

June 21, 2013

CL 8-2013, June 20, 2013
ICPC 9-2013, June 12, 2013
Report ICP 56-2013

Bonnie Nistico-Dunk, City Clerk
City of St. Catharines
P.O. Box 3012
St. Catharines, ON L2R 7C2

SENT ELECTRONICALLY

Bill 6, Great Lakes Protection Act
ICP 56-2013

Dear Ms. Nistico-Dunk,

Regional Council, at its meeting of June 20, 2013, approved the following recommendations of its Integrated Community Planning Committee:

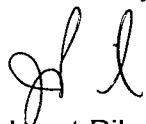
That Report ICP 56-2013, June 12, 2013, respecting Bill 6, Great Lakes Protection Act, **BE RECEIVED**;

That Council **ENDORSE** the Great Lakes St. Lawrence Cities Initiative's letter to the Ontario Ministry of Environment regarding Bill 6, Great Lakes Protection Act (attached to Report ICP 56-2013 as Appendix I); and

That this report **BE CIRCULATED** to the Area Municipalities and the Niagara Peninsula Conservation Authority.

A copy of Report ICP 56-2013 is enclosed for your information.

Yours truly,



Janet Pilon
Regional Clerk
:nld

.../2

cc: C. Kett, Town Clerk, Town of Fort Erie
H. Soady-Easton, Town Clerk, Town of Grimsby
W. Kolasa, Dir. Corp. Services/Town Clerk, Town of Lincoln
D. Iorfida, City Clerk, City of Niagara Falls
H. Dowd, Town Clerk, Town of Niagara-on-the-Lake
N. Bozzato, Town Clerk, Town of Pelham
A. Grigg, City Clerk, City of Port Colborne
S. Daniels, City Clerk, City of Thorold
S. Luey, CAO, Township of Wainfleet
C. Raby, City Clerk, City of Welland
C. Langley, Township Clerk, Township of West Lincoln
T. D'Amario, CAO/Secretary-Treasurer, Niagara Peninsula Conservation Authority
P. Robson, Commissioner, Integrated Community Planning
K. Vaughan, Project Manager, Niagara Water Strategy
M. L. Tanner, Associate Director, Regional Policy Planning
C. Rittner, Acting Director, Water & Wastewater
B. Matthews-Malone, Acting Director, Administration
S. McPetrie, Administrative Assistant, Integrated Community Planning
N. Smagata, Administrative Assistant



REPORT TO: Integrated Community Planning

SUBJECT: *Bill 6, Great Lakes Protection Act*

RECOMMENDATIONS

1. That Council **ENDORSE** the Great Lakes St. Lawrence Cities Initiative's letter to the Ontario Ministry of Environment regarding *Bill 6, Great Lakes Protection Act* (Appendix I).
2. That this report **BE CIRCULATED** to the Area Municipalities and the Niagara Peninsula Conservation Authority.

PURPOSE

The purpose of this report is to provide information on proposed legislation for protection of the Great Lakes and collaborative work with the Great Lakes and St. Lawrence Cities Initiative (GLSCI), and to ask Council to endorse the letter that is being sent to the Ministry of Environment by GLSCI on behalf of its members. This report aligns with the Council Business Plan under Strategic Theme 1: Responsive Region and Strategic Theme 4: Environmentally Responsible.

BUSINESS IMPLICATIONS

There are no direct financial implications related to this report at this time. However, as outlined in the report, there is uncertainty regarding the financial impacts in the implementation of *Bill 6*. We will continue to report on the implications when they clearer.

REPORT

In July 2012, Niagara Region submitted comments to the Ontario Ministry of Environment concerning the *Proposed Great Lakes Protection Act* and *Great Lakes Strategy*. The Strategy was released in December 2012 and is meant to be Ontario's first road map to guide Ontario's future actions to protect the Great Lakes.

In February 2013, the *Great Lakes Protection Act* was re-introduced and Niagara Region's original comments are currently being considered by the Ministry of Environment. In addition to Niagara Region's initial comments, staff has been working with the Great Lakes St. Lawrence Cities Initiative, a bi-national coalition of mayors and other local officials that works actively with federal, state, and provincial governments to advance the protection and restoration of the Great Lakes and the St. Lawrence River, to provide more detailed comments/changes to the Act. These detailed changes being

submitted through the GLSCI reflect our high level concerns for the following issues, attached as Appendix I:

