Total Estimated Project Cost Combined	12,800,000	-	12,800,000	5,732,432	7,067,568	-

*All costs include 1.76% non-refundable HST.

** Total Contract Award is equal to i) \$6,444,434.14 before tax; ii) \$6,557,856.18 including 1.76% non-refundable HST; \$7,282,210.58 including 13% HST.

Listing of Regional Roads to be Resurfaced Under Part 2

Proposed Program Locations:

City of Port Colborne

- Regional Road 3 (Main Street East) from Barber Drive to Highway 140

City of St. Catharines

- Regional Road 38 (Martindale Road) from Regional Road 87 (Lakeshore Road West / Main Street) to J.R. Stork Bridge

City of Welland

- Regional Road 41 (Woodlawn Road) from Seaway Drive to Bridge

Township of West Lincoln

- Regional Road 20 (Highway 20) from Caistor Centre Road to Regional Road 12 (Grimsby Road)

Provisional Locations:

City of Fort Erie

- Regional Road 116 (Stevensville Road) from Eagle Street to Regional Road 25 (Netherby Road)

City of St. Catharines

- Regional Road 89 (Glendale Avenue) from Regional Road 69 (Pelham Road) to Jacobson Avenue

Township of West Lincoln

- Regional Road 27 (Wellandport Road) from Vaughan Road to Elcho Road

Subject: Regional Road 71 (Sir Isaac Brock Way / St. David's Road) Multi-Use Path Transfer of Jurisdiction

Report to: Public Works Committee

Report date: Tuesday, August 9, 2022

Recommendations

1. That Regional Council **AUTHORIZE** the transfer of jurisdiction and responsibility for certain sections of the Multi-use Path along Regional Road 71 (Sir Isaac Brock Way / St. David's Road) from Niagara Region to the City of Thorold; and
2. That the Commissioner of Public Works **BE AUTHORIZED** to execute an agreement with the City of Thorold in a form acceptable to the Director of Legal and Court Services which provides for a complete transfer of jurisdiction and responsibility for certain sections of the Multi-Use Path and for continued maintenance and snow removal for other parts of the Multi-Use Path as described in this Report PW 30-2022.

Key Facts

- The purpose of this report is to seek Council approval to transfer jurisdiction and responsibility for certain sections of the recently constructed multi-use path along Regional Road 71 (Sir Isaac Brock Way / St. David's Road) between Regional Road 50 (Merrittville Highway) and Regional Road 56 (Collier Road) to the City of Thorold (the "SIBW MUP").
- Often multi-use paths are located entirely within a highway right of way controlled by a single municipality, but the SIBW MUP is formed over parts of Niagara Region's headquarters property as well as over a Ministry of Transportation controlled overpass, which creates a need to treat different parts in different ways.
- Staff, utilizing delegated authority, previously entered into an agreement with the City of Thorold to assign maintenance and snow removal responsibilities to the City for all sections of the SIBW MUP along the Sir Isaac Brock Way and St. David's Road corridor.
- Recommendation #1 will, if approved, transfer jurisdiction and responsibility of those parts of the SIBW MUP located within the Sir Isaac Brock right of way, while providing for continued maintenance and snow removal with respect to other

sections of the MUP which either form part of Niagara Region headquarters lands and/or lands under the jurisdiction of the Ministry of Transportation.

- The primary difference between passing jurisdiction to a local municipality such as Thorold verses a simple contract of maintenance as now exists is the relative permanency of the arrangement and that the municipality paying to maintain and being responsible for the multi-use path will ultimately determine if and when it may need replacement or removal. The proposed agreement contemplates a guaranteed minimum period during which the City of Thorold would be obligated to maintain and if necessary replace the transferred portions of the SIBW MUP.
- The land underlying the MUP remains in the ownership of Niagara Region.

Financial Considerations

Niagara Region successfully obtained funding through the Ministry of Transportation (MTO) Ontario Municipal Commuter Cycling Program (OMCC) to support construction of active transportation infrastructure along the Regional Road 71 (Sir Isaac Brock Way and St. David's Road) corridor. This funding directive was ratified through PW 41-2019, PW 8-2018 and By-law 2018-26. Staff have coordinated cost sharing agreements with the City of St. Catharines and the City of Thorold to further offset construction costs.

Transfer of the jurisdiction of this asset to the City of Thorold will result in the transfer of future financial responsibilities associated with this asset to the City of Thorold. This treatment is in alignment with current practice for these types of assets.

