



Transportation and Works Department
Commissioner's Office

MEMORANDUM

TO: Dewatering Complaint Review Committee Members

FROM: Bruce Macgregor, Commissioner of Transportation and Works

DATE: April 2, 2007

RE: **Formation of the Dewatering Complaint Review Committee**

Attached is a report adopted by Regional Council on May 22, 2003 establishing the Dewatering Complaint Review Committee. This copy is provided for an understanding of the creation, terms of reference, process and responsibilities of its members.

Please feel free to contact me (Ext. 5025) or Debbie Korolnek (Ext. 3015) at 905-764-6346, if you have any questions.

/ba

A handwritten signature in black ink, appearing to read "Bruce".

Attachment Clause 1 of Report No. 4 (May 22, 2003)

Copy: Debbie Korolnek, General Manager, Water and Wastewater

Comm./P09/Dewatering Complaint Review Committee Memo.doc



Clause No. 1 embodied in Report No. 4 of the Commissioner of Transportation and Works was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting on May 22, 2003.

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16TH AVENUE TRUNK SEWER ENHANCED MITIGATION PROGRAM COMPLAINT REVIEW COMMITTEE

1. RECOMMENDATIONS

It is recommended that:

1. Regional Council establish and appoint a Complaint Review Committee comprised of five members of Regional Council.
2. Regional Council authorize the Complaint Review Committee to review and determine whether York Region should provide alternate permanent water supply to a dissatisfied resident in relation to a capital infrastructure project dewatering activity.
3. Regional Council adopt the Terms of Reference for the Complaint Review Committee as outlined in this report and that the Complaint Review Committee provide its written findings to Regional Council for approval of the Complaint Review Committee's recommendations.
4. The Chief Administrative Officer report back to Regional Council on the costs of implementation of the Complaint Review Committee recommendations.

2. PURPOSE

The purpose of the report is to update Transportation and Works Committee and Regional Council on the implementation of the enhanced mitigation program related to the dewatering aspects of the 16th Avenue Trunk Sewer project, and to obtain approval for the creation of a Complaint Review Committee to be responsible for reviewing well water concerns associated with the 16th Avenue Trunk Sewer Project.

3. BACKGROUND

This report relates to the impacts of dewatering associated with the Ninth Line and 16th Avenue Trunk Sewer tunnelling projects.

The Ninth Line and 16th Avenue Trunk Sewer Tunnelling Project consists of three phases (*see Attachment 1*). These are:

- Ninth Line Trunk Sewer, Box Grove to south of Major Mackenzie Drive.

- 16th Avenue Trunk Sewer, Phase 1, from Ninth Line to Stone Mason Boulevard.
- 16th Avenue Trunk Sewer, Phase 2, from Stone Mason Boulevard to Woodbine Avenue.

These sewers will accommodate development in the Towns of Markham and Richmond Hill, and, in combination with the Leslie Street Lower Trunk Sewer and the 19th Avenue Interceptor Sewer, will also divert flow from existing trunk sewers to provide additional capacity to accommodate growth in the Towns of Aurora and Newmarket and the City of Vaughan.

The need for these sewers was identified in the 1997 York Durham Sewage System (YDSS) Master Plan.

The Regional Municipality of York Council at its meeting on November 21, 2002 in Report No. 9 of the Commissioner of Transportation and Works outlined an enhanced mitigation program for resolving residents water supply concerns related to the 16th Avenue Trunk Sewer Project. Regional Council ratified the creation of this enhanced mitigation program, including the concept of a body to resolve disputes related to the impacts of dewatering.

3.1 Trunk Sewer Construction

The Master Plan established the preferred solution to service new growth in York Region as a gravity-based sewer system.

The project involves the construction of deep, large diameter concrete sewers, through tunnelling. Tunnelling is the only feasible method of constructing sewers of this type, at depths of up to 50 metres.

In order to construct the shafts and the tunnels, the deep aquifer must be dewatered to bring the groundwater level in the deep aquifer below the depth of the shaft and tunnel. Dewatering is undertaken through pumping of water at various locations along the route of the trunk sewer to allow the construction to take place. There is no feasible safe way to construct such a tunnel without dewatering in the vicinity of the project.

Design and construction of the trunk sewer as a gravity sewer through tunnelling and dewatering is the only viable method. Other alternatives were reviewed during the Environmental Assessment design period and determined to have environmental, health and safety, and technical drawbacks.

