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DRAFT DRINKING WATER SOURCE PROTECTION ACT, 2004

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, August 25, 2004, from the Commissioner of Transportation and Works and Commissioner of Planning and Development Services be adopted, subject to amending Recommendation 1 to read as follows:

“1. The comments on the draft *Drinking Water Source Protection Act, 2004* as forwarded by staff in response to Environmental Bill of Rights (EBR) Registry Number AA04E0002 be endorsed and The Regional Clerk forward a copy of this report to the Minister of the Environment.”

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 draft *Drinking Water Source Protection Act, 2004* as forwarded by staff in response to Environmental Bill of Rights (EBR) Registry Number AA04E0002.
2. The Regional Clerk 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 Draft *Drinking Water Source Protection Act, 2004* and the comments provided to the Ontario Ministry of the Environment in response to the EBR posting of the Draft Legislation. In addition this report also provides an assessment of the potential

impact of this initiative on residents and businesses in The Regional Municipality of York.

3. BACKGROUND

On June 23, 2004, the Ontario Ministry of the Environment (MOE) released draft legislation entitled *Drinking Water Source Protection Act, 2004 (DWSPA)*. The draft DWSPA was posted to the Environmental Bill of Rights (EBR) Registry and comments were invited for a period of 60 days, ending August 23, 2004. The Legislation is intended to enable watershed-based source water protection to address the recommendations of Commissioner Denis O'Connor's Part Two Report of the Walkerton Inquiry.

The draft DWSPA was prepared by MOE following review of comments received on the "White Paper on Watershed-Based Source Protection Planning (White Paper), released in February 2004 and throughout the stakeholder consultation process. Regional Council endorsed Clause 3 of Report No. 4 of the Commissioner of Transportation and Works on April 22, 2004 that formed York Region's response to the EBR Posting on the White Paper.

The MOE continues to work on technical details of Source Protection Planning and the ensuing implementation process through two expert source water protection committees:

- 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.

The text of the draft DWSPA has been prepared and circulated for comment to assist government in developing the best possible legislation. It is expected that comments received in response to this draft and the findings of the two expert source water protection committees will be used by the Province to introduce a comprehensive source protection Bill.

In view of the EBR time-lines provided for comment, York Region staff have already filed comments on the Draft Act. These comments are appended to this report as *Attachment 1*. The issues addressed in this response are reviewed and summarized in the following sections of this report.

4. ANALYSIS AND OPTIONS

4.1 Features of the Draft *Drinking Water Source Protection Act, 2004*

The draft DWSPA:

- Outlines the intended process, parties, and responsibilities to develop and implement drinking water source protection in Ontario.
- Outlines the distribution of Source Protection Areas (generally conform to existing conservation authority boundaries) in Ontario.
- Defines the intended roles and responsibilities of the MOE, the Source Protection Board, and Source Protection Committees in the process.
- Outlines the requirements and the relevant technical contents of *Terms of Reference for Source Protection Plans, Assessment Reports, and Source Protection Plans*.
- Outlines general provisions for legal powers and limitations.

4.2 Issues

The draft *DWSPA* provides an appropriate step forward from the White Paper to achieve legislation and resolve some of the issues raised by the White Paper. Despite these steps forward, considerable effort will still be required by the MOE to fully address the issues of all affected parties so that the implications of source protection are well understood.

Attachment 1 provides additional detail on the issues identified and raised by York Region Staff. In general, these can be grouped into four themes: Process; Roles and Responsibilities; Municipal Wellhead Protection; and Technical Drafting of the Legislation.

Process:

The draft *DWSPA* outlines a potentially workable process to develop Source Protection Plans but does not 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 what happens after Source Protection Plans are developed for stakeholders to fully appreciate the potential effects and value of the proposed regime.

Roles and Responsibilities:

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

Municipal Wellhead Protection:

The draft *DWSPA* does 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. A report on the September 8, 2004 Planning and Economic Development Committee agenda deals with the inclusion of wellhead protection area mapping for York Region on the Moraine as required through the Oak Ridges Moraine

Conservation Plan. Regional staff expects this requirement to be extended beyond the Moraine through this Legislation.

