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BILL 99 - PROPOSED LAKE SIMCOE PROTECTION ACT ENVIRONMENTAL BILL REGISTRY POSTING 010-3753

The Planning and Economic Development Committee recommends the adoption of the recommendations contained in the following report dated August 25, 2008, from the Commissioner of Planning and Development Services and the Commissioner of Environmental Services:

1. RECOMMENDATIONS

It is recommended that:

1. Council endorse the comments made in response to Environmental Bill of Rights Registry posting 010-3753 on Bill 99 - *The Proposed Lake Simcoe Protection Act*.
2. Regional staff continue to monitor and provide comments on Bill 99 - *The Proposed Lake Simcoe Protection Act* and Proposed Lake Simcoe Protection Plan as it progresses, including but not limited to appearing before Standing Committee of the Legislature to articulate the Region's important issues.
3. This report and *Attachment 1* be forwarded to the Ministry of the Environment, local municipal Clerks in York Region, Lake Simcoe Region Conservation Authority and Durham Region.
4. The Region support the direction being taken by the Province in the Lake Simcoe Watershed, but request that the Province recognize the Places to Grow Plan and the principle of additional growth and development in the watershed.
5. Council reiterate its position to the Province that Simcoe County should be subject to planning policies that reflect the policies within the Greater Golden Horseshoe and further that the Province require the same high standards in planning and servicing that are required of York Region, in all watershed municipalities.
6. The Province be requested to assist the Region of York in servicing north York Region by continuing to review and discuss the impact of legislation and increasing standards on the municipal ability to provide services to these areas and work in partnership with York to find solutions.

2. PURPOSE

The purpose of this report is to advise Committee and Council of the provisions of *Bill 99 - The Proposed Lake Simcoe Protection Act* and the comments submitted by the Region in response to the Environmental Bill of Rights Registry (EBR) posting deadline of August 17, 2008. Further, the report identifies the next steps in the process.

3. BACKGROUND

The Province has introduced a series of initiatives to ensure the long term health of Lake Simcoe

In 2006, the Province announced that they would introduce legislation to protect Lake Simcoe. In order to move forward on this, the Province has:

- Set-up a 10-member Science Advisory Committee on March 27, 2008.
- Set-up a multi-stakeholder advisory committee to advise on best practices to improve the long-term future of the Lake. Mayor Morris of Aurora and Regional CAO Bruce Macgregor are members of this committee.
- Between December 2007 and March 2008 released, consulted and finalized an Interim Regulation (O.Reg. 60/08) governing, among other things, effluent phosphorus limits, to March 31, 2009, for Water Pollution Control Plants (WPCPs) within the Lake Simcoe watershed.
- Regional Council at its meeting of April 24, 2008, adopted Clause 2 of Report No. 4 of the Transportation and Works Committee which updated Council on the Interim Regulation and the minimum phosphorous limits Regional staff recommended to the Province during it's drafting of the Interim Regulation.
- On March 27, 2008, released a Discussion paper on creating Ontario's Lake Simcoe Strategy for a 36 day comment period, ending May 2, 2008. Along with key issues, the Discussion paper also presented thirteen questions for stakeholders to answer on the five key areas and invited stakeholders to one of three consultation sessions in early April.
- Regional Council at its meeting of June 19, 2008, adopted Clause 6 of Report No. 6 of the Transportation and Works Committee which provided comments to the Province on the Discussion paper prior to the EBR deadline of May 2, 2008.

On June 17, 2007, *Bill 99 - the Proposed Lake Simcoe Protection Act* was introduced in the Legislature and given first reading. The Bill was also posted on the EBR with a

comment deadline of August 16, 2008. Due to this comment deadline, Regional staff from Planning, Environmental Services Department and Legal Services Branch, along with local municipalities in the Lake Simcoe watershed in York Region worked together to submit comments on the proposed legislation. These comments are appended as *Attachment 1*.

4. ANALYSIS AND OPTIONS

York Region already constrained by competing Provincial Plans

York Region is one of Canada's fastest growing municipalities with a current population of close to 1 million people. The Provincial population forecast contained in Places to Grow - Growth Plan for the Greater Golden Horseshoe, identifies a York Region 2031 population of 1.5 million people and employment of 800,000 jobs.