Analysis

Sidewalks fall under the jurisdiction of the lower tier municipality as defined in the *Municipal Act, 2001*, c. 25, s. 55. Multi-use paths and other off-road active transportation infrastructure are not defined in the *Municipal Act* but have many similarities. Staff have identified benefits in having multi-use paths funded by Niagara Region or by a combination of Niagara Region and a local municipality; treated in the same fashion as sidewalks. A similar arrangement was previously approved by Council with respect to the multi-use path along Merrittville Highway which arrangement was also with the City of Thorold.

The approach recommended by staff relieves Niagara Region of long-term ongoing costs associated with asset ownership; including maintenance, repair, and snow removal which the municipality is more equipped to perform. This is keeping consistent

with sidewalks under the Municipal Act. The local area municipality will maintain, repair, replace and assume liability for any claims that may arise from the use of a path which it is maintaining. The City of Thorold gains a measure of control after ten years, which would potentially allow the City of Thorold to determine that the condition does not justify continued maintenance or replacement and that the improvement should be removed.

Staff, utilizing delegated authority, previously entered into an agreement with the City of Thorold to assign maintenance and snow removal responsibilities to the City for all sections of the SIBW MUP along the Sir Isaac Brock Way and St. David's Road corridor. The current agreement requires Thorold to undertake different levels of maintenance and repair depending on the part of the SIBW MUP involved. In the case of the MTO lands and the lands forming part of the International Plaza, the City of Thorold is restricted to winter maintenance. The term of the existing agreement is indefinite but may be terminated by either party on sixty days' notice.

The SIBW MUP, unlike the Merrittville Highway multi-use path is not contained entirely within the Niagara Region right of way but instead incorporates part of the lands upon which the Niagara Region headquarters building is located as well as a portion that crosses Highway 406 which is under the jurisdiction of the Ministry of Transportation ("MTO"). Niagara Region is unable to transfer jurisdiction of the lands under MTO jurisdiction and it is undesirable to do so with components that form part of the International Plaza. Those parts, which cannot be transferred, must still be maintained and staff recommend a maintenance and snow removal only arrangement for those parts of the SIBW MUP similar to what exists under the current agreement.

The various sections of the Sir Isaac Brock Way and St. David's Road MUP are outlined below. Refer to legend on Keyplan attached as Appendix 1.

- Jurisdiction of the following sections of MUP are recommended to be transferred to the City of Thorold:
 - Sir Isaac Brock Way Multi-use Path (3) - between Schmon Parkway and Highway 406 southbound ramps (west limit of MTO corridor)
 - St. David's Road Multi-use Path (5) - between Highway 406 northbound on-ramp (east limit of MTO corridor) and Regional Road 56 (Collier Road).
- The following sections of MUP are to remain under Niagara Region jurisdiction but be subject to a maintenance arrangement with the City of Thorold:

- Civic Park Multi-use Path (2) - Constructed as part of the Civic Park on Niagara Region Headquarters property.
- The following sections of MUP are to remain under Ministry of Transportation (MTO) jurisdiction but be subject to a maintenance arrangement with the City of Thorold:
 - Highway 406 Multi-use Path (4a) - between ~125m west of 406 southbound on-ramp and ~35m east of 406 northbound on-ramp (within limits of Highway 406 corridor).
 - MTO Bridge Structure Multi-use Path (4b) - Concrete portion of MUP integral with St. David's Road overpass structure owned by MTO.

A form of agreement has not been finalized; pending the opportunity for each Council (Niagara Region and the City of Thorold) to approve the arrangement in principle. Niagara Region staff recommend that it contain the following key features:

- The City of Thorold would be entitled to terminate, on sixty days' notice only its obligations respecting maintenance and repair as they relate to those parts of the SIBW MUP for which jurisdiction was not transferred;
- The City of Thorold for the first ten years of the term of the agreement would be obligated to replace those parts of the SIBW MUP for which jurisdiction has been transferred if maintenance and repair to specified standards is no longer possible due to the age or condition of the path.
- On and after the tenth anniversary, if the City of Thorold should determine that continued maintenance and repair is not feasible and replacement not desirable then in its discretion, those parts of the transferred SIBW MUP could be removed at the cost of the City of Thorold and City of Thorold's obligations with respect to the removed sections of the Sir Isaac Brock Way right of way would terminate.

These listed rights are intended to broadly reflect the rights the City of Thorold would have over a sidewalk on a Niagara Region right of way.

Alternatives Reviewed

Retaining jurisdiction of the MUP will leave Niagara Region responsible for general maintenance which it currently is not set-up to do. Niagara Region currently does not own equipment or operate a program for the maintenance of snow removal of multi-use paths; similar to sidewalks.