3.2 Potential Impacts on Wells

The zone of influence is the area where the groundwater level in the deep aquifer will be drawn down below that of the pre-dewatering levels. Hydrogeologists from the Town of

Markham, the contractor and the Region have agreed on the extent of the zone of influence where wells may be affected by the lowering of the groundwater level. Wells within the zone of influence experience a lowering of the water level in the well caused by project dewatering activity. The Regional Project Team and its consultants have agreed that a draw down of more than two metres may impact a well's ability to supply water to the well users. The Region has implemented an enhanced mitigation program to monitor all resident complaints, both inside and outside the measured zone of influence to ensure that affected residents do not go without water.

3.3 Enhanced Mitigation Program

Based on input from residents and the Town of Markham Council, Regional staff proposed enhancements to the existing mitigation program in Report No. 9 of the Commissioner of Transportation and Works.

Implementation of the enhanced mitigation program is the responsibility of the Regional Project Team, comprised of Regional staff, Inspec-Sol, Marshall Macklin Monaghan, and the design-build consortium led by McNally/Aecon Joint Venture. The roles and responsibilities within the Region's Project Team are outlined in *Attachment 2*.

3.3.1 Improvements to the Mitigation Program

On January 23, 2003, Regional Council approved the retention of Inspec-Sol Inc. to provide hydrogeological and public communications services for the 16th Avenue Project. Since January 2003, Inspec-Sol Inc. has been working with the Regional Project Team to implement the enhanced mitigation program.

The Regional Project Team has also continued to improve its public communications program. On February 8, 2003 the Region launched a 24 hour call centre to address resident complaints relating to project activity (*see Attachment 3*). The Regional Project Team has also met with Markham residents several times in 2003, and is also planning a public meeting to discuss project activity and progress at the end of May, 2003.

3.3.2 Progress Update

Since November 2002, significant progress has been made in implementing the enhanced mitigation program:

- As of April 1, 2003, twenty-three new wells are being drilled for residents who have been on temporary water supply for more than one season. Four drilling crews are now working on this, and will complete the drilling and commissioning of these new wells by May 31, 2003.
- The Region has calculated the incremental hydroelectricity cost increases incurred by residents on temporary water supplies and cheques to affected residents have been delivered and final payments are expected to be made by May 30, 2003.
- The Regional Project Team created and will launch in May a public information web site to provide residents with important project information.

4. ANALYSIS AND OPTIONS

4.1 Hydrogeological Assessments

Geology and the science of hydrogeology are very complex. Although, the hydrogeologists from the Town of Markham, the contractor and the Region, can agree on the assessment of impacts to individual wells through a program of monitoring water levels and surveying and analyzing wells, residents may not be persuaded by the explanation and presentation of scientific evidence.

In November, it was proposed that a dispute mechanism be established to address resident concerns that have not been resolved to the resident's satisfaction. The review process would ensure all residents are treated fairly and assessed properly.

A proposed structure, mandate, and process for a Complaint Review Committee has been developed. It is proposed that the Complaint Review Committee would consist of Regional Councillors who would review complaints and to develop recommendations for any additional Regional action.

4.2 Complaint Review Committee-Terms of Reference

4.2.1 Administrative Review by a Committee of Council

Procedurally, Council as a whole does not have to conduct the proposed review. Rather, it is proposed that Council authorize a committee of Council, the Complaint Review Committee, to conduct the review on behalf of Council. There are no differences in the procedural standards that would be applied to Council undertaking a review, as opposed to a committee of Council with the authority to conduct the review and make recommendations to Council.

The decision for each review rests ultimately with Council, and therefore it is proposed that the Committee's recommendations be brought forward to Council for ratification.

4.2.2 Composition and Membership of the Complaint Review Committee

It is proposed that Council establish a Complaint Review Committee composed of five members of Regional Council. The composition of five members would best ensure that a quorum is achieved while at the same time ensuring a viable and manageable working group. A membership of five would also ensure multiple viewpoints and experience be brought to bear in the Committee's deliberations.

4.2.3 Mandate of the Complaint Review Committee

The Complaint Review Committee would provide dissatisfied residents with an opportunity to present their case as to why the Region should implement an alternative permanent water supply solution.