Approximately 69% of York Region is within the Provincial Greenbelt (GB) and Oak Ridges Moraine Conservation Plan (ORMCP), an area which is effectively excluded from additional growth. Under these plans along with Places to Grow, additional growth can only occur as intensification in existing developed areas, and in designated, but as yet undeveloped urban areas and towns and villages and in the three "white-belt" areas in Markham, Vaughan and East Gwillimbury. The East Gwillimbury area is entirely within the Lake Simcoe watershed. With the introduction of Bill 99 and the anticipated provisions of the Lake Simcoe Protection Plan, constraints may be placed on future growth in the East Gwillimbury white-belt as well as potential development lands already designated in communities in Georgina, East Gwillimbury, Newmarket, Aurora, King and Whitchurch-Stouffville.

While the Region supports the direction being taken by the Province in the Lake Simcoe Watershed, it must be recognized that in order to comply with the Places to Grow Plan, the principle of additional growth and development in this watershed must be recognized.

Further, while York is constrained by Provincial Plans and required to comply with Lake Simcoe regulations, lands in Simcoe County are not so limited. Regional Council is on record on many occasions requesting the Province to apply a planning policy in Simcoe County that reflects the policies within the Greater Golden Horseshoe. The Region remains of the opinion that the same high standards that are required of York Region, should be required of all watershed municipalities. It is recommended that in addition to the comments on the EBR posting of Bill 99, the Council recommendations reiterate this position to the Province.

Elements of the Proposed Act

The main objective of the Bill is to establish a Lake Simcoe Protection Plan to protect Lake Simcoe water quality and ecological integrity.

The Province states that the long-term strategy would be based upon the following principles:

- Consideration of the broad range of societal values associated with the Lake Simcoe watershed, including the environment, recreation, the agricultural economy, and sustainable growth.
- An approach that allows for continuous improvement by adapting to what is learned from ongoing science and monitoring (i.e., an adaptive management approach).
- The use of consistent and coordinated policies, programs, and other management approaches on a watershed basis.
- The use of a variety of regulatory and non-regulatory management tools, which build on the existing provincial regulatory frameworks and enable the use of new regulatory tools where necessary.

The Province's approach to protect Lake Simcoe is comprised of four key components:

1. Introduction of a proposed Lake Simcoe Protection Act, that would, if passed by the Legislature would among other things:
 - Include an authority for the Lieutenant Governor in Council to establish a Lake Simcoe Protection Plan with clear objectives and target.
 - Include an authority for the Lieutenant Governor in Council to make regulations to govern activities in shoreline, tributary and wetland areas of the watershed.
 - Include an authority for the Minister to amend existing prescribed tools (e.g. Certificates of Approval issued under the *Ontario Water Resources Act*) to comply with policies in the Plan.
 - Amend the *Ontario Water Resources Act* to establish a regulation-making authority to create a water quality trading program.
 - Grant the Lake Simcoe Region Conservation Authority the authority to apply regulations under section 28 of the *Conservation Authorities Act* to areas that are outside of its area of jurisdiction but within the Lake Simcoe watershed.
2. Development of a Lake Simcoe Protection Plan, including:
 - Targets and measures for addressing the key threats to the ecological health of the Lake Simcoe watershed.
 - Policies that build on existing provincial legislation, regulation, policies and programs tools.
 - Seeking the advice of the Science Advisory Committee, the Stakeholder Advisory Committee, First Nations and the public.
3. Governance
 - Two advisory committees would be appointed by the Lieutenant Governor in Council and would report to the Minister: a coordinating committee and a science committee. These advisory committees would coordinate implementation and provide advice to the Minister.

4. Enhance Existing Voluntary Tools

The government announcement of funding in the amount of \$20M over four years (\$5M per year) to support implementation of the protection plan. The funding would focus primarily on:

- Providing assistance to farmers to encourage agricultural best management practices that reduce environmental impacts.
- Scientific research and monitoring.
- Coordination.

Staff comments

Regional staff prepared and forwarded a response to the Province on the EBR posting of Bill 99 to meet the EBR commenting deadline of August 16, 2008. A number of specific issues with the proposed Bill are included in the comments. The key messages to the Province include:

On-going Regional support for the Lake Simcoe Conservation Authority as the lead agency for this Initiative

The Region's on-going support for the Lake Simcoe Conservation Authority as the lead agency for this initiative to build on their 17 years of LSEMS work and leadership and avoid unnecessary duplication with the Authority mandate under the *Conservation Authorities Act* and the *Clean Water Act* as well as deliverables required for the *Clean Water Act* under the Georgian Lake Simcoe Source Protection Committee.

Process and Timing for Act and Plan to Incorporate meaningful Consultation

The provincial process includes approval of both legislation and Plan by year-end 2008, staff recommends that the Province conduct meaningful consultation and take the necessary time to consult widely on this initiative. The timing recommended would see approval of the Act and the Plan in the spring of 2009.

