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WHITE PAPER ON WATERSHED-BASED SOURCE PROTECTION PLANNING

The Transportation and Works Committee recommends:

- 1. The presentation by Lloyd Lemon, Manager, Water Resources Protection, be received;**
- 2. The recommendations contained in the following report, April 1, 2004, from the Commissioner of Transportation and Works and Commissioner of Planning and Development Services be adopted, subject to amending Recommendation 1 and Bullet Point 1 of Recommendation 9 to read as follows:**
 - “1. In light of the significant cost implications of various Provincial initiatives regarding water quality regulations and protection including the Safe Drinking Water Act and Regulations, the Sustainable Water and Sewage Systems Act, the Nutrient Management Act and the Oak Ridges Moraine Conservation Act, the Province provide substantial funding for all aspects of development and implementation of Source Protection Plans, including compensation for ongoing and new initiatives.**
 - The Premier of Ontario and the Minister of the Environment as York Region’s comments regarding Environmental Bill of Rights (EBR) Registry Number PA04E0003;”**

1. RECOMMENDATIONS

It is recommended that:

1. The Province provide substantial funding for all aspects of development and implementation of Source Protection Plans, including compensation for ongoing and new initiatives.
2. The Province clarify the future roles, tasks and responsibilities for all participants in the planning, implementation and long-term maintenance of the Source Protection plans.
3. The Province recognize that realistic timelines are required to ensure that effective Source Protection Plans can be prepared to reflect local conditions, needs and capacity and build this consideration into the Source Protection Planning process.
4. The Province revise the proposed approval process to clarify responsibilities and liabilities and to streamline the process to fit into the ongoing municipal planning framework.

5. Regional Council support the Province's initiative to revise the process for managing water taking as a part of Source Protection Planning in Ontario and to increase the role for municipalities and conservation authorities in the review of permit applications and renewals.
6. The Province establish a process for charging for water taking that is fair and equitable for all users and scaled to minimize costs for municipal and private drinking water use and provide higher costs for commercial uses that are consumptive or provide transfer from watersheds.
7. The Province ensure that sufficient and appropriate resources are available to administer the Permit To Take Water program in a timely manner.
8. Staff forward a copy of this report, as received by Committee, to The Minister of the Environment by April 14, 2004 as York Region's comments regarding Environmental Bill of Rights (EBR) Registry Number PA04E0003;
9. The Regional Clerk forward a copy of this report to:
 - The Minister of the Environment as York Region's comments regarding Environmental Bill of Rights (EBR) Registry Number PA04E0003;
 - The Association of Municipalities of Ontario (AMO) as York Region's contribution to AMO comments on the White Paper on Watershed-based Source Protection Planning.
 - 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 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 "White Paper on Watershed-based Source Protection Planning" (White Paper) and compares the content of the White Paper with the content of the "Final Report of the Advisory Committee on Watershed-based Source Protection Planning". The report also provides an assessment of the potential impact of these initiatives on residents and businesses in The Regional Municipality of York and provides comments for submission to the Association of Municipalities of Ontario, The Ontario Ministry of the Environment (MOE) and local and neighbouring municipalities.

3. BACKGROUND

On February 12, 2004, the MOE released a "White Paper on Watershed-based Source Protection Planning" (White Paper). The White Paper has been prepared as a consultation

document on the proposed approach for the development of a locally-driven watershed-based source protection planning process. The White Paper provides information on the planning aspects of proposed source protection legislation, improvements to the permit to take water program and the principles and factors relating to implementing a system for charging for water taking.

The White Paper was prepared by MOE following review of comments received on the “Final Report of the Advisory Committee on Watershed-based Source Protection Planning” as published on the Environmental Bill of Rights Registry in April 2003. Both reports follow from the recommendations related to source protection in Commissioner Denis O’Connor’s Part Two Report of the Walkerton Inquiry.

In addition to publishing the White Paper, the MOE has acted on the recommendations of the Advisory Committee on Watershed-based Source Protection by announcing the formation of two expert source water protection committees on November 14, 2003:

- The 21-member Implementation Committee, tasked with providing advice to the government on tools and approaches to implement watershed-based source protection planning.
- The 16-member Technical Experts Committee, tasked with providing advice on an Ontario-based threat assessment process.

Through the combined consultation of these committees and the White Paper, the Provincial Government is addressing the recommendations of Commissioner O’Connor and building on the framework proposed by the Advisory Committee on Watershed-based Source Protection Planning by:

- Developing source water protection legislation.
- Engaging in wide consultation on the content of the proposed legislation before introducing it into the legislature.
- Ensuring that watersheds across Ontario have source water protection plans.
- Strengthening provincial rules to ensure that approval of water taking is based on a comprehensive approach to managing water.