4.2.4 Scope of the Complaint Review Committee

The Complaint Review Committee would review complaints by dissatisfied residents where the Region's Project Team has determined that there is no hydrogeological basis to substantiate that an impact occurred on a well due to dewatering for a Regional construction project. The Complaint Review Committee would be authorized to recommend, if it deemed appropriate the provision of an alternate permanent water supply to the resident. Temporary water supply would be maintained, where the Complaint Review Committee recommended either that a permanent supply be provided or recommended that a resident be taken off temporary supply, until Regional Council ratifies the CRC recommendation.

The authority of the Complaint Review Committee is limited to recommendations that must be ratified by Council before being implemented. In the event that a recommendation is made for a water supply solution and a resident does not have temporary supply, a temporary supply may be put into place. Provision of temporary supply of water is governed through the mitigation process established for the project and is administered by Regional staff.

4.2.5 Availability of the Complaint Review Committee

To be eligible for review by the Complaint Review Committee, a resident must have a well interference complaint related to a Regional project. The resident's complaint must have been subject to a well interference assessment conducted by a hydrogeologist representing the Region. The resident must also have had his or her earlier request for alternate Regional water supply denied by staff or the Project Team.

4.2.6 Forum

The Complaint Review Committee would conduct its review in an open and public form. The Complaint Review Committee deliberations would, however, be in private. The Complaint Review Committee would have available to it dedicated Regional clerical support in relation to the conduct of the Committee and to process. The Complaint Review Committee would also have available Regional legal support. However, it is not recommended that the Region be represented by a lawyer at the Complaint Review Committee. Rather, it is envisioned that a lawyer would be made available to the Complaint Review Committee during the sitting of the Complaint Review Committee to address any legal issues requiring clarification and direction. In addition, legal counsel would be available to the Complaint Review Committee during the deliberation and decision process.

4.2.7 Overview Process

In order to initiate the Complaint Review Committee process, an eligible resident would be required to contact the Call Centre, within 30 days of the Region's Project Team's final assessment. Once a call is received, it would be logged and documentation would be

sent to the resident, that he or she would need to complete and return to the Regional Clerk's office, in order to invoke the Complaint Review Committee process. This documentation, much like a written deputation request, would enable the Clerk's office to make the necessary arrangements to convene the review by the Complaint Review Committee.

It is proposed that the date and location of the Complaint Review Committee be acceptable to the resident. For the convenience of the resident, bi-weekly meetings of the Complaint Review Committee alternating between the Region Administration Offices during business hours, and the local Municipality office during evening hours are proposed. It is contemplated that the resident would provide a list of attendees who he or she proposes would address the Complaint Review Committee on his or her behalf. In the simplest terms, the Complaint Review Committee would hear the resident and then hear, on behalf of the Region, the actions and response of the Regional Project Team and hydrogeologists. The Complaint Review Committee would then deliberate in private following which it would make its findings and recommendations to Council. The Complaint Review Committee's recommendations would be reported to Council for approval. Once Council has decided the matter, a written decision would be released to the resident within three business days.

4.2.8 Procedural Requirements

It must be emphasized that the proposed Complaint Review Committee review process is not judicial in nature. The Complaint Review Committee's deliberations will not be made on the basis of legal principles. The Complaint Review Committee will not affect in any way an individual's legal rights. All legal remedies available to a resident will remain.

Recognizing that the ultimate decision of Council is not judicial, the Complaint Review Committee does not require a formal procedure.

The proposed procedure for the Complaint Review Committee is to permit the resident to introduce documentary information and to bring with them individuals, knowledgeable about the matter, who will give depositions. The resident may also present his or her position through deputation. Questions then can be asked of those individuals through the Committee Chair. Likewise, representatives on behalf of the Region would be afforded the same opportunity. The Committee Chair, who controls the process, is entitled to rule on the appropriateness of questions asked by the resident or the Region, and to then put appropriate questions to witnesses. The questions asked should be "reasonably required". The Chair of the Complaint Review Committee retains control of the process and jurisdiction to decide what questions are reasonable.

The Complaint Review Committee may implement informal procedures to promote an efficient review process. The goal of efficiency is recognized as a goal consistent with, and essential to a fair process. Nothing prevents the Complaint Review Committee from

limiting deputations, so long as the Complaint Review Committee does not foreclose a resident's right to be heard and to put forward their position.

