



**Planning &
Development Services**

Tel. 905-683-4550
Fax. 905-683-0360

TOWN OF AJAX
65 Harwood Avenue South
Ajax ON L1S 2H9
www.ajax.ca

September 24, 2015

Mr. Grant Crack, Chair and Mr. Joe Dickson, Vice-Chair
Standing Committee on General Government
99 Wellesley Street West, Room 1405
Whitney Block, Queen's Park
Toronto, ON M7A 1A2

Ms. Sylwia Przezdziecki, Clerk
Tel: 416-325-3515
Fax: 416-325-3505
sprzezdziecki@ola.org

**Re: Submission to the Standing Committee on General Government on Bill 66,
An Act to protect and restore the Great Lakes-St. Lawrence River Basin and
Potential Amendments**

In April 2015, the Town of Ajax provided comments on Bill 66 by submitting the attached Council-endorsed staff report to the Province via the Environmental Bill of Rights Registry (012-3523). The report provided observations, identified gaps and made recommendations to strengthen the proposed legislation to improve the likelihood of implementation, its readability and, ultimately, the Province's achievement of stated objectives.

I am pleased to have this opportunity to submit the following proposed amendments for consideration, based on emerging findings from ongoing scientific study and hydrodynamic modeling of the Ajax-Pickering-Western Lake Ontario nearshore sponsored by the Town and led by internationally renowned *Cladophora* expert Dr. Martin T. Auer of Michigan Tech University.

Town staff strongly urge Standing Committee to incorporate the following recommendations into the final version of the proposed legislation prior to its enactment:

1. Section 7 requires the Minister to ensure that monitoring and reporting are sufficient in relation to water quality, harmful pollutants and climate change. This section must clearly identify nutrient loading and algal productiveness among the ecological conditions to be monitored.

Recommendation: Revise Section 7.(1) to include nutrient loading and algal productiveness as ecological conditions for which programs and other actions will be used for monitoring and reporting (new text shown in bold):

7.(1) Subject to subsection (2), the Minister shall ensure that programs or other actions that will be used to monitor and report on the following ecological conditions of all or part of the Great Lakes-St. Lawrence River Basin and that are sufficient for the purpose of improving understanding and management of the Basin are established and maintained:

1. Harmful pollutants.
2. Water quality.
3. **Soluble reactive phosphorus concentrations in nearshore water, measured at**

appropriate intervals over the water column.

4. **Algal production measured through tissue phosphorus in *Cladophora*.**
 5. Impacts of climate change...
2. Section 9 permits the Minister, after consultation, to establish qualitative (observations like "colour", not measurements) or quantitative (measurable) targets and requires the Minister to establish "at least one" target within 2 years, to reduce algae blooms in "all or part of" the Great Lakes-St. Lawrence River Basin. Section 9 permits, but does not require, the target to be quantitative, and permits, but does not require, a target to be set for Lake Ontario.

Recommendation:

Add new Section 9(2.1) to Section 9 to incorporate 3 quantitative targets, as follows:

"Section 9(2.1) Within two years after this section comes into force, the Minister shall establish a phosphorus reduction strategy for the Lake Ontario nearshore, which shall, **at a minimum, include:**

- (i) **Establishment of a water quality objective for *Cladophora*, representing non-nuisance conditions, expressed with reference to biomass density and tissue phosphorus concentrations,**
 - (ii) **A Provincial Water Quality Objective for soluble reactive phosphorus in the nearshore waters of Lake Ontario, derived with reference to 9(2.1)(i); and**
 - (iii) **Phosphorus loading limits for sewage treatment plants discharging to Lake Ontario, expressed as Bioavailable Phosphorus ug/L, which will ensure compliance with 9(2.1)(i) and (ii)."**
3. Schedule 1 Policies refer to key natural heritage features and key hydrologic functions, which are identified by the Province in the Greenbelt Plan. There is no reference to nutrient loading.

Recommendation:

Amend Section 1. (4)(i) to read as follows: "Policies specifying requirements relating to the contents of prescribed instruments, including requirements related to the reduction of harmful pollutants **and bioavailable phosphorus loading** or related to the measures that shall be taken to assist in achieving the objectives of the initiative."

4. Section 38 includes an exclusion clause that must be deleted.

Recommendations:

The Town supports removal of the exclusion clause at Section 38(l), as recommended by the Great Lakes Protection Act Alliance.