Provincial representatives are meeting with key stakeholders on source water protection issues between March 1 and 23, 2004. York Region staff participated in a consultation session in Toronto on March 23rd 2004.

The White Paper has been posted to the Environmental Bill of Rights registry to solicit public consultation. Comments are required by April 14, 2004.

The media releases that accompanied the announcement indicate that the provincial government is committed to introduce legislation on source protection planning and will continue to consult with key stakeholders and experts to develop regulations, and technical and implementation details related to source protection planning.

4. ANALYSIS AND OPTIONS

The White Paper is organized into four sections. Section One is an introduction that provides: an overview, the purpose; justifies the need for action; describes other provincial initiatives on source water protection; presents the organization of the White Paper and advises how to participate. Section Two provides background, and explains the concepts of source water protection, watersheds and why source water protection plans are best developed on a watershed basis. Section Three describes proposed source water protection planning legislation. Section Four introduces discussions on improving the management of water taking.

The analysis of the White Paper will focus on issues in Sections Three and Four as they relate to York Region.

4.1 Proposed Source Water Protection Planning Legislation

The issues of watershed-based source protection planning were previously brought forward in review of the “Final Report of the Advisory Committee on Watershed-based Source Protection” in Clause 23 of Report 6 of the Commissioner of Transportation and Works on June 18, 2003. York Region’s comments, including 13 recommendations were forwarded to MOE and incorporated with comments from 152 other agencies and the Final Report of the Advisory Committee on Watershed-based Source Protection to produce the White Paper.

Regional Council previously supported:

- Watershed-based Source Protection Planning as an important initiative to protect our water resources and a significant contribution to public safety and the public planning process.
- Municipal participation in a Source Protection Planning Board and a Source Protection Planning Committee as outlined in the Final Report of the Advisory Committee and subsequently presented in the White Paper.
- The Implementation of Source Protection Plans through existing legislative mechanisms and appropriate amendments to municipal planning documents which will have regard for the recommendations.

The White Paper does not provide any cause to change the previous recommendations.

In terms of a watershed-based source protection planning process, the White Paper follows the recommendations of the Advisory Committee. A few minor clarifications are provided however, many of York Region’s recommendations to the Advisory Committee have clearly been included.

Some of the key features of the White Paper are:

- Provision for Provincial responsibilities in the development of technical guidance and legislation as well as final approval of the completed source protection plans.
- Designation of Watershed Regions, primarily based on existing conservation authority boundaries.
- Creation of a Source Protection Planning Boards (SPPB) for each Watershed Region, to be comprised of members of the Conservation Authority Boards.
- Provision of responsibility to the SPPB to review Terms of Reference for source water protection plans, ensure that source water protection assessments and plans comply with MOE requirements, work to achieve 100% municipal support for plans via Council Resolutions.
- Creation of 15 member (plus Chair) Source Protection Planning Committee (SPPC) to be comprised of representatives from municipalities, first nations, public health bodies, agricultural sector, the public, and other sectors.
- Appointment of a Chair for the SPPC by the Province based on recommendations from the lead conservation authority in each Watershed Region.
- Provision of responsibility of the SPPC to develop the Terms of Reference and direct the preparation of source protection plans, including a public consultation process.
- Provision for the majority of the work in developing source protection plans to be carried out by the conservation authorities within the Watershed Regions, with support as necessary from stakeholders, including municipalities.

Issues previously raised by York Region that are not addressed in the White Paper include:

- The need for substantial provincial funding to enable preparation and implementation of Watershed-based Source Protection.
- The need for reasonable timelines.

As well, further issues that have arisen include:

- Implementation and Enforcement of Source Water Protection Plans and wellhead protection plan requirements.
- Issues relating to land use changes that may be required as a result of Source Protection Plans.

Further information as to how the Province proposes to address these issues is required in order to evaluate the potential effects on York Region and make appropriate comment to the Province. Further opportunity for comment is expected in future government releases on the source water protection planning process.

Provincial Funding:

Clause 23 of Report 6 of the Commissioner of Transportation and Works, dated June 18, 2003, advised Committee and Council of the recommendations of the Advisory Committee as follows:

The Provincial funding should include:

- Compensation for ongoing programs for watershed planning.
- Ongoing funding support for work to gain the necessary understanding of the conditions in the watershed on which source protection planning will be based
- Ongoing funding support of monitoring programs as dictated by the Source Protection Plans.
- Substantial funding of the development and implementation of the Source Protection Plans.
- Funding to support any municipal roles in the upkeep and enforcement of Source Protection Plans.
- Funding of training for staff to be involved in Source Protection Planning.