In the case of the proposed Complaint Review Committee, the following conclusions can be drawn:

- There should be adequate notice to the resident.
- While no formal procedure is required, the Region should fairly disclose the intended process and allow any eligible resident an opportunity to be heard; this includes submitting documentation, affording deputants an opportunity to speak and to be questioned and permitting the resident to present argument, orally or in writing, in person, or by agent/counsel. The process should be fair.
- The Complaint Review Committee should hear and consider the resident's complaint in good faith and with an open mind.
- The Complaint Review Committee, and ultimately Council, is obliged to balance the public benefit against private detriment. This is a political and not a judicial function. Its ultimate responsibility is to the electorate, having fairly heard the resident.
- If a resident does not appear to be heard or elects to withdraw from the process without exercising the opportunity presented to them to be heard, a decision may be made in their absence.
- If any member of the Complaint Review Committee or Council has any personal or pecuniary interest in the outcome of the matter, he or she shall disqualify themselves.

4.2.9 Deliberation Criteria

The Complaint Review Committee should approach its consideration of a resident's complaint by addressing the following questions:

Review of Response Program:

- Did the Region follow its protocol?
- What is the basis of the hydrogeologist's decision?

Other Criteria:

- How long has the resident resided at the address?
- Have they ever had problems in the past?
- Have they done maintenance on the well and are there records of this maintenance?
- Other influencing factors?

The recommendations are summarized in Table 1.

Table 1
Complaint Review Committee

Committee	• Five Members of Regional Council with a quorum of three.
Format	• Public forum, private deliberation, public decision.
Mandate	• To provide residents with a review of the assessment made by the Region's Project Team relating to residents' water supply claims. • To determine whether the Region should implement an alternate permanent water supply solution.
Scope	• To review complaints where the Region's project team have determined there is no impact on a resident's well from Regional construction.
Review	• To recommend the provision of an alternate permanent water supply.
Mechanism	• Hear the complainant. • Hear the actions and response of the Region. • Consider/deliberate. • Communicate Committee findings and recommendations.
Eligibility	• To be eligible, a complainant must have been: - A well interference complainant related to a Regional project. - Undergone a well interference assessment conducted by a hydrogeologist representing the Region (at the Region's expense). - Had their request for a permanent water supply denied.
Process	• Request for Review to be made by complainant, verbally to the Call Centre, within 30 days of Region's response. • Complete written request for review documents as provided by the Region. • Confirmation of acceptable review date and location by complainant. • Request for list of attendees from complainant. • Bi-weekly meeting alternating between the Region Administration Offices during business hours, and the Local Municipal office during evening hours. • Convene the Review at the Complaint Review Committee. • Confirmation of Committee findings within three business days of Council.
Deliberation Criteria	• Did the Region follow its protocol? • What is the basis of the hydrogeologist's decision? • How long has the resident resided at the address? • Have they ever had problems in the past? • Have they done maintenance on the well and are there records of this maintenance? • Other influencing factors?

4.3 Application of Complaint Review Committee to Other Projects

The Region's Capital Plan includes four major projects that involve tunnelling/dewatering over the next five years (*see Attachment 4*):

- 16th Avenue Phase II (2003-2006).
- Bathurst Collector/Langstaff Trunk Sewer (2003-2005).
- 9th Line to Stouffville Road (2003-2004).
- South-East Collector (2004-2006).

In light of the similarity of well water supply issues and concerns on the 9th Line and 16th Avenue Trunk Sewer project involving dewatering, it is proposed that the Complaint Review Committee be authorized to review complaints of current impacts from active or recently completed projects, and future planned projects. With reference to the current project on the 9th Line and 16th Avenue, all residents that registered a concern prior to the implementation of the enhanced mitigation program have been contacted to assess their level of satisfaction with the original assessment of the contractor.

For this project, it is proposed that residents who are still not satisfied with the assessment conducted by the contractor be re-assessed through the independent hydrogeologist retained by the Region as part of its enhanced mitigation program. It is further proposed that subsequent to this re-assessment, if residents are still unsatisfied they will be eligible to request a review of their file by the Complaint Review Committee.

In 2001 and 2002, the Region also carried out significant dewatering during its construction of the new Georgina Water Treatment Plant near Willow Beach. For complaints of current impacts, the CRC would be available as a means of recourse. Suggestions have also been made to consider the application of the Complaint Review Committee process to this completed project where the project impacts are no longer being felt. It should be pointed out however that in such situations it is not possible to accurately measure or quantify past impacts. As such Regional staff strongly recommend that any claims of past damages/impacts be referred to established claim resolution and legal processes.