The Town also supports the Alliance's other amendments, as follow, to enhance the Bill's purposes to fully commit to the importance of natural habitats, such as wetlands in the Great Lakes-St. Lawrence River Basin:

- Revise Section 1(2) as shown below:
 1. To protect and restore watersheds, wetlands, beaches, shorelines and other coastal areas of the Great Lakes-St. Lawrence River Basin;
 2. To protect and restore the natural habitats and biodiversity of the Great Lakes-St. Lawrence River Basin, **including critical habitat areas for migratory birds, bats and insects such as Important Bird and Biodiversity Areas;**
 3. To protect and improve the capacity of the Great Lakes-St. Lawrence River Basin to respond to the impacts and causes of climate change, **including by effectively managing urban and rural stormwater, promoting green infrastructure, and protecting and restoring wetlands;**
 - Revise Section 3 to add the following definition: **“Important Bird and Biodiversity Areas means areas that have been identified by BirdLife International using internationally agreed upon, standardized, quantitative, and scientifically defensible criteria.”**
 - Revise Section 33 by adding references to other inter-jurisdictional agreements (e.g., the Migratory Birds Convention, the Ramsar Convention and the Convention on Biodiversity) that should inform updates to the Great Lakes Strategy;
 - Revise Section 5 by adding new Section 5.1 to Part III to ensure that all of the Great Lakes Ministers, individually and severally, pursue the achievement of the visions and goals established in Ontario’s Great Lakes Strategy.
5. Also, the Great Lakes and St. Lawrence Cities Initiatives’ recommended amendments, consisting of the following, are supported:
- Revise Section 10.(b)(ii) by adding explicit requirement for consultation with municipal councils;
 - Revise Section 12 by adding the requirement to include a financing strategy and cost-benefit analysis in any proposal;
 - In Section 16.(1)(b), ensure the hearings officer appointed will be impartial, such as the Environmental Commissioner of Ontario; and,
 - In Sections 9.(2) and 9.(3), link the benefits of wetlands protection to the reduction in algal blooms, provided that (quantitative) targets are also established for point source discharges, such as sewage treatment plants; and,
 - Require the designation of Geographically Focused Initiatives as “instruments” or, more appropriately proposals for instruments, so that they would be appealable pursuant to the Environmental Bill of Rights, 1993, rather than simply policies requiring notice and public consultation.

I request that the Town of Ajax’s comments and recommendations be applied to strengthen Bill 66 prior to approval.

Kindly ensure the Town of Ajax is notified should the proposed legislation receive Royal Assent.

Sincerely,

A handwritten signature in black ink that reads "Paul Allore". The signature is written in a cursive style with a large initial "P" and "A".

Paul Allore, M.C.I.P., R.P.P.
Director of Planning & Development Services
905-619-2529, ext. 3220
paul.allore@ajax.ca

Attachment: Town of Ajax Staff Report to General Government Committee, dated April 9, 2015

cc. Town of Ajax Council
Alliance for the Great Lakes Protection Act
Great Lakes and St. Lawrence Cities Initiative

**TOWN OF AJAX
REPORT**



REPORT TO: General Government Committee

SUBMITTED BY: Paul Allore, M.C.I.P., R.P.P.
Director, Planning & Development Services

PREPARED BY: Barb Hodgins, M.C.I.P., R.P.P.
Senior Policy Planner

SUBJECT: Comments on the Proposed *Great Lakes Protection Act* (Bill 66)

WARD(S): All

DATE OF MEETING: April 9, 2015

REFERENCES: Community Strategic Plan – Environmental Leadership
Report to General Government Committee on the Province's "Healthy
Great Lakes, Strong Ontario Discussion Paper", dated May 7, 2009

RECOMMENDATION:

1. That the report titled "Comments on the Proposed *Great Lakes Protection Act* (Bill 66)", dated April 9, 2015, be endorsed as the Town's comments on the proposed legislation, per Environmental Bill of Rights Registry Posting 012-3523;
 2. That the Minister of the Environment and Climate Change be respectfully requested to invite the Town of Ajax to join the proposed Great Lakes Guardian Council when it is being established; and,
 3. That a copy of the report be sent to the Ministry of the Environment and Climate Change, Durham Region, Durham area municipalities, Ontario's Environment Commissioner, the Toronto and Region Conservation Authority and the Central Lake Ontario Conservation Authority.
-

BACKGROUND:

On February 18, 2015, the Province released a proposed *Great Lakes Protection Act* (Bill 66), which has received first reading and was posted to the Environmental Bill of Rights Registry (012-3523)¹ by the Ministry of the Environment and Climate Change (MOECC) for a 60-day comment period that ends on Sunday, April 19, 2015.