- The potential impact that targets and initiatives that come out of the *Great Lakes Protection Act* will have on municipalities, including significant costs and operational responsibilities.
- Emphasis being placed on consultation versus collaboration early on in the decision making process, which may lead to significant costs and operational responsibilities with little consideration for a municipality's capacity or options for the Province to provide support to the municipalities for undertaking these initiatives and achieving targets.
- The limited consideration for and/or reference to existing provincial legislation and agreements that currently protect the Great Lakes (e.g., *Clean Water Act*, *Nutrient Management Act*, *Ontario Water Resources Act*, *Environmental Protection Act*, *Water Opportunities Act*, Canada-Ontario Agreement Respecting the Great Lakes Basin Ecosystem, Canada-U.S. Great Lakes Water Quality Agreement). This is a concern because *Bill 6* states that "the provision that provides the greatest protection to the ecological health of the Great-Lakes-St. Lawrence River Basin prevails" over all other legislation. We are particularly concerned that this will impact existing practices in the Niagara Region (e.g., agricultural, waste water treatment) without proper consultation and consideration. Additionally, federal legislation will supersede the provincial legislation, which complicates the issue further on how to apply and administer the regulation.

Staff will continue to monitor this legislation and its evolution through the legislative process. For the information of members of the Integrated Community Planning Committee, the comment and review process is the result of the coordinated efforts of staff from both Integrated Community Planning and Water/Wastewater (Public Works).

REPORTS PERTINENT TO THIS MATTER

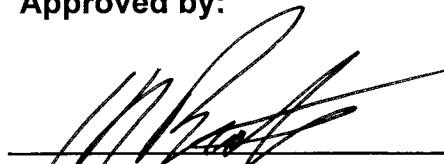
- ICP 77-2012: Bill 100 – Ontario's *Proposed Great Lakes Protection Act* and Great Lakes Strategy; July 18, 2012.

Submitted by:



Patrick Robson
Commissioner
Integrated Community Planning

Approved by:



Kenneth J. Brothers, P. Eng. FIWA
Acting Chief Administrative Officer

This report was prepared by Katelyn Vaughan, Project Manager, Niagara Water Strategy with input from Water and Waste Water staff and reviewed by Mary Lou Tanner, MCIP, RPP, Associate Director, Regional Policy Planning.

APPENDIX



May 23, 2013

Carolyn O'Neill
Manager, Great Lakes Office
Ministry of the Environment
135 St. Clair Avenue West , 6th fl
Toronto Ontario, M4V 1P5

Re: Great Lakes Protection Act, EBR Registry Number 011-6461

Dear Carolyn,

On April 26th, the Great Lakes and St. Lawrence Cities Initiative submitted draft comments to you on Bill 6, the *Great Lakes Protection Act*. Below are final comments that I hope you can take into consideration as you develop amendments to propose to the Legislative Committee.

As indicated in our previous comments, the Cities Initiative is supportive of the intent of the legislation. It is vital that complex problems on the Great Lakes that are not easily addressed through regulation are addressed through collaborative action, and the legislated process outlined in the proposed *Great Lakes Protection Act* could serve as an important means to enable this type collaborative action.

However, in establishing this framework in legislation, the Province has also introduced authority that would allow the Minister to impose on municipalities and other local authorities targets and initiatives with potentially significant costs and operational responsibilities associated with them.

The legislation outlines a thorough consultation process to ensure stakeholder input into the Geographically-Focused Initiatives (GFIs). However, consultation cannot serve as a substitute for genuine collaboration. An emphasis on collaboration, rather than lengthy consultation is required.



That is why the Cities Initiative is recommending a shortened process to develop each GFI, with more work at the front end to identify parties who are willing to collaborate and to determine what they can bring to the table in terms of expertise and resources. It is also proposed that the legislation include requirements to quantify the costs and to work with municipalities to determine if they can afford these costs, in advance of approval of a GFI. Genuine collaboration, where the Government and participating stakeholders and public bodies have a mutual understanding of the time and financial and other resources necessary and available to implement an initiative will be key to making the GFIs a success.

Another essential key to success is a financial commitment on the part of the Province towards implementation of the targets and GFIs. Funding made available under the *Clean Water Act* assisted property owners and other stakeholders to address threats to drinking water. A commitment to a similar funding program in the GLPA would be welcome.

SPECIFIC PROVISIONS

The following are proposed amendments to the GLPA to address the above concerns, as well as several other provisions that are problematic to municipalities.

Part I, 3. Interpretations

Under the definition of 'public bodies', there is concern with including source protection committees (SPC) and source protection authorities (SPAs) in this definition. SPCs are multistakeholder committees established under the *Clean Water Act*, and as such are not public bodies per se. SPAs were also established under the *Clean Water Act*, with the limited mandate of administering the development of source protection plans. Their geographic scope overlaps significantly with Conservation Authorities in Southern Ontario, with very few exceptions. As the Conservation Authorities are the public entities behind the SPCs, with clear legislative provisions and administrative structures to support them, it is more appropriate to name CAs in the definition of 'public bodies'. Consistent with the recommendations of the Drummond Report, overlapping mandates of public bodies should be reduced wherever possible.