These recommendations are still valid and have not been addressed within the White Paper.

Further discussion of the cost implications, including examples of current York Region costs are provided in Section 5.

Recommendation:

The Province provide substantial funding for all aspects of development and implementation of Source Protection Plans, including compensation for on-going and new initiatives.

Implementation and Enforcement:

The White Paper is focused on the process of developing the plans and achieving approval for the plans but details regarding tools and changes to legislation to permit effective implementation of source protection plans have not yet been identified. While the Province may expect this to be a step following consultation, there is a need to consider these options at this time. Similarly, legislative and planning requirements for implementation of wellhead protection plans, that are a key tool through which the municipalities can protect their drinking water sources, are not defined at this time.

Municipalities and Conservation Authorities have at their disposal, a variety of existing legislative tools which, if modified, could be used to implement Watershed-based Source Water Protection. Such legislation as the *Conservation Authorities Act*, *Municipal Act*, and *Planning Act* could all be amended to provide direction and tools for this initiative, particularly since municipal planning documents are intended as a principal delivery tool. As well, municipalities have already forged a number of strategic linkages with agencies, such as Conservation Authorities to provide existing services. These linkages could be strengthened through this process. The Province should therefore be requested to amend existing legislation to provide the necessary regulatory tools and powers for effective implementation of Watershed-based Source Protection Plans.

The Advisory Committee recommendations recognized the need further consultation with municipalities and stakeholders to identify the appropriate types and scope of new municipal powers. These additional powers would require substantial effort on behalf of municipalities to update municipal by-laws and policy and to ensure that the staffing resources are available to effectively implement, manage and enforce the source protection process.

Recommendation:

The Province clarify future roles, tasks, and responsibilities for all participants in the planning, implementation and long-term maintenance of Source Protection Plans.

Timing:

The White Paper does not provide any direction towards expectations of timing required for completion of Source Protection Plans. The time required to meet a consistent standard across the province will vary from area to area depending upon scale, current level of understanding, capacity to undertake the work, and funding. It is reasonable to suggest that a time-frame be provided for the SPPC and SPPB to develop and submit a Terms of Reference for the Source Protection Plan that includes a workable schedule to meet the needs of the individual area.

Recommendation:

The Province recognize that realistic timelines are required to ensure that effective Source Protection Plans can be prepared to reflect local conditions, needs, and capacity and build this consideration into the Source Protection Planning process.

Process for Approval:

The White Paper proposes a review and approval process for Source Water Protection plans that is overly long and complex. As proposed, the public and stakeholders would have opportunities for input during consultation to prepare the plan, potentially during the finalization of the plan by the SPPC, at time of approval by the SPPB, during the comment period while posted on the Environmental Bill of Rights Registry, and through an appeals process.

Recommendation:

The Province revise the proposed approval process for Source Protection Planning to clarify responsibilities and liabilities and to streamline the process to fit into ongoing municipal planning framework.

4.2 Improving the Management of Water Taking

The Province currently manages water taking under the Ontario Water Resources Act (OWRA) and the Water Taking Transfer Regulation (Ontario Regulation 285/99). The OWRA requires anyone taking more than 50,000 litres of water per day, with some exceptions to obtain a Permit from a Director (MOE) appointed by the Minister.

Permitted water uses typically include municipal, commercial, industrial, and communal water supplies, agricultural irrigation, recreational uses, water bottling, and construction. Specific uses that are exempt from the permitting requirement are: individual household use, direct watering of livestock and poultry and water for firefighting. O.Reg. 285/99 provides for conservation, protection and wise use of Ontario's waters by prohibiting the bulk transfer out of specified water basins. This prohibition does not apply to water packaged in a container having a volume of 20 litres or less.

In recent years, municipalities, non-governmental agencies and the public have shown greater interest in how Ontario's water resources are managed to ensure that our supply of water is protected in the long-term. The Province recognizes that the management of water taking is critical to protecting drinking water sources, and for many other purposes, including sustaining the needs of the ecosystem. The two issues related to management of water taking that are brought forward for discussion in the White Paper are the approach being taken by the MOE to review its rules and processes associated with management of water taking, including the "Permit To Take Water" (PTTW) program; and the possibility of developing a framework under which Ontario could charge for water taking.

