

October 1, 2001

THE WALKERTON INQUIRY
The Honourable Dennis R. O'Connor, Commissioner
180 Dundas Street West, 22nd Floor
Toronto, ON M5G 1Z8

**RE: Ontario Professional Planners Institute
Submission to The Walkerton Inquiry – Part 2**

Dear Justice O'Connor:

We are very pleased to provide this submission to Part 2 of the Walkerton Inquiry. The Ontario Professional Planners Institute (OPPI) represents Ontario's professional planning community, and is the only organization that brings all Ontario planners together. Our members include both public and private sector municipal, land use and environmental planners who are active in formulating the land use and environmental policies and decisions which shape the land use fabric in Ontario. An objective of OPPI is to improve the quality of the Ontario environment and communities by the application of sound planning principles.

The focus of our submission is on the Inquiry's questions pertaining to the watershed planning process, and the regulation of other land uses and their interaction with a watershed management planning process. Specifically, the following provides our views regarding questions 1, 2, 3, 4, 6 and 12.

1. How should interested parties (industry, agriculture, environmental groups, municipalities) be represented in the planning process?

The watershed planning process must include a proactive public and agency consultation component, striving to ensure that all interested parties have a range of timely opportunities to provide input.

The Code of Professional Conduct adhered to by members of OPPI outlines the planner's responsibility to the public interest as follows:

"Members have a primary responsibility to define and serve the interests of the public. This requires the use of theories and techniques of planning that inform and structure debate, facilitate communication, and foster understanding".

As such a member must:

- (i) *"practice in a manner that respects the needs, values and aspirations of the public and encourages discussion on these matters;*

- (ii) *provide full, clear and accurate information on planning matters to decision-makers and members of the public, while recognizing the client's right to confidentiality and the importance of timely recommendations;*
- (iii) *acknowledge the inter-related nature of planning decisions and their consequences for individuals, the environment, and the broader public interest; and*
- (iv) *identify and promote opportunities for meaningful participation in the planning process to all interested parties”.*

We would expect that the above principles would be reflected in watershed planning consultation programs.

The key is to initiate consultation opportunities early in the planning process, providing ample opportunity for involvement. It is important to ensure that the consultation program targets the broad community, including groups that may otherwise be under-represented in the process.

The current watershed planning process in Ontario does provide opportunities for public input. Public consultation is essential to identify and discuss public interest. Effective consultation provides an opportunity for the community to influence public policy direction.

Specific tools for consultation will vary according to the nature of the community and the geographic setting. For example, the needs of an urban community will be quite different than the needs of a rural community. Appropriate tools need to be developed for meaningful participation in the planning process – these tools may go beyond those prescribed in legislation or guideline documents.

There are examples where the requirement for consultation in the watershed planning process has been addressed in Official Plan policies. For example, Section 3.1.3 of the Regional Official Policies Plan (ROPP) for the Region of Waterloo requires that “*Terms of reference for watershed studies will be jointly determined by the Province, the Region, affected Area Municipalities, and the Grand River Conservation Authority in consultation with affected landowners*”. In addition, matters that subject to the *Planning Act* are subject to a tried and tested effective process for public involvement.

The public can provide input on the environmental features of a watershed, as well as on the policy framework that will be used to assist in making land use planning decisions. Public participation is essential in promoting acceptance and ownership of a watershed plan. Participation in a watershed planning exercise also serves an information and educational purpose. Community members may voluntarily take measures to implement mitigation or management practices at the local level (e.g., improvements to septic systems, modifications to manure management practices).

Public consultation may be time-consuming. However, the tradeoff is between the resources required to conduct an effective and open consultation program vs. the potential benefits that result with increased interest and cooperation in participating in sound land use planning decisions and practices.

- 2. Please give your ideas for the interaction between a Watershed Management Planning process and the regulation of agricultural activities, the regulation of waste water, septage and biosolids, the regulation of industrial discharges, the control of urban development and the regulation of any other potential sources of contamination. Discuss the interaction in relation to policy development, standard setting and monitoring and enforcement.**

We see the watershed planning process working in tandem with the regulatory process. That is, the watershed planning process would formulate a policy framework within which land use planning policies and decisions would be made, while the regulatory process would deal with matters pertaining to standards (e.g., sewage effluent, septic systems, use of biosolids), monitoring and enforcement. We would argue that integrated approaches to planning and implementation become a very key issue. Identifying the constraints on land use to achieve water management objectives can be accommodated in typical land use planning policy and documents developed under the *Planning Act*.