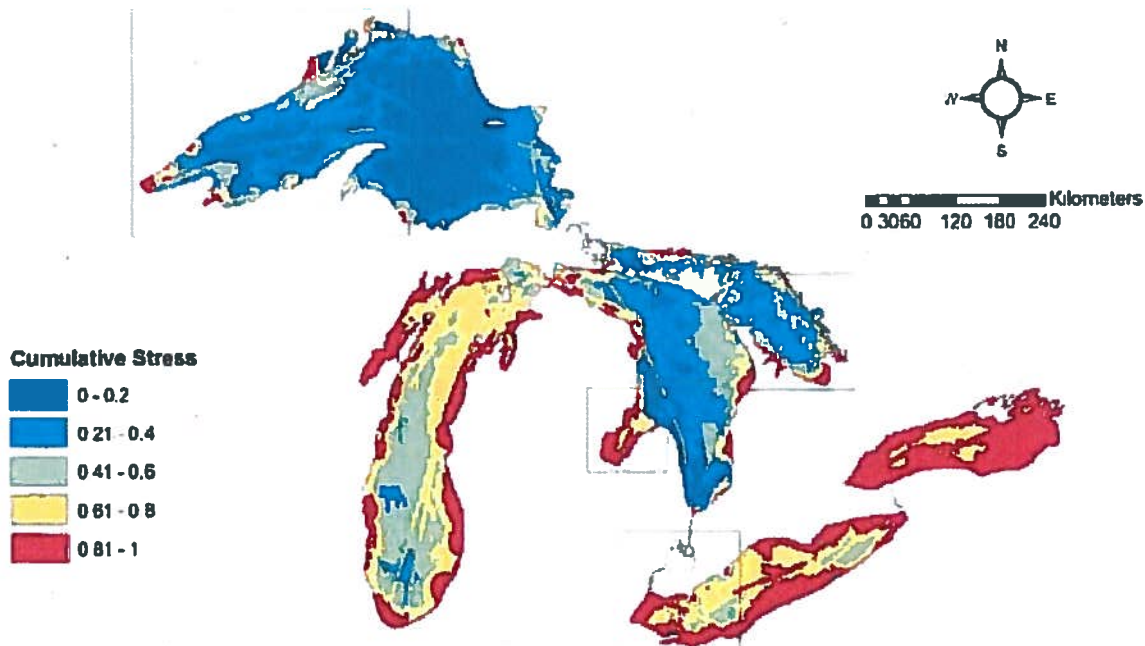
¹ Link to EBR Posting 012-3523: <http://www.ebr.gov.on.ca/ERS-WEB/External/displaynoticecontent.do?noticeId=MT10NDM5&statusId=MTg3Mzc5&language=en>

DISCUSSION:

The proposed *Act* put forward by the MOECC is intended to help keep the Great Lakes “drinkable, fishable and swimmable” by:

- Helping fight climate change, reduce harmful algal blooms and protect wetlands and other coastal areas;
- Monitoring and reporting on the Great Lakes health;
- Encouraging local action on priority issues from “Ontario’s Great Lakes Strategy”²; and,
- Meeting commitments in the Canada-Ontario Agreement on Great Lakes Water Quality and Ecosystem Health (COA 2014)³. The COA 2014 is the primary mechanism by which the Federal and Provincial governments co-ordinate their respective work to address commitments made in the Canada-U.S. Great Lakes Water Quality Agreement (GLWQA 2012)⁴.

Within the Great Lakes Basin, Lake Ontario is the Town’s sole source of drinking water that sustains this growing community. Accordingly, Lake Ontario is a highly-valued asset of Ajax residents and visitors that needs to be protected and restored. Positioned at the lower end of the Basin, Lake Ontario is under tremendous cumulative threat, as shown in the Figure⁵ below:



² Link to Ontario’s Great Lakes Strategy 2012: <https://www.ontario.ca/document/ontarios-great-lakes-strategy>

³ Link to COA 2014: <https://ec.gc.ca/lcpe-capa/default.asp?lang=En&n=E9A42FF1-1>

⁴ Link to GLWQA 2012: <https://www.ec.gc.ca/grandslacs-greatlakes/default.asp?lang=En&n=A1C62826-1>

⁵ Source of GLEAM Map: www.pnas.org/cgi/doi/10.1073/pnas.1213841110 :

<file:///C:/Users/bhodgins/Desktop/GLEAM%20%20%20Great%20Lakes%20Environmental%20Assessment%20and%20Mapping%20Project.html>

Cumulative pressure is generated by stressors such as human activities, urbanization and infrastructure, and tends to be concentrated along the nearshore, as evidenced by declining water quality, excessive algae growth (eutrophication) and unattractive, smelly shorelines.

The proposed *Act* would establish a legislative framework for developing Initiatives, indicators of ecological health, targets to be met, performance requirements and progress reports potentially anywhere within the Great Lakes Basin where water drains into a Great Lake or the St. Lawrence River.

Observations, Gaps and Recommendations

The observations, gaps and recommendations set out in this staff report focus primarily on those aspects of the proposed *Act* that are particularly relevant to the Town's interests. Underlining has been added to emphasize certain points.