4.2.1 Revisions to Water Taking Management

The MOE is committed to improving the program through which water taking is managed. One key direction for improvement is to provide greater opportunities for public involvement in decisions about water taking. The proposed improvements include:

- Ensuring that the notification process would enable interested parties to receive early and regular notification by the MOE.
- Increasing the responsibility of permit applicants to address concerns of the public.
- Developing improved science for understanding the consequences of water taking on local water supplies, the ecosystem and other users.
- Developing improved minimum requirements for required monitoring associated with water taking.
- Developing improved guidance documents to aid PTTW applicants and reviewers.
- Promoting water use efficiency and conservation.

4.2.2 Water Taking Charges

On December 18, 2003, the Province announced its intent to apply charges to water taking that remove water from the watershed for commercial purposes. The intent behind this move is to ensure that those who benefit from Ontario's water resources pay their fair

share to protect and manage it for future generations. This would be the first time that charges have been applied to the taking of water in Ontario.

Through the White Paper, the MOE is requesting input on the proposal to develop a charge program for water taking. The key principles that are put forward as a guide for a provincial water taking charges framework are:

- Promoting water resource protection through efficient use and conservation.
- Ensuring fairness, equity and transparency for permitted water users and other stakeholders, including the people of Ontario.
- Applying user charges to permitted water takers that can contribute to the costs of managing a sustainable and healthy supply of Water in Ontario.

The White Paper presents several alternatives that could be applied to develop the framework for charging for water taking in Ontario. The issues/options presented include:

- Choosing between a fixed-fee or graduated fee approach based on factors such as characteristics of the water taking, purpose of the water taking, or conditions in the watershed.
- Applying a volume-based approach that reflects the quantity of water taken. This would require permit holders to monitor and report the volume of water taken.
- Applying a charge approach based on consumptive use if the water is permanently removed from the watershed.
- Applying a different charge approach relative to the source of the water taking. For example, different charges could be established for groundwater or surface water and theoretically based on the sensitivity of the source and demand.
- Determining whether any exemptions should exist. Many other jurisdictions that currently have a charge program for water taking have exemptions for uses such as drinking water, fire protection, mineral processing, agriculture, and conservation.

4.2.3 Potential Effect of Proposed Water Taking Changes on York Region

York Region depends on water taking administered through the Permit To Take Water program to deliver municipal water supply to its residents. Proposed review of the current PTTW program is expected to improve the ability of York Region to deliver water to its residents and demonstrate that this process is operating in a manner that minimizes the potential effects on the environment.

York Region is currently considered to be a leader in terms of many of the proposed revisions to the PTTW program, particularly in developing regional-based tools to understand the effects of water taking, monitoring and reporting, and in water use efficiency and conservation.

One of the key issues regarding water resource management that can be improved under the proposed revisions to the PTTW program is to improve the involvement of municipalities and conservation authorities in the review and approval process for

PTTWs. This is especially important in York Region as there is potential that water use by others could affect the availability of water for future municipal use. York Region is working co-operatively with the conservation authorities at this time to improve the management of water resources, but formalization of the roles and responsibilities of these agencies can only improve the program.

The potential to have the Province charge for water taking could have a profound effect on the cost of delivering water in York Region. This effect would be minimized if the proposed framework for charging was limited to commercial taking and did not include charges for municipal drinking water use. It is however, also important in terms of resource management that charges for water taking are administered in a fair and equitable manner to all who use the resource. The possibility of water taking charges based on consumptive use based on transfer from watersheds could also affect York Region unless exemptions were provided for municipal systems where water from local groundwater sources are ultimately directed to Lake Ontario following wastewater treatment.

York Region staff have participated in workshops sponsored by the MOE toward improving the science of understanding the potential effects of water taking and developing new tools for water resource management, monitoring, and reporting. This involvement will ensure that York Regions interests are represented and that York Region's Groundwater Management Strategy will reflect the issues that are relevant to MOE, interested agencies, and the public. Some examples of issues are: assessment of effects to natural ecological systems; temporary use permits, such as for construction dewatering; and consumptive commercial water taking, such as water bottling facilities and concrete plants.

Recommendations:

Regional Council support the Province's initiative to revise the process for managing water taking as a part of Source Protection Planning in Ontario and to increase the role for municipalities and conservation authorities in the review of permit applications and renewals.

The Province establish a process for charging for water taking that is fair and equitable for all users and scaled to minimize costs for municipal and private drinking water use and provide higher costs for commercial uses that are consumptive or provide transfer from watersheds.

The Province ensure that sufficient and appropriate resources are available to administer the Permit To Take Water program in a timely manner.