Watershed planning is a planning process, not a regulatory process. There are a range of existing available planning tools (e.g., Official Plans, Zoning By-laws, Secondary Plans, Site Plan Control) that can be used to implement recommendations arising from a watershed or subwatershed planning exercise. The broader watershed planning process and the more local planning instruments are integrally linked and are dependent on each other to ensure that desired land use and environmental protection measures are implemented. The key is to ensure that information and knowledge obtained through the watershed or subwatershed planning process is translated into policies that can be implemented. One of the purposes of watershed planning is to identify constraints (i.e., areas that are sensitive to development) and opportunity areas for development or for further more detailed examination.

We suggest that a hierarchy of planning policy is required in order to maximize the effectiveness of water protection initiatives. This hierarchy would consist of, in order from the general to the specific, the *Planning Act* and Provincial Policy Statement, watershed planning and subwatershed planning, Official Plans, Zoning By-laws and other site specific measures such as Site Plan Control. All of these planning instruments should be interconnected and complementary with respect to their role in water protection.

Generally, it is our view that there should be a stronger planning basis, enunciated in policy, guidance and related support materials, from which to make sound decisions on land use allocations and water resource protection.

The Provincial Policy Statement, which is currently under review, includes a water quality and quantity policy as follows:

“The quality and quantity of ground water and surface water and the function of sensitive ground water recharge/ discharge areas, aquifers and headwaters will be protected or enhanced”.

In addition, section 1.1.1e) of the Policy Statement notes that “a coordinated approach should be achieved when dealing with issues which cross municipal boundaries, including: ... ecosystem and watershed related issues”.

This Policy Statement is rather vague - we are suggesting that this policy statement needs to be clarified and strengthened in order to more adequately protect water quality and quantity in Ontario. For example, we would support the requirement for municipalities to identify strategies for ground water protection and to develop policies which support these strategies. Official Plans should be required to identify strategic water resource areas such as recharge/discharge areas, aquifers, headwaters and wellhead protection areas and protect them from incompatible uses, similar to what is currently required for significant natural heritage areas, for example. In addition, performance standards which confirm that water quality and quantity is not being adversely affected could be developed. We will be making submissions to that effect to the Ministry of Municipal Affairs and Housing

We suggest that improvements can be made to existing planning tools and processes and that we should build on our successes to date, rather than trying to develop new procedures. For example, there are a number of key provincial documents which provide guidance on watershed planning in Ontario. These documents are: *Subwatershed Planning*, *Water Management on a*

*Watershed Basis: Implementing an Ecosystem Approach; and Integrating Water Management Objectives into Municipal Planning Documents*¹.

The water management 'model' promoted by these documents establishes the appropriate direction. These documents suggest that it is important to develop three sets of plan documents (watershed, subwatershed and site management plans) to achieve an integrated set of policies and regulations for effective water management. The *Planning Act* allows for the incorporation of higher level policy pertaining to uses of land in pursuit of watershed objectives. The subwatershed plans can identify specific water management issues and recommend the performance criteria and objectives to be met. However, it is at the micro level of the individual site management plans for individual parcels of land that the detailed objectives of watershed plans can be truly implemented. All of these planning documents can be brought into the local sphere of approval through provisions of the *Planning Act*. The implementation of appropriate monitoring measures and programs can be a co-operative venture with roles and responsibilities distributed among local governments, regional Conservation Authorities and local public health agencies.

This current framework for watershed and subwatershed planning emphasizes the following:

- "promoting an ecosystem based approach to environmental and land use planning on a watershed basis;
- fostering early, integrated planning for land use, water management and environmental protection and management;
- coordinating the efforts and initiatives of agencies, interest groups and the private sector; and
- enhancing the efficiency and effectiveness of the land use planning and review process"².

We would support these principles.

It is important to note, however, that not all areas have watershed plans (and will not have in the near future, particularly in rural areas). At present there is very little opportunity for the control of agricultural practices under the *Planning Act* and Provincial Policy Statement. Consideration should be given to whether these regulatory tools need to be revised as part of an overall initiative to strengthen water protection legislation and policy.

3. Is it feasible for Watershed Management Plans to set out maximum nutrient or contaminant loads for entire watersheds or sub-watersheds. If so, how should allocations among entities be determined?