Relationship to Council Strategic Priorities

Active transportation improvements are a key strategy in the Region's Transportation Master Plan under Moving People and Goods. The Brock District Plan is a catalyst for future development of the Brock area and will transform the surrounding area into a best in class experience for visitors, students and those working/living in the area. This is in line with positioning Niagara globally with the experience when visiting this district. The proposed arrangement provides an opportunity for rationalizing services between the City of Thorold and Niagara Region respecting an asset considered desirable and beneficial to the community by both municipalities.

Other Pertinent Reports

PW 41-2019	St. David's Road Interchange Reconstruction and Multi-Use Path Construction
PW 8-2018	Ontario Municipal Commuter Cycling Program – 2017 Grant
By-law 2018-26	Authorize Agreement Execution of Ontario Municipal Commuter Cycling Program (OMCC) 2017-2018

Prepared by:
Mike Keller
Project Manager
Transportation Engineering
Public Works Department

Recommended by:
Bruce Zvaniga P.Eng.
Commissioner of Public Works
Public Works Department

Submitted by:
Ron Tripp, P.Eng.
Chief Administrative Officer

This report was prepared in consultation with Frank Tassone, AD Transportation Engineering, Carolyn Ryall, Director, Transportation Services Division, Sterling Wood, Legal Counsel, Corporate Services, and Brian McMahon, Program Financial Specialist.

Appendices

Appendix 1	Key Plan
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LEGEND

- ① Existing Merrittville Highway Multi-Use Path
- ② Civic Park Multi-Use Path
- ③ Sir Isaac Brock Way Multi-Use Path
- ④a Highway 406 Multi-Use Path
- ④b MTO Bridge Structure Multi-Use Path
- ⑤ St. David's Road Multi-Use Path

MEMORANDUM

PWC-C 22-2022

Subject: Blue Box Transition Update

Date: August 9, 2022

To: Public Works Committee

From: Sherri Tait, Manager - Waste Collection & Diversion

The purpose of this memorandum is to provide Committee with information and update on the residential Blue Box transition to full producer responsibility.

Background

On June 3, 2021, the Ministry of Environment, Conservation and Parks (MECP) released a new Blue Box regulation under the *Resource Recovery and Circular Economy Act, 2016* and filed [amendments](https://www.ontario.ca/laws/regulation/r22349) (https://www.ontario.ca/laws/regulation/r22349) to the Blue Box regulation on April 14, 2022. The regulation makes producers of the Blue Box materials fully responsible for their products and packaging once consumers dispose of them. Between July 1, 2023 and December 31, 2025 all existing residential Blue Box programs in Ontario will move to a single, provincial collection system funded, governed and operated by the producers. Niagara Region has been identified to transition to full producer responsibility no later than January 1, 2024.

Producers and Producer Responsibility Organizations (PROs) (organizations that were created to help producers meet their obligations) have registered with Resource Productivity and Recovery Authority (RPRA).

The recent Blue Box regulation amendments require PROs with 66% of aggregate weight of Blue Box material supplied, to describe, in an initial report, how they will establish a province-wide collection system and operate a post-collection system (i.e. processing of Blue Box material) by July 1, 2022. Circular Materials Ontario (CMO) has standing to file the initial report as they have entered into agreements, as a PRO with their own subscribing producers and, as the common collection system administrator, with producers subscribing to other PROs (i.e. Ryse Solutions Ontario) through an agreement. Together, they are responsible for more than 66 per cent of the aggregate weight of Blue Box material supplied to Ontario consumers in 2020.

Decision Points/Considerations

As presented in previous reports (PW 23-2020 and PWC-C 24-2021), there are several considerations and decisions that will need to be made related to the Blue Box transition. A high level overview of these are presented below and the anticipated timelines for decisions in brackets. The timelines noted below are approximate, and will be impacted by the timing of key information (e.g. compensation) received by CMO.