Builds on the *Lake Simcoe Protection Act, 2008*

The proposed *Act* was written to reflect parts of the *Lake Simcoe Protection Act, 2008*, which has a companion Lake Simcoe Protection Plan that includes a Phosphorus Reduction Strategy. Currently, Bill 66 refers to, but does not include, actual clauses (mapping, permits, prohibited activities, entering property and enforcing regulations) from the *Lake Simcoe Protection Act*, and would adopt a hierarchy of policies, with and without legal force, use terms such as "delegated policies" which are used in the Lake Simcoe Protection Plan.

Recommendation: Replace each reference to a clause from the *Lake Simcoe Protection Act* with the actual clause. Add definitions and explanations of the policy hierarchy and terms such as "designated policies" per the Lake Simcoe Protection Plan, in order to make the proposed *Act* easier to interpret.

Considers Cumulative Impacts

In its preamble, Bill 66 states that the Basin is vulnerable to effects of climate change, and that cumulative pressures from population growth, development, loss and degradation of natural features and pollution have led to the decline of Lakes Ontario, Erie and Huron.

Gap: The proposed *Act* lacks provisions and policies to ensure that individual stressors and cumulative impacts will be identified, measured and then addressed, such as stressors arising from provincially-planned growth and infrastructure. Also, provisions and policies regarding how to reduce the Basin's vulnerability to climate change through *adaptation* and *mitigation* are absent.

When studied individually, nutrients, chemicals and other pollutants may not be deemed by the Federal or Provincial governments to pose threats to the health of humans and the aquatic environment. However, if studied and analysed together to measure their cumulative impacts, the sources of such pollutants should become uncovered and become the focus of future Initiatives and Targets.

Support from sustained, reliable funding from federal, provincial, regional and municipal sources will be required to study and take effective actions to reverse cumulative impacts on Lake Ontario's ecological health, especially its nearshore.

Recommendations: Add provisions and policies to ensure that not only individual stressors but also cumulative impacts will be identified, measured and addressed, such as arise from provincially-planned growth and infrastructure; add provisions and policies regarding how to reduce the Basin's vulnerability to climate change through *adaptation* and *mitigation*; and establish reliable, sustained Federal and Provincial funding to support this work.

Relies on Ontario's 2012 Great Lakes Strategy

The proposed Act refers to and relies on the 2012 Ontario's Great Lakes Strategy and reflects its principles and performance measures.

MOECC staff advise that the 2012 Strategy was due for review this year but the review process has not commenced. The Minister is responsible for maintaining the Strategy, and would be required under the proposed Act to review it before December 18, 2018 and every six years afterwards, and have the authority to amend the Strategy between reviews. The principles set out in the 2012 Strategy, which are reflected in the proposed Act but have been strengthened, as shown in bold type, are to:

1. **Protect human health and well-being through protection and restoration of water quality, hydrologic functions and the Basin's ecological health, including eliminating or reducing harmful pollutants;**
2. **Protect and restore watersheds, wetlands, beaches, shorelines and other coastal areas;**
3. **Protect and restore natural habitats and biodiversity;**
4. **Protect and improve the Basin's capacity to respond to impacts and causes of climate change;**
5. **Improve understanding and management of the Basin by advancing science and promoting consideration of traditional ecological knowledge related to existing and emerging stressors and by establishing and maintaining monitoring and reporting programs or actions with respect to its ecological conditions; and,**
6. **Enrich quality of life in communities by supporting environmentally sustainable economic opportunities, innovation and use of natural resources.**

Gap: The first principle refers to protecting human health and restoring water quality, but needs to also specify protecting aquatic health and particularly the nearshore, in order to truly take an ecosystem approach.

Recommendation: Strengthen Principle 1, to read as follows: Protect human and aquatic health and well-being through protection and restoration of water quality, particularly in the nearshore, hydrologic functions and the Basin's ecological health, including eliminating or reducing harmful pollutants.

Establishes a Great Lakes Guardians Council

The proposed Act would establish a Great Lakes Guardians Council and have it meet at least annually. The Guardians Council would include, in addition to the Minister of the Environment and Climate Change and other Great Lakes Ministers:

- municipal representatives;
- conservation authorities with jurisdictions located wholly or partly in the Basin;
- First Nations and Metis communities;
- environmental organizations;
- scientists; and,
- industrial, agricultural, recreational and tourism sectors.

The Guardians Council would be responsible for identifying priority actions and potential funding measures and partnerships for projects, facilitating information sharing, and obtaining input regarding:

- establishing targets;
- criteria for selecting and prioritizing geographic areas for which Proposals for Initiatives will be developed; and,
- Developing and implementing approved Proposals and inter-jurisdictional agreements related to protecting or restoring the Basin's ecological health.

