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FINAL REPORTS OF PROVINCIAL EXPERT COMMITTEES ON DRINKING WATER SOURCE PROTECTION

The Transportation and Works Committee recommends:

1. The presentation by Lloyd Lemon, Program Manager, Water Resource Protection, be received; and
2. The recommendations contained in the following report, February 16, 2005, from the Commissioner of Transportation and Works and Commissioner of Planning and Development Services be adopted:

1. RECOMMENDATIONS

It is recommended that:

1. The Regional Clerk forward a copy of this report to the Minister of the Environment as Regional Council's endorsement of the comments on the *Final Report of the Implementation Committee on Source Water Protection (SPIC Report)* and the *Final Report of the Technical Experts Committee on Science Based Decision making for protecting Ontario's Drinking Water Resources: A Threats Assessment (TEC Report)* as forwarded by staff in response to Environmental Bill of Rights (EBR) Registry Numbers XA04E0021 and XA04E0022. (see Attachment I).
2. The Regional Clerk also forward a copy of this report to:
 - The Association of Municipalities of Ontario (AMO).
 - Local Municipalities within York Region, The Regional Municipality of Peel, The Regional Municipality of Durham, The Township of Bradford-West Gwillimbury, The City of Toronto, The Toronto and Region Conservation Authority, and the Lake Simcoe Region Conservation Authority for their information.

2. PURPOSE

This report provides Transportation and Works Committee and Regional Council with an overview of the content of two expert reports on Drinking Water Source Protection presented as advice to the Minister of the Environment in November 2004. The report also provides a summary of the significance of these two reports to York Region, presents comments on the content of these reports submitted by staff in response to the EBR Posting, and provides an overview of the next steps in the source protection planning process.

3. BACKGROUND

On December 10, 2004, the Ontario Ministry of the Environment (MOE) posted the *Final Report of the Implementation Committee on Source Water Protection (SPIC Report)* and the *Final Report of the Technical Experts Committee on Science Based Decision making for protecting Ontario's Drinking Water Resources: A Threats Assessment (TEC Report)* on the Environmental Bill of Rights Registry and invited comments for a period of 60 days, ending February 14, 2005.

These reports present the advice to the Minister of the Environment from two expert committees that were convened to assist the Province in addressing technical issues and implementation issues in establishing a regulatory framework to govern Drinking Water Source Protection. The two committees met frequently between January and November 2004.

The work of the expert committees represents the fourth piece of consultation released by the Province as part of the process to establish Drinking Water Source Protection. The previous releases included:

- The “*Protecting Ontario's Drinking Water: Toward a Watershed-Based Source Protection Planning Framework – The Final Report of the Advisory Committee on Watershed-Based Source Protection Planning*” (April 21, 2003). Regional Council received this information and endorsed comments to the EBR in Clause 23 of Report 6 of the Commissioner of Transportation and Works on June 26, 2003.
- The “*White Paper on Watershed-Based Source Protection Planning*” (White Paper) Regional Council received this information and endorsed comments to the EBR in Clause 3 of Report 4 of the Commissioner of Transportation and Works on April 22, 2004.
- The “*Draft Drinking Water Source Protection Act, 2004*”. Regional Council received this information and endorsed comments to the EBR in Clause 8 of Report 8 of the Commissioner of Transportation and Works on September 23, 2004.

The key issues raised in this last report dealt with the following:

Process:

The draft *DWSPA* outlined a process to develop Source Water Protection Plans but failed to provide sufficient information regarding the origin of financing; technical resources; objectives and technical standards, technical process; potential content of regulations; timing; roles, responsibilities and liabilities; implementation tools and expectations and how SWPPs are to be implemented.

Roles and Responsibilities:

The potential roles and responsibilities of municipalities was not well defined and required clarification, particularly in terms of how Source Protection Plans were expected to fit into the municipal planning process.

Municipal Wellhead Protection:

The draft *DWSPA* did not address the specific legislative tools for municipalities to implement effective measures for wellhead protection to ensure the security and maintain quality of water supplies.

4. ANALYSIS AND OPTIONS

The two Final Reports released by the MOE on December 14, 2004 represent the work of two expert committees during approximately 11 months in 2004. These committees included:

- The 21-member Implementation Committee whose mandate was to provide the government with advice on tools and approaches to implement watershed-based source water protection planning. Michael Garrett, York Region CAO was a member of the Implementation Committee with Lloyd Lemon, Program Manager, Water Resources Protection serving as an alternate.
- The 16-member Technical Experts Committee whose mandate was to provide the government with advice on an Ontario-based threat assessment process.