1. Provision of collection and haulage services on behalf of producers. (Fall 2022)
2. Servicing additional property types that are not included in the Blue Box regulation (i.e. industrial, commercial and institutional) during transition if Niagara Region does not contract with CMO or after full transition starting in 2026. (Prior to December 31, 2025).
3. Collection of Non-Designated materials (ex. soft cover and hard cover books and some flexible plastics used for containment of food such as sandwich bags and freezer bags) after full transition of the Blue Box program on January 1, 2026. (Prior to December 31, 2025).
4. Service at residential drop off depots. (Fall 2022 for contracting with CMO during transition period. Producers are required under the regulation to provide depot collection services during the transition period only for eligible communities that have curbside collection. A decision will be required prior to December 31, 2025 if Niagara Region wishes to provide residential depot collection services starting January 1, 2026).
5. Provision of promotion and education for Blue Box program on behalf of CMO (Fall 2022).
6. Continuation of Special Events Recycling as it is not included in the Blue Box regulation. (Prior to January 1, 2024).
7. Provision of collection and haulage of Public Space Recycling on behalf of producers. (Fall 2022).

CMO's Procurement Approach for Blue Box Collection Services

On May 2, 2022, the Association of Municipalities of Ontario (AMO) and the Municipal 3Rs Collaborative (M3RC) held a webinar where CMO presented their procurement approaches for the residential Blue Box transition.

CMO's proposed approach to the residential Blue Box transition includes the following:

- Status quo (i.e. collection from current residences and facilities, accepted materials, dual stream collection, same collection container type, continuation of commingling of materials from eligible and non-eligible sources (ex. businesses)) for transition period (July 31, 2023 to December 31, 2025) if an eligible community or their contractor has contracted with CMO for the transition period.
- Procure collection services through competitive procurement using catchment areas after transition period. Niagara Region is a catchment area.

Further to the above, if an eligible community does not contract with CMO to provide collection services, CMO will approach their contractor to contract directly with them. If both do not agree to contract with CMO, CMO will need to procure collection services prior to the eligible community's transition date. If an eligible community's current contract extends into or beyond 2026, CMO will offer to contract with the eligible community using the Master Service Agreement (MSA) and Statement of Work (SOW) for vendors awarded the contract through the competitive procurement process. This will exclude requirements for collection from non-eligible sources (ex. businesses).

On May 11, 2022, CMO has released a MSA and Statement of Works SOWs for Residence and Facility Collection, Depot Collection, Public Space Recycling Collection and Promotion and Education for the transition period. Eligible communities will need to agree to and sign the MSA and SOWs in order to provide these services on behalf of CMO.

Initially, CMO asked for feedback by June 15, 2022 on the MSA and SOWs and to complete a survey by June 30, 2022 to indicate if the eligible community wished to contract with CMO to provide residential Blue Box services. However, based on a number of concerns related to the terms and conditions of the MSA and SOW raised by eligible communities and organizations such as AMO and M3RC, CMO announced on June 3, 2022 that they would be revising the MSA and SOW and anticipated that new documents would be released on June 15, 2022.

On June 22, 2022, CMO released revised MSA and SOW on the [CMO website](https://www.circularmaterials.ca/onmunicipalities/) (<https://www.circularmaterials.ca/onmunicipalities/>) and extended the deadline for the survey to July 15, 2022. The survey was only for the MSA and SOW for Residences and Facility Collection. CMO indicated that if an eligible community responded with a 'conditional yes' (i.e. is a staff recommendation and not endorsed by Council), CMO would include both the eligible communities transition date and January 1, 2026 in their formal procurement for collection services (to contract directly with service providers) and CMO will decide based on the procurement results on which date will be chosen.

While the revised MSA and SOW addressed many concerns raised by eligible communities, AMO and M3RC, the MSA and SOWs introduced new terms and conditions that may require eligible communities to re-negotiate with their service providers, at the eligible community's cost and add a number of potential risks. For Niagara Region these include but are not limited to:

Compensation

The approach to determine payment to eligible communities is based on 2020 Datacall costs which, in Niagara's case, does not reflect the true costs to provide the collection services. For example it does not include a full year of increased collection costs due to the new contract that started in October 2020.

CMO requested eligible communities who experienced increases in collection costs as a result of new collection contracts to complete a survey by June 30, 2022 outlining the procurement approach and resulting cost increases.

On July 15, 2022, CMO sent an email stating they are in the process of reviewing the information received via the survey and will be able to provide a response on payment offers after an internal process. This internal process is required due to the value of the requested adjustments. They expect to share the outcome of this process by the end of August.

Contamination Rate

As per the SOWC, the contractor will use best efforts to reduce the quantity of Non-Blue Box Material in collected Blue Box Material to no more than four percent (4%) by weight.