5. FINANCIAL IMPLICATIONS

The cost of implementing CRC recommendations has not been provided for in the Region's 10 year Capital Plan.

The cost of continuing water supply beyond the date that it has been determined there are no impacts from the Region's construction has not currently been provided for in the Region's 10 year Capital Plan.

The Chief Administrative Officer will report back to Regional Council on the projected cost obligation of creating the Complaint Review Committee and implementing its recommendations.

6. LOCAL MUNICIPAL IMPACT

Construction of the 16th Avenue Trunk Sewer has a significant impact on the residents of the Town of Markham. Enhancements and continued development of the original mitigation program are intended to address the resolution from the Town Council and the concerns raised by the residents in and adjacent to the affected area.

The continued growth in the community of Holland Landing/Queensville, City of Vaughan and the Towns of Newmarket, Aurora, Richmond Hill and Markham depend on this trunk sewer being constructed by 2006. Further delays to the project because permits will not be issued will result and impact this growth. Approval of this Committee and continued work to address the Town of Markham's concerns will minimize the impact and delay to the permitting process.

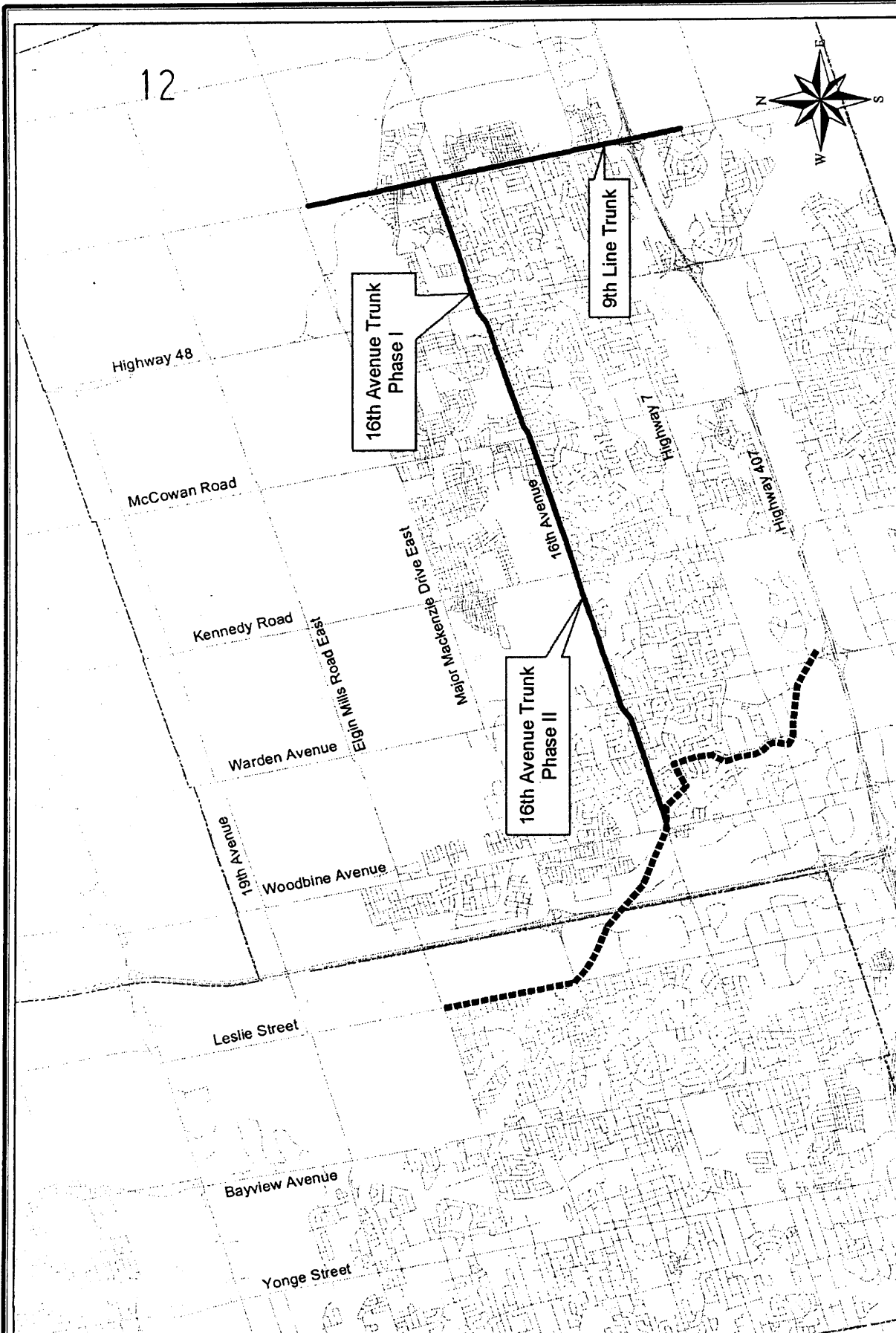
7. CONCLUSION

The Regional Project Team continues to work with the Town of Markham and its residents to address concerns and to evolve the mitigation program to ensure that it meets resident needs and addresses their concerns.

The adoption of the Complaint Review Committee process will provide another important enhancement to the current mitigation program by providing unsatisfied residents with an easy way to dispute the scientific assessments of the Region's Project Team.

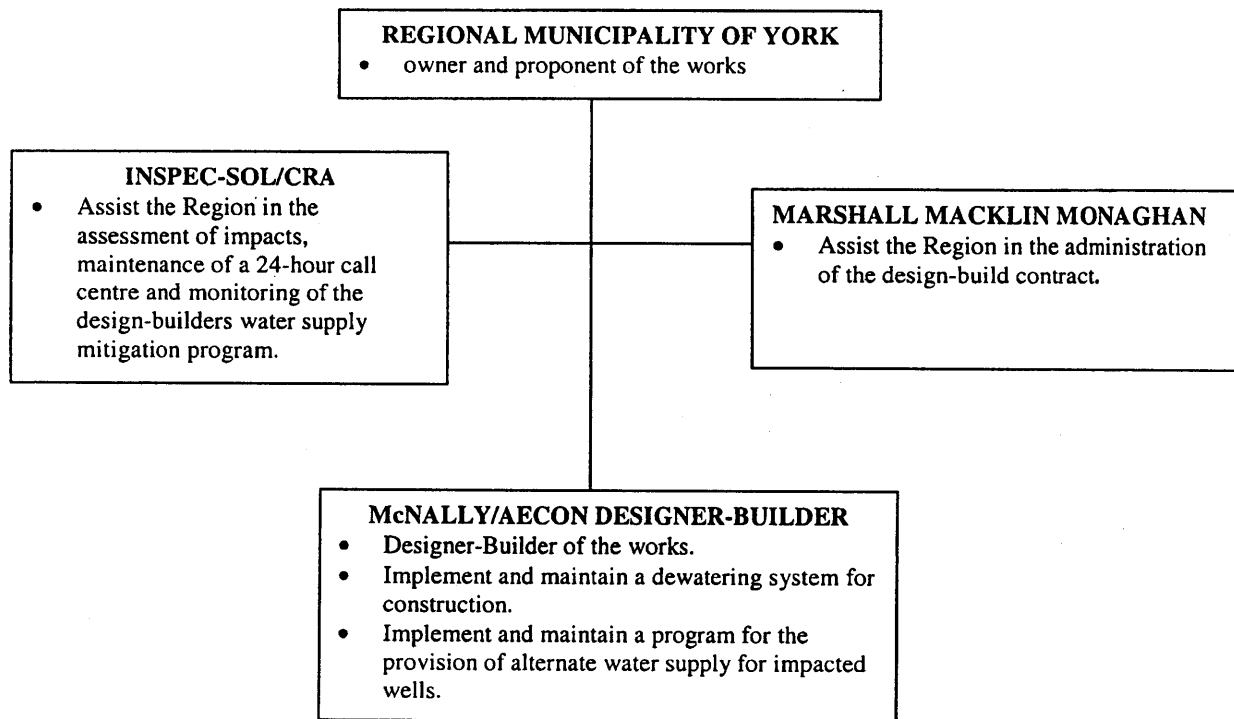
The Senior Management Group has reviewed this report.

(A copy of the attachments referred to in the foregoing is included with this report and is also on file in the Office of the Regional Clerk.)