Proposed Amendment #1

3. (1) In this Act,

“public body” means,

(a) a municipality, local board or conservation authority,

(b) a ministry, board, commission, agency or official of the Government of Ontario,

[DELETE (c) a source protection authority or source protection committee.] or

(d) a body that has been prescribed by the regulations or an official of such a body;
 (“organisme public”)

Note: Any further references to SPCs or SPAs in Part 1, 3 Interpretations should also be deleted.

Part III, 7. Progress Reports

Progress reports are an important way to demonstrate over time the impact of programs and investments on priorities issues being address on the Great Lakes. These should be issues on a regular and predictable basis, much like the Chief Drinking Water Inspector’s Annual Report. However, given that the impact of policies and programs takes time to take effect, it is suggested that these reports should be released on a 3-year cycle. It is particularly important to inform the public of this progress, and to use the progress reports as a means to communicate publicly about our shared responsibilities towards protecting the Lakes.

Proposed Amendment #2

7. (1) The Minister of the Environment shall, *[delete 'from time to time']* *[ADD 'once every three years']* and after consulting with the other Great Lakes ministers, prepare a report setting out the following...

[ADD 7. (2) The Minister of the Environment shall release a plain language summary document of the progress report to the public at the same time as the release of the progress report.]



Part IV, 8. Targets

The targets established under Bill 6, could have more far reaching financial and resource implications than the Geographically Focused Initiatives, and yet there is little in the way of consultation required in the Act, as compared to the GFIs. An explicit requirement to consult those impacted by the targets, and a requirement to conduct a cost assessment of meeting the targets is needed in the Act.

Proposed Amendment #3

8. (1) To achieve one or more purposes of this Act, the Minister of the Environment may, after consulting with the other Great Lakes ministers [*ADD and those public bodies and other stakeholders that may be impacted by the targets*], establish qualitative or quantitative targets relating to the Great Lakes-St. Lawrence River Basin, specifying in each target the area to which it applies and the manner in which, in his or her opinion, public bodies with jurisdiction in that area should take it into consideration.

Proposed Amendment #4

[*ADD 8. (3) The Minister shall conduct a cost assessment of reaching the proposed targets and consult on this assessment publicly before rendering a decision on targets.*]

Part V, Proposals for Initiatives

Section 9 requires that the Minister release a summary of the scope of a Geographically-Focused Initiative before a proposal is developed. More details should be included in this step, to demonstrate that the Minister and Ministry have done their homework in scoping out parties that are willing to collaborate on the initiative, and that the Minister and Ministry are aware of the costs involved and who will bear them, however preliminary, in undertaking the initiative. Given our recommendation to streamline the process (see below), it is all the more important that there be a requirement to assess costs and seek parties willing to collaborate at the front-end of the process.



Proposed Amendment #5:

9. (1) Before directing one or more public bodies to develop a proposal for an initiative under section 10, the Minister of the Environment shall do the following:

1. Consult on a summary of the proposed direction, as he or she considers advisable, with,
 - i. the other Great Lakes ministers,
 - ii. representatives of the interests of public bodies [*ADD including all municipal councils*] with jurisdiction in the geographic area described in the summary,
 - iii. representatives of the interests of First Nations and Métis communities that have a historic relationship with the geographic area described in the summary [*ADD as per the Ontario Government's duty to consult in a real and constructive way*], and
 - iv. such other persons as he or she considers advisable

Proposed Amendment #6

9. (2) The Minister of the Environment shall ensure that the summary of the proposed direction includes the following:[*ADD 4. a preliminary assessment of costs to implement and enforce the initiative and an identification of the public bodies and other stakeholders who may bear the cost; 5. documentation of public bodies and other parties that have expressed an interest in collaborating on the Initiative*]

There is concern amongst municipal representatives that the process outlined under Parts V and VI is duplicative and will result in a long delay in action to address priorities issues. While consultation is important, too much consultation can actually reduce the participation of important stakeholders who do not have the time or resources to participate in processes that may take years to come to a conclusion. It is therefore recommended that proposal development and initiative development phases be collapsed into one phase. As outlined above, this would require that more front-end work is done



by the Ministry before the Minister releases his summary of the initiative. Then the process would proceed directly to developing the initiative itself.

Proposed Amendment #7

[Delete Part V, sections 10.-14.]