The following sections provide a brief overview of the content of the reports, discuss some of the implications that the report recommendations would have on York Region, and provide an overview of the comments that Regional staff have submitted to the EBR posting, and outlines the next steps in the Drinking Water Source Protection Planning process.

In previous responses to the MOE, York Region has stressed the importance of several key issues, including:

- The need for more information regarding the Source Protection Planning Process.
- The need for further clarification of the roles and responsibilities of municipalities.
- The need for clear understanding of costs and funding sources.
- The need for clarity on expected timing.

These issues remain relevant as the two Final Reports present further advice to the Minister on the Source Protection Planning process. The Final Reports make some advances in proposing possible solutions to address some of the issues that have been previously raised by stakeholders, such as providing additional input on tools required,

roles and responsibilities, and options for funding. The recommendations presented in these reports are solely intended for consideration by the Minister of the Environment. There is currently no obligation for the Province to incorporate any of the recommendations in these documents in future legislation. As a result, the question that arises from review of these documents is: how will the Province craft these principles and recommendations into a regulatory framework?

However, it will be necessary for the Province to work with municipalities and the Federal government to ensure that municipalities have the financial and policy tools to delivery source water protection along with other proposed and complimentary proposed Provincial programs such as the Greenbelt Act and Places to Grow.

4.1 Content of Final Reports

The two Final Reports are very broad and extensive in their coverage. The reports focus on establishing a series of principles that can be followed when developing a regulatory framework. The advice provided as recommendations is intended to allow the province sufficient flexibility in developing legislation and programs that can be applied universally across Ontario.

4.1.1 Implementation Committee Report (SPIC Report)

The Implementation Committee Report contains 29 Guiding Principles related to Drinking Water Source Protection Planning and an additional 10 principles relating to Funding. There are 133 recommendations intended to assist the Province in implementing Watershed-based Drinking Water Source Protection Planning. The recommendations are provided under the general topics of Source Protection Planning Process (8 recommendations); Implementation Framework (8 recommendations); Implementation Tools (10 recommendations); Issue-Specific Implementation Tools (89 recommendations); and Funding of Source Water Protection (18 recommendations). A matrix showing more details on potential roles and responsibilities of participants in the process is provided.

Key recommendations dealing with issues raised by the Region include:

- Legislation should clearly identify and delineate responsibilities of municipalities, conservation authorities and other agencies.
- Once SWPPs have been developed and approved, the lead board, in consultation with others, should clarify how SWPPs will be implemented, reviewed and evaluated.
- Municipal Official Plans be required to “be consistent with” SWPPS and be required to be updated to include SWPPS during 5-year reviews.
- A Land Securement program be developed to meet SWPP across watersheds.
- The Province has committed to fully funding the initial preparation of SWPPs. In addition, the Committee recommends that the Province, in consultation with other stakeholders, establish a long term funding program to support capital and operating expenditures related to SWPP implementation, monitoring, review and updating.

These principles and recommendations cover a very wide range of topics and incorporate an equally large number of views on what will or will not work. The challenge remains that there are still substantial unknowns, particularly around roles and responsibilities, anticipated costs of the planning process and future implementation, and the sources of funding.

One of the challenges that the SPIC faced was to identify a means of providing the necessary tools and authorities to municipalities that would effectively protect drinking water sources from potentially harmful existing land uses as well as for future land uses. Current powers related to land use zoning under the Municipal Act are reasonably useful for limiting future land use, but not appropriate for regulating existing land use. The SPIC recommends that a Municipal Sphere of Jurisdiction for drinking water source protection be established under the Municipal Act to provide municipalities with the tools necessary to protect drinking water sources from existing and approved land uses. Details of the tools that would be included under this Municipal Sphere of Jurisdiction are not provided.

4.1.2 Technical Experts Committee Report (TEC Report)

The Technical Experts Committee Report contains 30 Guiding Principles and 128 recommendations intended to assist the Province in developing an Ontario Based Threat Assessment process that can be used in Watershed-based Drinking Water Source Protection Planning. The recommendations are provided under the general topics of Threats Inventory and Issues Identification (27 recommendations); Vulnerability Analysis (38 recommendations); Risk Analysis (7 recommendations); Risk Management (7 recommendations); Ecological Protection (10 recommendations); Data Requirements and Management (20 recommendations); Research, Data and Information Needs (1 widely-based recommendation); Permits to Take Water (9 recommendations) and Drinking Water Protection Actions by 2008 (5 recommendations).