We do not believe that it is feasible for watershed management plans to set out maximum nutrient or contaminant loads for entire watersheds or subwatersheds. The setting of nutrient and contaminant loads should be addressed at a more site-specific level and based on requirements

¹ These documents were produced by the Ministry of Environment and Energy [now Ministry of the Environment] and the Ministry of Natural Resources. June 1993.

In addition, the following reports which were published in 1997 provide useful information on watershed planning: Final Report – Coordination, Resources and Effectiveness, Task Group Watershed Planning Initiative; Final Report – Relevance and Responsiveness, Task Group Planning Initiative; and Final Report – Science and Technology Task Group.

² Beak International Incorporated. 2001. *A Review of Watershed Management Experience*. Prepared for Executive Resource Group, Ministry of the Environment. January 2001. p. 5.2.

for specific uses. For example, *Bill 81 – The Nutrient Management Act* may require nutrient management plans to be completed. The intent of these plans is to ensure that the amount of nutrient applied to a property is that which is required for crop uptake rather than an amount in excess which could potentially lead to a negative impact on water quality. Proper nutrient management at a site-specific level will result in a decreased overall effect on a regional water system.

It is our view that there is currently insufficient scientific research and expertise to make definitive determinations of maximum loads on a watershed or subwatershed basis. Therefore, regulating the application of nutrients at a site-specific level is a more appropriate mechanism for water resource protection.

Acceptable nutrient management plans could be conditions of planning approval and building permit approval. Guidelines could be developed to ensure that nutrient management systems are well separated from ground and surface water resources and from municipal well and water source areas.

4. Should Watershed Management Plans determine those areas that are particularly sensitive to water contamination, and should specific land uses be prohibited in those areas? Under what authority?

We would agree that specific land uses should be prohibited in areas that are particularly sensitive to water contamination. However, the issue of restricting land uses for water protection is a difficult one. The matter of landowner entitlement to compensation, particularly in agricultural areas, is one that warrants further consideration.

A watershed plan is a context within which a number of different jurisdictions can cooperate to develop an overview framework to guide further planning and decision-making on a watershed basis. The watershed plan usually sets out the broad requirements for further more detailed study to be undertaken at a subwatershed level. These subwatershed plans can then identify constraint and opportunity areas for development. Subwatershed plans can identify areas that may be sensitive to development such as ground water recharge areas or other sensitive ground water areas. These plans can provide the context within which future development should occur. Municipalities can require that subwatershed studies be done prior to development approvals.

Sensitive areas such as ground water recharge areas and aquifer protection areas could be identified and designated through the watershed or subwatershed planning process. Land use planning policies to protect these areas from development, or to place restrictions on the type and form of development (e.g., buffers, density restrictions), would then be established at the municipal level. These policies could be particularly important tools for the protection of private water supplies in rural areas. In addition, wellhead protection areas (i.e., those areas with a direct influence on the water supply system) could be designated and protected by policies.

Policies regarding restrictions on development in urban areas would best be addressed at a municipal planning policy level. Land use restrictions in agricultural areas require more careful examination. In agricultural areas, it may be a matter of implementing more non-regulatory tools. For example, it may be appropriate to provide guidance on best management practices that may take the form of more sustainable cropping or manure management practices.

One effective mechanism is to include provisions for watershed planning in Official Plans. For example, the Regional Official Policies Plan (ROPP) for the Region of Waterloo includes specific policies which address watershed planning. Section 3.1.2 of the ROPP indicates that “*where completion of a watershed study has been identified as a priority ... Area Municipalities will require the finalization of the watershed study prior to the adoption of Area Municipal Official Plan Amendments or approval of Area Municipal Implementation Plans to permit significant areas of new development or redevelopment within the watershed*”.

Section 3.1.2 of the ROPP also makes provision for “*the determination of areas where no development will be permitted or where site specific Environmental Impact Statements may be required to assess development proposals*”.

Section 4.12 of the County of Bruce Official Plan addresses watershed planning in the following manner:

“The County encourages the preparation of watershed and subwatershed studies where major development and redevelopment are proposed which would have a significant downstream impact upon a watershed. These studies are most needed in areas with both development pressures and highly sensitive natural environments to provide some understanding of the relationship between water resources and land use activities. The development of sound watershed and subwatershed plans will require the cooperation between affected municipalities, government agencies and interested groups to ensure that potential cross boundary environmental impacts are addressed. The results of watershed studies should be incorporated into the County and/or Municipal Official Plans whenever practical”.

Zoning By-laws are another local mechanism that can be used to restrict land uses and can serve as an implementation tool for broader policy initiatives established in a watershed or subwatershed plan.