Lake Simcoe Act and Plan must recognize that approved growth and future growth required by Places to Grow Plan will occur within the watershed

As the Bill is currently drafted, the proposed *Lake Simcoe Protection Act*, 2008 and Protection Plan would prevail in the event of conflicts with policies relating to the health of Lake Simcoe. While this direction in isolation may appear appropriate, it may have some serious implications for existing and future development as well as infrastructure investment in the Lake Simcoe watershed.

All municipalities in York Region are bound by the requirements of the Places to Grow Plan, including the population and employment forecasts and growth management studies, leading to official plans and amendments at the upper and local level (in accordance with the Provincial forecasts and Plans). These activities are well into the advanced stages of completion. In York Region, some of this population and employment growth will occur in the Lake Simcoe watershed in the white-belt in East Gwillimbury and in existing approved settlement areas in Georgina, East Gwillimbury, King, Newmarket, Aurora and Whitchurch-Stouffville.

Potential directions of the Lake Simcoe Protection Plan have already impacted York Region. In Georgina, for example, the Phosphorus limits for the Sutton and Keswick Water Pollution Control Plants (WPCP)'s in the Interim Regulation (O. Reg. 60/08), while sufficient to accommodate growth to the to the end of March 2009, are not sufficient to allow the build-out of these communities as set out in existing approved Secondary Plans and as required under Places to Grow (i.e. complete/balanced communities).

In addition, recent discussions with the MOE, on the Sutton WPCP Environmental Assessment, indicate that the interim limits themselves may ultimately be lowered for the long term in accordance with the Lake Simcoe Protection Plan. To lower the limits permanently would have very serious social, financial, and environmental consequences to the Region and our residents by:

- Preventing the connection of approximately 300 existing homes in Sutton on private septic systems to municipal services.
- Not acknowledging the significant financial resources already invested in plant expansions and associated infrastructure.
- Affecting the Region's and area municipalities' ability to comply with provisions in the Places to Grow Act and Plan.

Staff has reiterated to the Province that the Proposed *Lake Simcoe Protection Act* and Plan must recognize that approved growth consistent with existing Official Plans and future growth required by the Places to Grow Plan will occur within the watershed. It is recommended that the Council recommendation reiterate this message.

Minister of the Environment can require amendments to existing prescribed instruments, including sewage works under the Ontario Water Resources Act

York Region currently owns and operates five of the 15 sewage treatment facilities in the Lake Simcoe Basin. The total phosphorus loading from all facilities in the Lake Simcoe Basin was approximately 5.93 tonnes in 2006. Of this loading, York Region's contribution amounted to approximately 0.66 tonnes, or 11% of the total contribution. York Region's total permitted phosphorus loading contribution is approximately 1.90 tonnes based on current Certificates of Approval (C of A). York Region is committed to

the use of best practices in sewage treatment technology towards the protection of the environment as can be seen in the current Environmental Assessment for the Keswick Sewage Treatment plant expansion.

Waste water treatment plants are, in fact, not the main contributors of phosphorus enrichment in the watershed. Additionally, the costs of further phosphorus removal are disproportionately higher for waste water treatment plants to the actual amount of phosphorus removed. Simply put, there are better options for reducing phosphorus inputs to the Lake at lower cost, which must be explored.

Recognition of achievable wastewater effluent targets, wider, high impact solutions, and water quality trading are supported

Regional staff is of the opinion that the Act and/or Plan must recognize achievable targets for wastewater effluent quality and require a broader variety of solutions rather than just controlling phosphorus inputs from wastewater treatment facilities, which account for a low percentage of the total phosphorus input to the Lake.

York Region is working diligently to provide the highest practicable level of sewage treatment in our plants discharging into the Lake Simcoe basin, and will support Ministry efforts to establish a high standard of treatment for all facilities within the Lake Simcoe basin. However, the Region is approaching a level of diminishing returns on investment in the area of sewage treatment and further Ministry requirements placed on our existing approvals may be impractical and difficult to achieve, if not impossible. Prior to lowering Phosphorus limits, Regional staff is of the opinion that significant dialogue would be required with the bodies responsible for the approvals.

High impact, lower cost solutions to reduce phosphorus inputs to the Lake could include managing and or treating the Polder Wetlands discharge, investing in agricultural and rural land improvements and dealing with atmospheric deposition, where possible, with the use of phosphorous locking agents (such as the one undergoing testing by LSRC in the Newmarket area), assisting municipal urban storm water retrofits in all jurisdictions and proceeding with water quality trading programs.

In this last regard we note Section 30 of the proposed Bill proposes amendments to Section 75 of the Ontario Water Resources Act to permit this by Regulation. This should be implemented as soon as possible and York Region would be supportive of opportunities for pilot projects in our municipalities.