The recommended threats assessment and management process:

- Is outcome-based and intended to comprise sound technical guidance by the Province and flexible application by the Source Protection Committees.
- Provides recommendations to map “vulnerable areas” to protect drinking water quantity and quality. These “vulnerable areas” include Wellhead Protection Areas, Surface Water Intake Protection Zones, Vulnerable Aquifers, and Significant Recharge Areas.
- Provides a list of “threats of Provincial Concern” that must be assessed.
- Includes a flexible risk assessment process to classify the risk presented by identified threats as Low, Moderate or Significant.
- Requires mandatory action to address Significant Risks.

- Is for the most part consistent with current standards and mapping; however, some work will need to be updated to be consistent with the new process.

4.2 Implications to York Region

As previously reported, the Drinking Water Source Protection Planning Process will require York Region and local municipalities to expend substantial effort and resources to develop and implement Source Protection Plans. To date, the Province has not provided sufficient detail regarding the likely extent of these efforts and total costs. Preliminary cost estimates per square kilometre provided in the Implementation Committee Report would translate to total costs between \$1.7 and \$2.6 million dollars simply for development of source protection plans for the area covered by York Region. There is no opinion as to whether these cost estimates are low, realistic, or high. Based on current programs now underway in conjunction with local conservation authorities to address similar types of requirements as per the Oak Ridges Moraine Conservation Plan, these estimates must be considered to be very low.

A Municipal Sphere of Jurisdiction for Source Protection under the Municipal Act will likely provide York Region with more ability to protect our drinking water sources, particularly from existing and established land uses. Details of the scope of these powers and their relationship to existing municipal tools must be clarified.

The Technical Committee recommends that municipalities establish a 50-year water supply strategy. This is valid in terms of the source protection principles, but may not be consistent or workable in terms of planning measures and requirements under current legislation.

The proposed methods for identifying threats, mapping vulnerable areas and assessing the risk of identified threats is consistent with the general approach currently being followed by York Region to identify and assess threats to our groundwater supplies. Some additional work may be required to ensure that work initiated by York Region will meet future standards based on these recommendations.

In addition to the potential for increased need for resources and costs, the Drinking Water Source Protection Planning process as outlined will also introduce many new responsibilities and therefore liabilities to municipalities. These liabilities have not been clearly defined. Municipalities cannot fully appreciate the significance or value of the proposed process unless these costs and liabilities are understood at the outset of the process.

4.3 Overview of York Region Response to EBR Posting

The comments submitted by York Region staff in response to the EBR posting are provided in *Attachment 1*. These comments:

- Recognize the scope and value of the work completed by the Province.

- Reinforce the value of previous comments provided, particularly in terms of the key issues of Roles and Responsibilities; need for technical guidance; the need for secure, long-term funding, needed changes to the regulatory framework; the need for more information on the proposed process to allow effective decision-making; and the need for a reasonable and locally-achievable time allowance.
- Voice the need for a long-term commitment to the process, particularly in terms of secure sources of funding.
- Support the proposed roles for municipalities while at the same time requesting further clarification of these roles.
- Voice the need to provide additional details on the tools that will be provided to municipalities to enable source protection, particularly, within a proposed Municipal Sphere of Jurisdiction.
- Voice the need for direct funding to municipalities and to reward municipalities who have proactively initiated efforts to protect their water supply with their own financial resources.
- Stress the need to fully understand the proposed relationship between the Drinking Water Source Protection initiative and other provincial initiatives such as the Green Belt Plan, Planning Act Reforms, Places to Grow, the Safe Drinking Water Act and all other existing legislation.
- Provides specific comments for issues raised in each of the Two Final Reports.

4.4 Next Steps in Source Protection Planning Process

The Province, via the MOE, continues to demonstrate their commitment to fulfilling the recommendations with respect to Drinking Water Source Protection as outlined in the *Report of the Walkerton Inquiry – Part 2* (2002). As previously reported, this process is proceeding well with abundant opportunities for public consultation, however, there continues to be pressure to rush introduction of the process before many of the uncertainties associated with the proposed process have been addressed.

The next steps in the Province's initiative to achieve source protection in Ontario and the schedule anticipated by York Region staff are:

1. Province to review EBR comments on Final Reports of the Expert Committees and additional stakeholder consultation planned for February 2005.
2. Province to either release a second draft of Drinking Water Source Protection Act for further input, or introduce the Drinking Water Source Protection Act into the legislature. (Spring 2005).
3. Legislative process leading to Enactment (Spring/Summer 2005).