Requesting Seat on Great Lakes Guardians Council

To advance the Town's interests and protect its investment in restoring its waterfront and nearshore, it would be invaluable for the Town to be a member of the proposed Great Lakes Guardian Council. Also, for the Province to ensure accountability and transparency, Council meetings and related materials need to be made available to the public throughout the Great Lakes Basin, which crosses time zones.

Recommendations: That the Minister invite a representative of the Town of Ajax to be a member of the Great Lakes Guardian Council. Add requirements that the Guardians Council's meetings will be advertised publicly in advance, and that agendas, meeting minutes, decisions, draft and approved Proposals for Initiatives and reports will be made available publicly upon completion, and that the meetings will be open and available to the public to attend in person, or to participate in or monitor in real time, on the Internet.

Needs Stronger Performance Standards

The Province intends to develop performance standards in order to measure, track and issue Progress Reports to the Legislature and the public every three years, and refine the measures over time. The proposed *Act* would rely on the following performance indicators and standards from the 2012 Great Lakes Strategy.

1. Increase public awareness and engagement on Great Lakes issues, as demonstrated by the number of community projects undertaken;
2. Drinking water meets a high standard of safety, as demonstrated by municipal residential drinking water systems meeting provincial drinking water standards;
3. Reduced levels of harmful pollutants in the ecosystem, as demonstrated by declining fish tissue contaminant levels and fish consumption advisories, as well as localized improvements in priority areas where efforts are focused to address problems;

4. Measuring phosphorus trends and reducing the frequency and severity of algae blooms in priority areas;
5. Beaches are available for public use for more of the season, as demonstrated by reduced beach postings;
6. Continued progress on cleaning up Areas of Concern, as demonstrated by restoring impaired beneficial uses;
7. Habitats, including wetlands, and native species are identified, protected, conserved and restored, supported by policies and programs to identify and take action on priority habitat, and by enhanced information;
8. The threat of aquatic invasive species to Great Lakes ecosystems have been reduced, supported by actions to reduce impacts of existing invaders and to prevent and respond to new arrivals;
9. Greater public access to monitoring results and scientific information, as demonstrated by increased number of publicly available Great Lakes studies and reports; and,
10. Ongoing implementation of Adaptation Actions in the Province's "Climate Ready: Ontario's Adaptation Strategy and Action Plan (2011-2014)", as demonstrated by progress updates contained in regular Climate Change Progress Reports.

Gap: Many of the performance indicators and standards are vague and not sufficiently rigorous or quantitative. Further, measurement of these indicators is not sufficiently funded by federal, provincial and regional governments to gather the information required to meaningfully report progress toward achieving the proposed principles.

For example, recreational water quality monitoring at beaches should be advanced such that genetic markers are used to identify human versus non-human *E. coli* bacteria in nearshore water samples, so as to identify its sources (e.g., human, waterfowl, dog, cat, raccoon, waterfowl or otherwise) and to pinpoint the actions required locally to reduce *E. coli* levels so as to reduce the frequency of beach postings. There is opportunity for the Province to insert stronger performance indicators into Bill 66 prior to further readings in the Legislature and receipt of Royal Assent.

Recommendation: Prior to further readings of Bill 66 in the Legislature, add more rigorous, explicit, quantitative performance standards based on the findings of the best available science to strengthen the proposed *Act* and the Great Lakes Strategy.

For example, consider updating water quality testing protocols for beach monitoring to use genetic markers to identify the type of *E. coli* in nearshore water samples, so as to identify its source (e.g., human, waterfowl, dog, cat, raccoon, waterfowl or otherwise) and pinpoint remedial actions required to reduce *E. coli* levels so as to reduce the frequency of beach postings. Provide supportive Provincial funds and equipment required by scientists to undertake and complete this important work.

Sets Overarching Principles

Actions and decisions to be taken under the proposed *Act* would be guided by a series of principles:

1. An ecosystem approach that recognizes the Lakes' intrinsic value and interdependence of land, air, water and living organisms, including humans, by using the best available science, considering cumulative impacts, encouraging conservation of resources and promoting watershed and sub-watershed approaches;
2. A precautionary approach, by exercising caution to protect the environment when there is uncertainty about environmental risks;
3. An adaptive management approach, by continuously improving and adapting policies and management approaches by monitoring impacts, assessing effectiveness and adjusting actions while considering new science, Traditional Ecological Knowledge, innovative design, practices and technologies, and the need to adapt to a changing climate;
4. Collaboration between government, interested parties and organizations;
5. Government accountability to the public for actions taken to achieve its purposes, promote increased transparency by setting clear goals, reporting regularly on progress and sharing information; and,
6. Recognition of First Nations and Metis communities that have an historic relationship with the Basin.

The proposed principles should be supported.