Part VI, Initiatives

To ensure municipal consent to participate in the GFI, it is proposed that an amendment be made that requires that the Minister seek a resolution of municipal council to adopt or support the GFI, before the Minister approves the GFI. A regulation should be created under this clause that 1) stipulate the information that must be provided to the municipalities in advance of their resolution of council, including provincial financial commitment to the GFI; and 2) that notwithstanding the resolution to support, a municipal government reserves the right to dedicate funding for implementation that is within their ability at budget time.

Proposed Amendment #8

Add new section 15: *[ADD Before the Minister approves an initiative, he must first seek a resolution of municipal council to adopt or support the Initiative, from each municipality within the geographically focused initiative.]*

Under Section 16, in the interest of keeping the GFI process on track, it is important to prescribe a timeline within which a Ministerial decision must be made about the proposed Initiative.

Proposed Amendment #9

16. (1) If a draft initiative is submitted to the Minister of the Environment, he or she may, *[ADD within nine months of receiving the draft initiative]*



Under Sections 21 and 22, related to Official Plan Conformity, there is concern that implementation of the Initiative, which is mandated by the Province, may result in appeals to the Ontario Municipal Board. Such appeals are enormously time consuming and costly for municipalities to defend. An outright prohibition on appealing requirements in a provincially-approved plan would be ideal. Another option would be to provide guidelines to the OMB or other quasi-judicial bodies that outline the expectations of the Government of Ontario in interpreting provincially-approved plans and their implementation.

Proposed Amendments #10

[ADD to Sec. 22, 'If a matter related to actions taken as required under an approved GFI was appealed to the Ontario Municipal Board, the Minister may do one or both of the following: 1) amend the relevant by-law with respect to the matter, by order; 2) Declare a provincial interest, as per sec 17. (51-54) of the Planning Act.]

Proposed Amendments #11

To provide greater clarity of interpretation to the OMB and other quasi-judicial bodies, it is proposed that the *Planning Act* be amended through the GLPA, to read,

2. The Minister, the council of a municipality, a local board, a planning board and the Municipal Board, in carrying out their responsibilities under this Act, shall have regard to, among other matters, matters of provincial interest such as,

- (a) the protection of ecological systems, including natural areas, features and functions;
- (b) *[ADD the ecological health of the Great Lakes and St. Lawrence River and their tributaries;]*
- (c) the protection of the agricultural resources of the Province; etc.



Again to provide greater clarity to the OMB and other quasi-judicial bodies, it is proposed that the Provincial Policy Statement be amended, to read,

[ADD 2.2.3 Planning authorities and relevant agencies, boards and commissions shall protect, improve or restore the Great Lakes and St. Lawrence River and their tributaries.]

There is concern that it will be difficult for quasi-judicial and judicial bodies to determine which policy or plan, from amongst the Growth Plan, the Greenbelt, the Oak Ridges Moraine Plan, the Lake Simcoe Plan or source water protection plans, is more protective of the environment. Rather than allow provisions that protect the ecological health of the Great Lakes and St. Lawrence to prevail, it is proposed that such issues of conflict be referred to the Minister of the Environment.

Proposed Amendment #12

20. (4) Despite any Act, but subject to a regulation made under clause 36 (1) (c), (d) or (e), if there is a conflict between a provision of a designated policy set out in an initiative and a provision in a plan or policy that is mentioned in subsection (5), *[DELETE the provision that provides the greatest protection to the ecological health of the Great Lakes-St. Lawrence River Basin prevails.]* *[ADD ‘the matter will be referred to the Minister to determine the appropriate course of action, within a twelve month period’.]*

Part VII, Miscellaneous

As noted above, a key to the success of the geographically-focused initiative is a financial commitment on the part of the Province. Under the Clean Water Act, that commitment was demonstrated by enshrining in legislation a funding program to assist with costs incurred to protect drinking water. A similar legislative funding commitment is needed in the GLPA.



Proposed Amendment #13

[ADD 38. (1) A program to be known as the Great Lakes Stewardship Program is hereby established.

Purpose

(2) The purpose of the program is to provide financial assistance in accordance with the regulations to,

- (a) persons whose activities or properties are affected by this Act;*
- (b) persons and bodies who administer incentive programs and education and outreach programs that are related to source protection plans;*
- (c) public bodies who are required to institute policies or undertake operational or enforcement activities directly related to an approved Initiative or Target as outlined under part IV and Part VI; and*
- (d) other persons and bodies, in circumstances specified in the regulations that are related to the protection of existing or future sources of drinking water.]*

Thank you again for the opportunity to provide comments on Bill 6. Please do not hesitate to contact me if you have any questions about these proposed amendments.

Regards,

Nicola Crawhall

Nicola Crawhall
Deputy Director
Great Lakes and St. Lawrence Cities Initiative