Regional staff will continue to monitor and review the Province's progress and will report to Committee and Regional Council at key points over the next one to two years. It

is anticipated that this initiative will involve considerable staff time and effort, both in the formulation and implementation stages.

4.5 Relationship to Vision 2026

Watershed-based Drinking Water Source Protection Planning is intended to preserve and restore the integrity of groundwater and surface water resources for the benefit of future generations. This intent is consistent with the objectives of Vision 2026 toward insuring clean water, securing a green York Region, and promoting conservation.

5. FINANCIAL IMPLICATIONS

Effective long-term management and protection of water resources is expected to be very costly. The two expert committee reports provide the Minister with further advice on options for funding watershed-based drinking water source protection.

The Province has indicated that the costs of developing the initial Source Protection Plan will be 100% funded by the Province. It is important to note that the Province does not currently have an appreciation of the total costs of either the source protection planning needs or the potential total costs of implementation. The mechanisms for delivery of the funds from the Province to municipalities in support of further source protection planning initiatives have not yet been established.

The 10-Year Capital Plan for groundwater management activities, including support of conservation authority projects to deliver watershed plans, consider the gross project costs only and do not consider the potential for funding to be provided by the Province. The potential costs to meet the requirements of the Drinking Water Source Protection Act cannot be estimated until after the Province enacts the legislation and provides necessary regulations and guidance. Projected costs are expected to be an early deliverable of the Conservation Authority led initiative. Regional staff will review and update the 10 year capital plans to ensure that the work will meet the standards required by legislation governing source protection planning and to include the benefits of provincial funding sources, once the regulatory framework is in place and funding support opportunities have been announced and secured.

Despite the opportunities for funding to support the Drinking Water Source Protection Planning Process to be delivered by the Province, the SPIC identified that a portion of future municipal water rates will likely be required to be reserved to assist with the Drinking Water Source Protection Planning process. This will ultimately affect the net cost of water to the residents in York Region. The potential effects of Drinking Water Source Protection Planning will be further considered during the 2005 review of Water and Wastewater rates.

6. LOCAL MUNICIPAL IMPACT

Local municipalities will be expected to participate in the Drinking Water Source Protection Planning process and to support implementation of the developed Source Protection Plans. It is also expected that municipal planning documents will need to be amended in accordance with Source Protection Plans. These amendments may be accompanied by new by-laws that are required to meet the objectives of the Source Protection Plans. No details regarding the extent to which municipalities will be required to participate in future source protection initiatives are available at this time.

7. CONCLUSION

The Province has indicated that the costs of developing the initial Source Water Protection Plans will be 100% funded by the Province and will be prepared by Conservation Authorities with the input of their municipal partners.

The Final Reports of the two expert committees (on Technical Issues and on Implementation) were released on December 10, 2004. These reports provide sound advice to the Minister regarding the principles that will need to be considered in developing a regulatory framework to accompany Drinking Water Source Protection. York Region staff has submitted comments to the EBR posting, as contained in *Attachment 1*, for the Minister to consider in conjunction with the advice from the two expert committees.

As in previous responses to EBR postings on the Watershed-Based Drinking Water Source Protection process, York Region's comments have stressed the importance of several key issues, including:

- The need for a simple straightforward Drinking Water Source Protection Planning Process.
- The need for further clarification of the roles and responsibilities of municipalities and other stakeholders.
- The need for clear understanding of expected costs and sources of long-term sustainable funding once the initial funding for SWPPs have been provided by the Province.
- The need for clarity on expected timing.

It is recommended that the Regional Clerk forward a copy of this report to the Minister of the Environment as Regional Council's endorsement of the comments on the *Final Report of the Implementation Committee on Source Water Protection (SPIC Report)* and the *Final Report of the Technical Experts Committee on Science Based Decision making for protecting Ontario's Drinking Water Resources: A Threats Assessment (TEC Report)*

as forwarded by staff in response to Environmental Bill of Rights (EBR) Registry Numbers XA04E0021 and XA04E0022.

Further, the Regional Clerk also forward a copy of this report to, The Association of Municipalities of Ontario (AMO), local municipalities within York Region, and other stakeholders.

The Senior Management Group has reviewed this report.

(The attachment referred to in this clause is attached to this report.)