Preparing Geographically-Focused Initiatives

There seem to be three scenarios through which a Proposed Geographically-Focused Initiative (GFI) could be prepared:

1. A public body or public bodies (municipalities and/or conservation authorities) could voluntarily prepare a Proposed GFI, consisting of:
 - a description of the proposed area to which it would apply, the environmental conditions of the area, the proposed issues to be addressed;
 - the proposed objectives, principles and priorities that guided its development;
 - the proposed types of policies that would be set out to achieve the objectives;
 - the proposed consultation process to be undertaken to develop the GFI, including the persons and public bodies to be consulted a plan for engaging potentially affected First Nations and Metis communities;
 - the proposed priorities that should guide implementation;

- the proposed specific methods to be used to assess whether objectives are being achieved;
 - a proposed strategy for financing its implementation; and,
 - the proposed date on which the Initiative would take effect.
2. The Minister could direct a public body or public bodies to develop a Proposed GFI that, in addition to the above, specifies the parties responsible for its development and other matters identified by the public bodies.
 3. Any person could request the Minister to direct public bodies to develop a Proposed GFI, subject to the person providing rationale for the GFI and any information requested to enable the Minister to assess the request.

Any of these scenarios could have implications to the Town, financially and from a staff resource perspective. For example, if a GFI were prepared for an area encompassing part of Ajax and/or watersheds draining through and from Ajax to Lake Ontario without the Town's involvement, or if the Minister directed the Town to develop an unplanned GFI. Financial impacts could be mitigated if the Town were to receive sufficient, sustained funding support.

Evaluating GFIs

Only highlights of a proposed evaluation process have been provided in the proposed Act (e.g., appointment of hearing officers, establishing rules of procedure, issuing a decision within 60 days of a hearing and written recommendations to the Minister).

As a result, it is not clear: whether all GFIs would proceed, or have the potential to proceed to, a hearing; if the Province intends to rely on existing hearing officers and well-known rules of procedure (e.g. the Ontario Municipal Board or Environmental Review Tribunal); or whether municipalities preparing or commenting on GFIs would require legal counsel and expert consultants to participate in the proposed evaluation process.

The Minister could either refer a GFI to the Lieutenant Governor in Council or not, and any party charged with the authority could either approve it, with or without amendments, or not approve it.

Should the Minister approve a Proposed GFI, the submitting public bodies would then be required to, by a specified date, develop a Draft GFI in accordance with the approved Proposed GFI and submit it to the Minister. In addition to the information provided in a Proposed GFI, a Draft GFI must also describe: the environmental conditions of the area and issues and activities to be addressed; the principles and priorities that guided its development; the priorities that should guide its implementation; the benefits and costs arising from its implementation to the public bodies responsible for its implementation; and how it would benefit the Basin's ecological health.

Upon receipt of a Draft GFI, the Minister could direct that it be amended and resubmitted within a specific time, appoint a hearing officer to conduct one or more hearings, or refer, or not refer, the Draft GFI to the Lieutenant Governor in Council.

Before referring a Draft GFI to the Lieutenant Governor in Council, the Minister would give the Draft GFI to the clerk of each municipality located wholly or partially in the affected area, invite each municipality to make submissions or pass a resolution on the Draft GFI within a time specified by the Minister. The Minister would consider any written municipal submissions or resolutions and decide to refer it or not to refer it.

Gap: It is not clear why a Draft GFI would be required after a Proposed GFI had been approved. The proposed process seems to defer consultation with a potentially affected but uninvolved municipality until after considerable time and resources have been spent developing and obtaining approval of a Proposed GFI. This could prove to be a barrier if there happened to be a "hold out" municipality or conservation authority. The proposed consultation process is minimal but could be expanded to be more vigorous.

Recommendations: Strengthen the list of contents of a Proposed GFI to be submitted to the Minister by requiring the inclusion of supporting Council resolutions from all municipalities wholly or partially within the proposed area to which the GFI would apply. Consider requiring that municipalities potentially affected by but uninvolved in preparing a Proposed GFI are given the opportunity to submit comments or pass a resolution respecting any Proposed GFI, to avoid creating the above-noted barrier.

Includes Policy Direction in GFIs

In the proposed *Act*, a hierarchy of policies from the *Lake Simcoe Protection Act* seems to have been incorporated at the end, but not enough explanation has been provided to users in the proposed *Act* or the Great Lakes Strategy not familiar with the *Lake Simcoe Protection Act* and the Lake Simcoe Protection Plan.

Gap: The proposed policy hierarchy and terminology are not clearly or fully explained in Bill 66 or the Great Lakes Strategy on which it relies, which may lead to confusion when interpreted in conjunction with traditional planning terminology. Also, Schedule 1 Policies refer only to key natural heritage features and key hydrologic functions, which are identified by the Province in the Greenbelt Plan. It is unclear whether regionally and locally significant natural heritage features and functions could be included. This potential restriction can be resolved by deleting the word "key" in proposed Schedule 1 of the proposed *Act*.