Next Steps

It is anticipated that once the comments made to the EBR posting are considered by the Province, changes to the proposed Bill may be made and the Act given second reading in the Legislature. The Bill may then be re-posted on the EBR and be referred to Standing Committee in its revised form. If the Bill is referred to Standing Committee of the

Legislature for public hearings then there may be an opportunity for the Region to make representation before the Committee to request changes to the Proposed Bill. It is recommended that staff monitor the evolution of the Bill and if warranted, request deputant status before the Committee.

The Province is apparently fast tracking both the proposed Bill and the Proposed Lake Simcoe Protection Plan and intends to release both the second reading version of the Proposed Bill and the draft Lake Simcoe Plan in early October. The current schedule proposes the approval of both by the end of 2008.

Regional staff will continue to monitor and comment on both the Bill and the Proposed draft Lake Simcoe Protection Plan and where possible and timely, coordinate comments with local municipalities in the Lake Simcoe watershed in York Region. Reports to Committee and Council will be undertaken on an as needed basis.

The provision of services in northern York Region becomes more difficult with additional Legislation

In October 2006, the Minister of the Environment advised York Region that proposals to provide sanitary sewage services in northern York Region would be required to proceed by way of an Individual Environmental Assessment (IEA). The Region is proceeding with this proposal as the IEA for the Upper York Sanitary Servicing (UYSS) project. An Individual Environmental Assessment is intended to examine the broadest range of alternatives possible. However, this is becoming increasingly difficult as alternatives are challenged or prohibited by compounding Federal and Provincial Statutes and Plans.

As an example, the previously discussed Class Environmental Assessment for the Keswick WPCP was complicated by requirements for increasing technical standards of treatment at the Regional and municipal level. Likewise, discussions on the Class EA for the Sutton WPCP are being impacted by potential future targets under the Lake Simcoe Protection Act and Plan. In the case of the UYSS, alternatives such as the extension of the Lake Ontario based York Durham Sanitary System (YDSS) into the Lake Simcoe Basin, may raise concerns in relation to the Great Lakes Charter and Agreement.

In light of these difficulties, it is recommended that the Province be requested to assist the Region of York in servicing northern York Region, by continuing to review and discuss the impact of legislation and increasing standards on the municipal ability to provide services to these areas, and work in partnership with York to find solutions.

5. FINANCIAL IMPLICATIONS

Long term costs and financial arrangements unknown

There is no indication in the proposed Bill of the financial arrangements needed for the implementation of the Proposed Protection Plan, but significant long-term stable funding from the Province will be required for successful Lake clean-up.

6. LOCAL MUNICIPAL IMPACT

This proposed Bill and the subsequent Plan have the potential of impacting regional and local municipal development patterns and future growth aspirations in the Lake Simcoe watershed. The interim regulation (60/08) in force to March 31, 2009 contains Phosphorus effluent limits which are insufficient to accommodate development in communities in the York Region area of the Lake Simcoe watershed.

Until the proposed Plan is released it is not possible to fully assess the implications of the proposals. However, specific issues have been highlighted and staff has proactively started impact reviews and evaluations to determine possible impacts to the Region.

7. CONCLUSION

Bill 99 - *the Proposed Lake Simcoe Protection Act* was posted on the Environmental Bill Registry for 60 days with a comment deadline of August 16, 2008. Comments were submitted by Regional staff on August 16, 2008. The comments are appended as *Attachment 1* to this report. Regional Council endorsement of these comments is recommended.

Additionally, it is recommended that the Province recognize the Places to Grow Plan and the principle of additional growth and development in the watershed in draft Bill 99 and the proposed Lake Simcoe Protection Plan. Further that Council reiterate its position that Simcoe County should be subject to planning policies that reflect the policies within the Greater Golden Horseshoe, and be subject to the same high standards in planning and servicing that are required of York Region, in all watershed municipalities.

Lastly, it is recommended that the Province be requested to assist the Region of York in servicing northern York Region by continuing to review and discuss the impact of legislation and increasing standards on the municipal ability to provide services to these areas and work in partnership with York to find solutions.

Regional staff will continue to monitor and comment on subsequent revisions of the Bill and if warranted, request deputant status before the Committee. Further, staff will review

and monitor the progress of the Proposed Lake Simcoe Protection Plan and report to Committee and Council on an as needed basis.

For more information on this report, please contact Barbara Jeffrey, Manager Land Use Policy and Environment, Ext 1526 or Laura McDowell, Director, Environmental Protection and Promotion, Ext. 5077.

The Senior Management Group has reviewed this report.

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