Niagara Region currently implements several tactics to reduce contamination in the Blue Box program (i.e. curbside audits and resulting education to residents and collection contractors, targeted communication to residents, Region-wide promotion and education

including specific Blue Box campaigns, social media posts etc.). The Region has not been able to meet a four percent (4%) contamination rate even including material that currently is not acceptable in the Blue Box program but that will be under full producer responsibility. The requirement for the Contractor to use best efforts to reduce the quantity of Non-Blue Box Material in collected Blue Box material to no more than four percent (4%) by weight and implement a plan at the Contractor's expense could result in significant cost increases with no significant changes to the contamination rate.

Eligible Sources

It is unclear in the SOW and in CMO's responses received on July 13, 2022 to questions posed by Niagara Region, if those properties currently receiving private garbage collection but collection of recycling from Niagara Region are considered an eligible source.

Ineligible Sources

While Niagara Region does appreciate the collection from ineligible sources is included for the transition period (July 1, 2023 to December 31, 2025), the costs associated with receiving/processing of material from ineligible sources are a concern.

Distance to Receiving Facilities

As per the documents, the drop off locations (i.e. Receiving Facilities) for Blue Box materials will be no more than a 60 minute drive time (one way) from the centre of the eligible communities. A 60 minute drive time one way from the centre of each eligible community is significantly longer than current drive times to Niagara Region's Material Recovery Facility (MRF). Also, CMO has indicated in response on July 13, 2022 to Niagara Region's questions that queuing and unloading times are unknown. Changes in queuing and unloading times could also impact collections and costs.

There is the potential that this will not be a concern as Niagara Region's MRF could be used as a receiving or processing facility.

New Terms and Conditions

The MSA and SOW introduce new terms and conditions that may require Niagara Region to re-negotiate with our current service providers, at Niagara Region's cost and they also add a number of potential financial risks. Any terms that need to be re-negotiated as a

result of CMO's MSA and SOW may come at a significant cost increase which will not be reflected in the approach used to determine payment proposed by CMO.

Administrative Costs

Administrative costs are based on current Resource Productivity and Recovery Authority Datacall (ex. approximately 3-5% of the collection contract). This does not generally (across Ontario) reflect actual costs to administer contracts, manage staff and resources and cover additional requirements such as reporting requirements stipulated by CMO.

Clarifications

CMO has made several clarifications in response to questions posed by Niagara Region, other eligible communities, AMO and M3RC during Municipal Working Groups hosted by CMO. These clarifications have not been reflected yet in an updated MSA and SOW.

Risk

Based on an initial review of the MSA and SOW by Niagara Region's Legal Services, the MSA and SOW allocate a tremendous amount of risk to Niagara Region including financial risk as noted above.

Survey Response

Similar to other eligible communities, Niagara Region has not formally responded to the survey as mentioned above and instead sent a letter outlining the concerns noted above.

Request for Proposals for Receiving Facilities

On June 7, 2022, CMO and Reverse Logistics Group (RLG), who CMO has contracted to perform work in connection to the operation of receiving facilities and related services, issued Request for Proposals (RFPs) from interested parties to establish and operate receiving facilities (i.e. transfer stations with no processing) in collection catchment areas. Three RFPs were released for various catchment areas based on date of the eligible communities' transition date within the catchment areas. Niagara Region is identified as a catchment area and is included in RFP #2.

On June 21, some municipalities sent a joint letter to CMO and RLG outlining concerns with the RFP including that some terms and conditions that municipalities had concerns with in the original MSA and SOW were contained within the RFP.

The RFP is looking for receiving facilities to be able to accept and have three tipping areas for single stream recycling, separated fibre stream and separated container stream.

Submissions for RFP #2 are currently due February 3, 2023 and the anticipated award date is prior to March 3, 2023.

CMO and RLG are looking for Receiving Facilities within one hour drive time (one way) from the centre of each eligible community (i.e. local area municipalities). Until the RFPs are awarded, it is unknown where the collection contractors will be required to drop off material.

Material Recovery Facilities

Each PRO will be responsible for determining where and how they process the collected Blue Box material. It is anticipated that CMO will release an RFP for processing Blue Box material in August. PROs have also been reaching out directly to municipalities that have material recovery facilities that are strategically located and have sufficient capacity.

Next Steps

Niagara Region will continue to work closely with CMO and AMO, M3RC and other eligible communities to review and express any concerns related to the MSA and SOWs.

At this time it is unclear how willing CMO is to further negotiate the terms and conditions of the MSA and SOWs.

After further review of the MSA and SOWs, analysis and potential negotiations with CMO, staff will report back on any recommendations.

In addition to the above next steps, Niagara Region will also continue to participate in municipal/industry sessions and subcommittees related to Blue Box transition.

Respectfully submitted and signed by

Sherri Tait,
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