As an example, the Town's Official Plan is an ecosystem-based, structural plan with a strong Greenlands System policy and mapping framework. The Greenlands System encompasses not only "key" natural heritage features and functions, such as provincially significant wetlands, wetland complexes, coastal wetlands and ANSIs, but also the Lake Ontario shoreline and a host of regionally and locally significant features and functions highly valued by this community.

If a GFI were to be prepared that would encompass or potentially impact on any portion of Ajax or its Greenlands System, the Town should be involved in its development.

Recommendations: Strengthen the proposed *Act* and Great Lakes Strategy by including a more complete explanation of the proposed policy hierarchy and terminology. In the proposed Schedule 1 Policies, delete the word "key", to ensure ensuing Initiatives can be designed to protect provincially, regionally and locally significant natural heritage features and functions.

Implications to Planning and Development

The proposed policies that may be set out in a GFI could affect Council decisions under the *Planning Act* and the *Condominium Act*, and Ontario Municipal Board decisions, pertaining to the area subject to an approved GFI. Such decisions would be required to conform with "designated" policies and have regard to policies "not designated" but set out in the GFI. However, this would not apply to a policy statement issued under Section 3 of the *Planning Act* or a Minister's Zoning Order under Section 47 of the *Planning Act*.

An approved GFI would prevail in the case of conflict between a GFI's designated policy and a policy in an official plan, zoning by-law or a policy statement issued by the Province under Section 3 of the *Planning Act*. Should there be conflict between a GFI's designated policy and a provision in one of the following plans or policies, the provision that provides the greatest protection to the Basin's ecological health would prevail:

- a policy statement issued under Section 3 of the *Planning Act*;
- the Greenbelt Plan and any amendments;
- the Niagara Escarpment Plan and any amendments;
- the Oak Ridges Moraine Conservation Plan and any amendments; and
- a Growth Plan established under the *Places to Grow Act*.

Within an area subject to an approved GFI, a municipality may not undertake any public work, improvement of a structural nature or other undertaking or pass a By-law for any purpose that conflicts with the GFI's designated policy. Any comments, submissions and advice from a municipality related to the following decisions must conform with designated policies in the GFI and have regard to policies that are not designated policies:

- i) decisions under the *Planning Act* or *Condominium Act* related to the area of a GFI;
- ii) decisions to issue, create or amend a prescribed instrument related to the area of a GFI; and
- iii) Any other matter specified in the GFI.

A Council with jurisdiction in an area to which a GFI applies must amend its Official Plan to conform with designated policies set out in the GFI, either no later than the date Council is required to revise an Official Plan in accordance with Section 26 (1) of the *Planning Act*, if the Minister does not direct Council to make the amendments on or before a specified date, or a date set by the Minister if Council is directed by the Minister to make amendments on or before a specified date.

If, in the Minister's opinion, an official plan having jurisdiction in an area to where a GFI applies does not conform with a designated policy set out in the GFI, the Minister may advise the municipality of the non-conformity, and request the municipality to submit a Proposal within a specified time for resolving the non-conformity.

If a Council failed to submit a proposal to resolve non-conformity within a specified time, or a proposal was submitted but the non-conformity could not be resolved, the Minister could, by order, with the Minister of Municipal Affairs and Housing, amend an Official Plan to resolve the non-conformity, and notify the affected Council in writing. Such a Ministerial order would have the same effect as an Official Plan Amendment (OPA) adopted by Council and, if the OPA were

not exempt from approval, the same effect as if approved by the appropriate Approval Authority (i.e., in Ajax's case, Durham Region or the Ontario Municipal Board). The order would be final and not subject to appeal.

As written, the *Act* proposes that the following policies could also be included in a GFI, but would not have any legal effect:

- Policies supporting co-ordination of environmental and resource management programs, land use planning programs and land development programs of Provincial ministries; and,
- Policies regarding stewardship programs, pilot programs, programs that specify and promote best management practices, outreach and education programs, research and specifying actions to be taken to implement an Initiative or achieve its objectives.

The following documents would be considered to be policies under the *Environmental Bill of Rights Act*: the Great Lakes Strategy; any Targets established; any Plan prepared setting out the actions that may be taken to achieve Targets; any approved Proposal for a GFI; and any approved GFI.

Notably, any person could request the Minister to establish a Target, subject to the person providing rationale for the Target and information requested by the Minister to assist in assessing the request.

An approved GFI would not, itself, be assessed under the *Environmental Assessment Act*.

Reviewing the Great Lakes Strategy

Any person or public body responsible for reviewing or amending Ontario's Great Lakes Strategy, preparing a Plan setting out the actions that may be taken to achieve Targets, developing or amending a Proposed GFI or developing or amending an approved GFI would be required to consider the purposes of the *Act* and the Great Lakes Strategy's principles when carrying out that responsibility. MOECC staff confirmed that a review of the Strategy is scheduled for 2015, but had not commenced as of the writing of this staff report.