Technical Drafting of the Legislation:

The draft *DWSPA* contains inconsistencies and technical details that require clarification.

4.3 Potential Impact on York Region

The draft *DWSPA* will require York Region and local municipalities to expend substantial efforts and resources to comply with the requirements for development and approval of Source Protection Plans and eventually to implement, manage, and update Source Protection Plans. Ideally, provincial initiatives will assist in providing financial and staff resources to deliver the required source protection products.

York Region will likely be a part of two “Watershed Regions” as delineated in the *DWSPA*. One Watershed Region is expected to comprise the areas of the Nottawasaga Valley and Lake Simcoe Region Conservation Authorities, and the other will comprise the Credit Valley Conservation Authority, Toronto and Region Conservation Authority, and Central Lake Ontario Conservation Authority. The principal challenge in this process will be in ensuring that York Region’s interests are adequately represented in the Source Protection Boards, Source Protection Committees, and technical sub-committees that will be established to develop and approve components of Source Protection Plans.

Future versions of the *DWSPA* are expected to deliver the appropriate tools for York Region to develop and implement effective measures to protect the quality of municipal water supplies via wellhead protection. York Region will continue to assist the Province to ensure that effective tools and measures are identified and made available. The form of implementation for future wellhead protection measures is not clear, but is likely to involve future amendments to the Official Plans of the Region and Local Municipalities following a development, consultation and approval process.

The draft *DWSPA* indicates that there is potential for several Source Protection Plans to be developed within watersheds in York Region. While this is appropriate from a local planning perspective, York Region staff will be challenged to provide qualified, consistent and effective representation to multiple Source Protection Committees and any technical teams responsible for the actual work of developing Source Protection Plans.

Many questions and issues remain unanswered with respect to the future responsibilities and liabilities of municipalities in development and implementation of Source Protection Plans. Future revisions of the *DWSPA* and accompanying documentation from the Province are anticipated to reduce this uncertainty.

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). The process of developing an appropriate approach and methodology to develop and implement source protection in

Ontario is proceeding well, although there appears to be pressure to rush delivery of the product.

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

1. Review comments on draft *DWSPA* from EBR posting and Expert Committees and revise draft for re-issue (Fall 2004).
2. Review comments on second draft *DWSPA* (Winter 2005).
3. Introduce into Legislature (Spring 2005).
4. Legislative Process leading to Enactment (Spring/Summer 2005).

Through the course of this process, the Province is expected to provide more details on implementation roles and responsibilities and funding measures and that are essential for municipalities to understand in order to fully voice support to proposed provincial source protection initiatives.

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 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 draft *DWSPA* does not provide any further insight into the potential net costs of either developing source protection plans, nor of costs related to implementation of these plans.

Substantial funding of a secure, long-term nature will be required to ensure that Conservation Authorities and municipalities can establish and implement Source Protection Plans. The Province's expert Implementation Committee continues to review options for future financing of Source Protection initiatives. York Region anticipates that substantial funding will be available from the Province to support source protection initiatives. In the event that provincial funding is not obtained, these measures could result in a net increase in the rate for water supply.

6. LOCAL MUNICIPAL IMPACT

Local municipalities will be expected to participate in the Source Protection Planning process as outlined in the draft *DWSPA* and to support the developed plans. It is expected that municipal planning documents will need to be amended in accordance with Source Protection Plans and it is possible that new by-laws will be needed in accordance with pending regulations. The draft *DWSPA* does not address the mechanisms through which municipalities would be expected to implement source protection.

7. CONCLUSION

The draft *Drinking Water Source Protection Act, 2004* was released for comment by the Ontario Ministry of the Environment on June 23, 2004. The Legislation outlines a potential legal framework for development and approval of source protection plans. York Region staff has submitted comments, as contained in *Attachment 1*, dealing with issues on implementation, resourcing, funding, timing, and technical inconsistencies.

The Senior Management Group has reviewed this report.

(A copy of the attachment referred to in the foregoing is included with this report and is also on file in the Regional Clerk's office.)