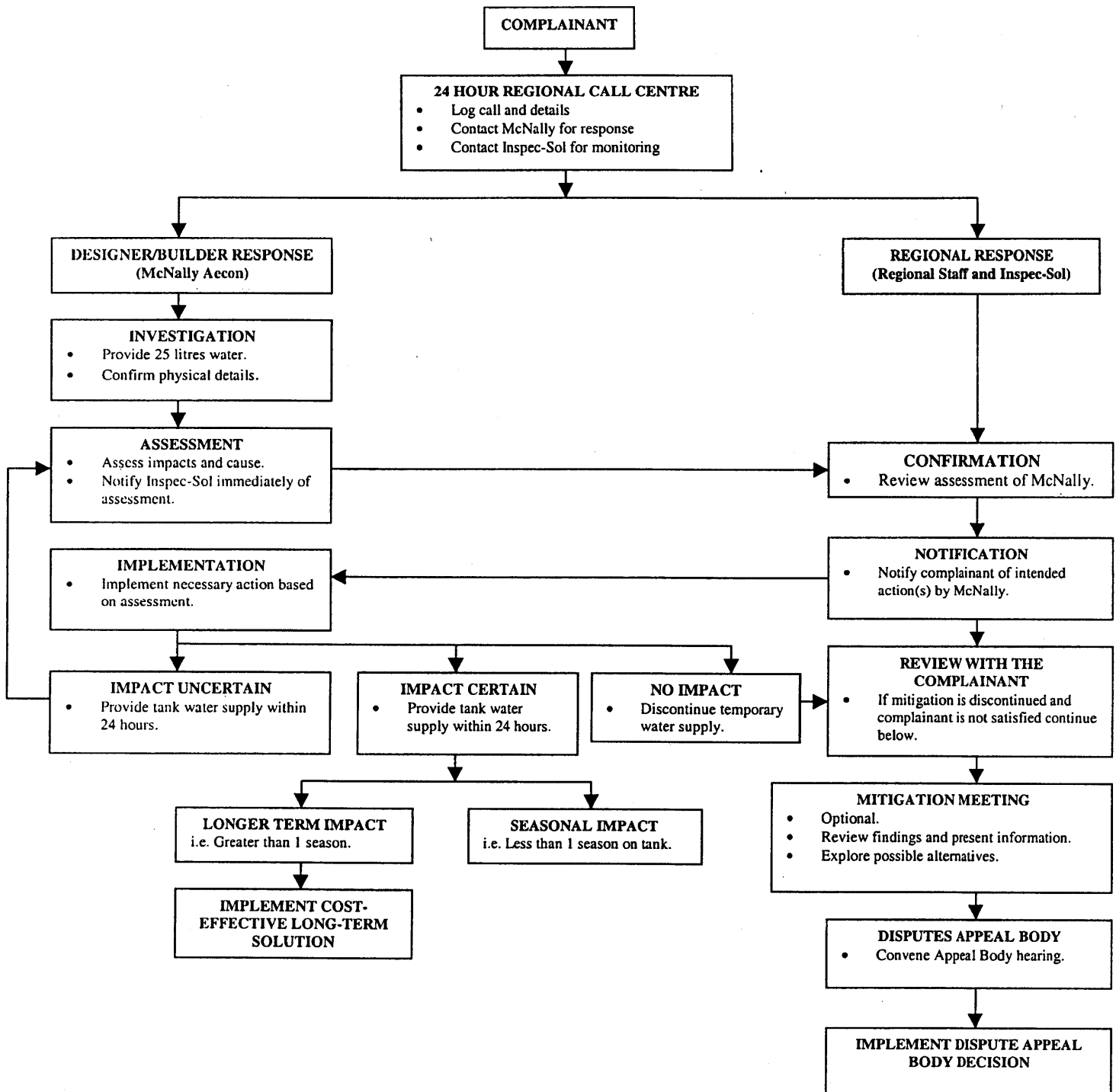
LOCATION PLAN
 16th Avenue Trunk Sewer
 16th Avenue (Y.R.73)
 Town of Markham

York Region INFRASTRUCTURE DESIGN AND CONSTRUCTION

ROLE OF 16TH AVENUE TRUNK SEWER TEAM MEMBERS

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DEWATERING COMPLAINANTS RESPONSE FLOW CHART



DR/cp
May 20, 2003

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Planned Projects