4.3 Relationship to Vision 2026

Watershed-based 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 ensuring clean water, securing a green York Region, and promoting conservation.

5. FINANCIAL IMPLICATIONS

Effective, long-term management of water resources is expected to be very costly. As an example, the costs of some of the current activities in York Region relating to elements of Source Protection Planning include:

- Approximately \$2,500,000 (2003 budget) in annual support, scaled to population base, to the LSRCA and TRCA for general watershed management initiatives.
- Approximately \$2,660,000 to date (and approximately \$1,020,000 per year (2003)) to LSRCA (including the Lake Simcoe Environmental Management Strategy (LSEMS)) and TRCA in special capital programs to monitor and improve water quality.
- An estimated \$3,790,000 over 5 years to LSRCA and TRCA for technical and planning studies to meet watershed management obligations of the Oak Ridges Moraine Conservation Plan by 2007.
- Approximately \$400,000 as York Region's share of the York Peel Durham Toronto Groundwater Management Strategy Study (YPDT Study) to 2004.
- Approximately \$1,500,000 since 2001 and \$20,000,000 in the 10 year Capital Program to programs to better understand groundwater systems in York Region and to develop and implement a comprehensive groundwater management strategy.

These costs only reflect York Region's contributions to some of the more regional watershed-based studies. Other municipalities, provincial agencies, including MOE and the Ministry of Northern Development and Mines have provided additional funding directly to the conservation authorities to assist in some of these endeavours.

These examples indicate that the process for watershed-based source protection planning as outlined in the White Paper will require substantial financing to address costs and to assist other municipalities and conservation authorities in meeting Source Protection Planning expectations. Further sources of secure long-term funding will also be required to develop the plans, implement the plans, and to maintain and update the plans. The financial total implications can not be quantified at this time. The Advisory Committee previously recommended that the Province provide substantial funding to defray municipal and Conservation Authority costs for the development and implementation of Watershed-based Source Protection Planning.

Some examples of activities that will require funding include: technical studies, monitoring, remedial actions, education, enforcement, and continued updating of the plans as implementation progresses.

In addition, the potential to have the Province charge for water taking, as described in the White Paper would have a profound effect on the cost of delivering water in York Region. This effect would be minimized if the proposed charges were limited to commercial taking and did not include charges for municipal drinking water use.

6. LOCAL MUNICIPAL IMPACT

Local Municipalities will be expected to participate in the Source Protection Planning process and to support the developed plans. Implementation of watershed-based source protection plans will include amendments of municipal planning documents and development of new by-laws. Implementation will follow development, and approval of the plans, which will include a public consultation process. Under the current municipal planning process, amendments to municipal planning documents would be subject to appeal to the Ontario Municipal Board. The cost of such a hearing may be substantial and the results difficult to predict. The White Paper does not address the proposed mechanisms through which the municipal planning documents would be updated to incorporate source protection plans.

7. CONCLUSIONS

The White Paper is a good first step toward developing a suitable framework for the Province to build an effective policy and regulatory basis to maintain the integrity and quality of Ontario's water resources. York Region recognizes the importance of the Watershed-based Source Protection Planning process and continues to support the Province in this pursuit subject to the following:

- That the Province provide substantial funding for all aspects of development and implementation of Source Protection Plans, including compensation for ongoing and new initiatives.
- That the Province clarify the future roles, tasks, and responsibilities for all participants in the planning, implementation and long-term maintenance of the Source Protection Plans.
- That the Province recognize that realistic timelines are required to ensure that effective Source Protection Plans can be prepared to reflect local conditions, needs and capacity and to build this consideration into the Source Protection Planning process.
- That the Province revise the proposed approval process to clarify responsibilities and liabilities and to streamline the process to fit it into the ongoing municipal planning framework.

Regional Council should also support the Province's initiative to revise the process for managing water taking as a part of Source Protection Planning in Ontario and to increase the role for municipalities and conservation authorities in the review of permit applications and renewals. The province should establish a process for charging for water taking that is fair and equitable for all users and scaled to minimize costs for municipal

and private drinking water use and provide higher costs for commercial uses that are consumptive or provide transfer between watersheds. The Province should also ensure that sufficient and appropriate resources are available to administer the Permit To Take Water program in a timely manner.

A copy of this report should be forwarded to the Minister of the Environment prior to April 14, 2004 as York Region's response to the Environmental Bill of Rights (EBR) Registry Number PA04E0003. The report should also be forwarded to local and neighbouring municipalities and the Association of Municipalities of Ontario.

The Senior Management Group has reviewed this report.