Considering Related Great Lakes Agreements

Any person or public body must consider agreements in effect and to which the Provincial government or Federal governments are a party related to the protection or restoration of the ecological health of the Basin, including the following agreements or agreements that replace them:

- The Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement of 2005 dated December 13, 2005 and signed by the Premiers of Ontario and Quebec and the Governors of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin.
- The aforementioned 5-year COA 2014, including any amendments made before or after the proposed *Act* comes into force. Annex 1 (Nutrients) of the COA mentions urgent need for a co-ordinated, strategic response to nutrient management issues, in particular Lake Erie. Referring to the resurgence of algal blooms in nearshore areas of Lakes Erie, Ontario and

Huron since the 1990's due to urbanization and agricultural practices in adjoining watersheds, algae is recognized as a problem requiring new solutions.

- The Great Lakes Water Quality Agreement (GLWQA) between Canada and the U.S., signed on November 22, 1978, including any amendments made before or after the proposed *Act* comes into force.

For many years, in accordance with the Town's Official Plan policy, Council and staff have been advocating for the Federal and Provincial governments to establish targets for Lake Ontario regarding nutrients and chemicals to protect and restore nearshore water and ecological health.

The GLWQA was amended in 2012, at which time the Federal government committed to developing programs, technologies and measures to better understand the Basin's ecosystem, and to restore and protect water quality in consultation with municipalities and the public. Annex 4 of the GLWQA set commitments, objectives, actions and timelines for addressing nutrients and other pollutants. One of its objectives is to "reduce occurrence of toxic and nuisance algal blooms that degrade drinking water quality, impair fish spawning, and adversely impact commercial and recreational fishing, swimming, tourism and overall enjoyment of the Lakes".

The Great Lakes Executive Committee (GLEC) is the binational decision-making team responsible for implementing Federal commitments in the 2012 GLWQA and shared Federal and Provincial commitments in COA 2014. The GLEC has focused on Lake Erie's algae issue since 2012, but will be turning its attention to Lake Ontario in the short term.

Recommendation: That the Federal and Provincial governments, through the GLEC and the MOECC, work with the Town to establish priority actions for Lake Ontario that will effectively curtail nutrient and chemical discharges to nearshore water at Ajax.

FINANCIAL IMPLICATIONS:

There are no financial implications to commenting on this proposed legislation.

COMMUNICATION ISSUES:

None.

CONCLUSIONS:

The performance measures in the 2012 Great Lakes Strategy, which are reflected in the proposed *Act*, should be strengthened as recommended before Bill 66 receives second reading.

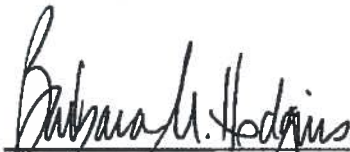
The proposed *Great Lakes Protection Act* has potential implications to planning and development in the Town, in watersheds draining through Ajax and adjacent municipalities to Lake Ontario, and on nearshore water quality and the aquatic environment in Lake Ontario along the Town's waterfront.

Generally, a municipality's involvement in the proposed evaluation process for a GFI would appear to require considerable time, substantial funding support, and possibly the services of outside legal counsel and consulting experts.

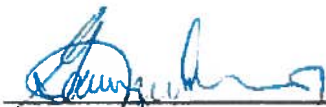
Modest Provincial funding offered through the Great Lakes Guardian Fund has enabled small-scale initiatives to be developed, which under the Strategy will be reported by the Province as "progress" toward achieving the proposed *Act's* objectives. The proposed *Act* and Strategy could result in different GFIs being applied to different stretches of the Lake Ontario shoreline and nearshore, not the comprehensive targets needed to ensure actual, measurable progress is made.

Taken together, the proposed *Great Lakes Protection Act*, 2012 Great Lakes Strategy and level of supportive Provincial funding do not appear to provide the avenue by which escalating algae growth in nearshore Lake Ontario at Ajax will be resolved in the foreseeable future. Therefore, the Town should continue to take action through other avenues.

However, Council should request a seat on the Great Lakes Guardians Council, as the Town has valuable experience to share with the broader Basin community related to determining priorities, developing and undertaking scoped, effective scientific study and modeling using actual measured data to identify sources of pollution and their cumulative impacts, for the purpose of restoring lost beneficial uses and ecological health in nearshore Lake Ontario.



Barbara Hodgins, M.C.I.P., R.P.P.
Senior Policy Planner



Gary Muller, M.C.I.P., R.P.P.
Manager of Planning



Paul Allore, M.C.I.P., R.P.P.
Director of Planning & Development Services