Some municipalities are undertaking contaminant source inventories (i.e., a reconnaissance level inventory of point and non-point sources of pollution). This information will be used to identify areas of concern and as a starting point for detailed potential contaminant sources evaluations in sensitive areas.

6. Should municipal by-laws be permitted to place greater restrictions on user activities than those contemplated by a Watershed Management Plan?

Under the *Planning Act*, Zoning By-laws dictate the use of lands and may place restrictions on how lands are to be developed. It would seem reasonable that these existing by-laws be enhanced to become more effective tools for dictating setbacks or separation distances from certain types of land uses and water sources, in order to protect the integrity of the water resource. Municipalities should be encouraged to adopt these enhanced mechanisms and to develop policies to enforce their implementation.

For example, it is important to protect municipal wellhead and water source areas from incompatible land uses. The protection of these areas can be achieved through the adoption of appropriate Official Plan designations and policies, and further reinforced through appropriate Zoning and Site Plan Control requirements.

We would encourage the efficient use of existing tools (i.e., Zoning By-laws, Site Plan Control) that are currently available to regulate land use, rather than trying to develop a roster of new tools or mechanisms to serve the same purpose.

With regard to Site Plan Control, existing powers under the *Planning Act* allow municipalities to develop appropriate policies to regulate the on-site features of development. In this way, watershed objectives, as contained in watershed plans, can be fulfilled. Site Plan Control provisions can address a number of issues, including grading and elevation of the land or any alteration to the contours of the land, landscaping and groundcover or protection of adjoining lands, location of garbage or waste collection and storage facilities, easements for improvement of watercourses and ditches or land drainage works, and so on. These agreements can be registered on title and can be monitored and enforced.

Entering into these kinds of agreements can be a prerequisite or concurrent approval condition for a wide variety of other land related approvals (e.g., building permits, severance applications, subdivision approvals). This is one practical example of how the broad goals of watershed plans, including specific performance criteria, can be dealt with and implemented on the ground.

12. Comment on the regulation of landfills, urban development, industrial activity, forestry, mining and the interaction with a watershed management planning process.

Our comments pertain to the regulation of infrastructure projects (as a form of urban development) and the interaction or relationship with a watershed management planning process. We have provided comment on the relationship of urban development to watershed planning in our response to Question # 2.

For infrastructure projects, the integration of watershed planning processes with environmental assessment processes may offer opportunities to identify all potential influences in the watershed and assist in identifying and assessing a range of alternatives. OPPI supports and promotes the integration of watershed planning processes with environmental assessment processes.

Municipalities who have prepared or are in the process of preparing a Class Environmental Assessment for an infrastructure project should use key findings from watershed plans, where they exist. This requires an integrated approach among those responsible for a range of planning processes. However, the practice of integrating these planning processes would result in more cost-effective studies, more efficient and timely assessments and greater involvement on the part of Conservation Authorities and other key public and agency stakeholders.

Watershed studies can provide technical and scientific input that can be used in the environmental assessment process for infrastructure projects. Ultimately, all planning processes must be complementary and used together to arrive at optimal decisions regarding infrastructure projects and water resource protection. For example, the Region of Halton prepared a watershed plan in conjunction with a master plan for servicing (completed as a Class Environmental Assessment). This approach worked well in that it both encouraged and resulted in public consultation and input on the servicing projects at an earlier point in the planning process than what might normally be expected. It also had the benefit of earlier and more pro-active participation on the part of key review agencies.

The recently revised Municipal Class Environmental Assessment, which is widely used across Ontario for the planning and approval of infrastructure projects, provides guidance on the preparation of master plans relative to meeting environmental assessment requirements. Perhaps there are lessons learned from these initiatives that could be used within the context of watershed planning.

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On a final note, OPPI recommends that any water protection initiatives must fully consider how the many participants and interests in watershed planning, along with the many legislative and regulatory mechanisms, can be best integrated in order to work effectively and efficiently towards a common goal. Unless these integration initiatives occur, it is likely that a fragmented response and lack of comprehensive planning will continue to jeopardize our valuable land and water resources.

Thank you very much for the opportunity to provide comment on this critical investigation to ensure the future safety of water supply in Ontario. If you have any questions or would like to discuss our submission, please contact me at (613) 580-4751, extension 5521.

Yours truly,

Dennis Jacobs, MCIP, RPP
President

cc. Ms. Mary Ann Rangam - Executive Director, OPPI
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