



**Residential & Civil
Construction Alliance
of Ontario**

Constructing Ontario's Future

**Submission to the Minister of the Environment Regarding
Bill 99: *The Lake Simcoe Protection Act, 2008***

Residential and Civil Construction Alliance of Ontario

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On behalf of its members and stakeholders in the wider construction and infrastructure sector, the Residential and Civil Construction Alliance of Ontario (RCCAO) is pleased to make a submission to the Minister of the Environment regarding Bill 99, the *Lake Simcoe Protection Act, 2008*.

As stated in our response to the Discussion Paper on *Protecting Lake Simcoe: A Strategy for Action*, RCCAO supports the principle of environmental stewardship and freshwater protection. At the same time, in order for the Government's strategy to sustain and preserve Lake Simcoe to be relevant, it must be consistent with and reinforce the principles and approaches set out in *Places to Grow: The Growth Plan for the Greater Golden Horseshoe*.

RCCAO, its members and stakeholders in the construction and infrastructure sector believe that the proposed objectives outlined in the Bill are too narrow. There is no doubt that improving and protecting the health of the Lake is a primary concern and that improving associated recreational opportunities is important, but no less important that other uses related to the Lake, including agriculture, residential housing and employment of many kinds.

The goals of the Lake Simcoe Protection Strategy must coordinate with those of *Places to Grow*, including the housing and employment growth targets laid out for the surrounding regions and the designation of the City of Barrie as a growth centre.

Key issues to be addressed by the Lake Simcoe Protection Plan, which will be enabled by the Bill, must be consistent with *Places to Grow*.

The population surrounding the Lake Simcoe Watershed is expected to grow significantly by 2031. It is estimated that the combined populations of Durham Region, York Region, Simcoe County, the City of Barrie and the City of Orillia will increase from 1,682,000 to 2,777,000. In *Places to Grow*, the Government recognized that economic growth is essential to preserve Ontario's standard of living and to build strong and prosperous communities. In order to manage the forecasted growth in a sustainable manner, *Places to Grow* has prescribed both the location and nature of future residential, employment, infrastructure and transit growth.

RCCAO supports the principles inherent in *Places to Grow*, notably the growth management policies and the recognition of the important role to be played by strategic infrastructure in supporting and accommodating forecasted population and economic growth.

Our members believe that the policies related to transportation, water and waste water systems and community infrastructure strike the appropriate balance between growth and environmental sustainability and that these policies will provide sufficient protection to the Lake Simcoe Watershed to enable the Government to act as a responsible steward of both the Lake and the economy.

Accordingly, the provisions of both Bill 99 and the Lake Simcoe Protection Plan must be consistent with the principles laid out in *Places to Grow*.

Bill 99 and the related five-page draft *Lake Simcoe Protection Plan: Proposed Outline*, contain some recognition of the need for development to proceed, albeit in the most environmentally acceptable manner. There are references to the ability to sponsor pilot programs in different areas as well as introduction of what appears to be a potentially novel approach to water quality trading (Section 30). However, in our view both the provisions of the Bill and the language in the Outline give too little attention to the need to balance diverse Provincial priorities.

Purpose and Objectives

The purpose and objectives of the Bill will frame the legislative debate and the details of the Plan to follow. Ensuring that all interests are considered and fairly weighed in developing the purpose and objectives is, therefore, a critical step.

The proposed purpose is stated in Section 1 of the Bill:

Purpose

1. The purpose of this Act is to protect and restore the ecological health of the Lake Simcoe watershed.

This is a noble and understandable objective. It is also, however, one that is stated without context or consideration of all provincial interests.

A case could be made that the “ecological health of the Lake Simcoe watershed” would be theoretically improved if all human activities were removed, including existing communities. While it is understood that this is not the intention of the legislation, such a wide ranging and unrestricted statement of purpose both confuses the real goals and leaves the legislation open to manipulation by those with narrow intent.

Recommendation 1: Section 1 should be restated as: “The purpose of this Act is to protect and restore the ecological health of the Lake Simcoe watershed to the maximum extent possible consistent with multiple uses of the Lake and surrounding region, including residential and employment growth as projected in Ontario’s Growth Plan for the Greater Golden Horseshoe.”

Section 4 lays out the objectives which are to be reflected in the ultimate Lake Simcoe Protection Plan. These are all valid and important, including the improvement and restoration of water quality, natural features and the coldwater fishery. RCCAO supports and is encouraged by sub-section 4(i) which emphasizes the need “to promote environmentally sustainable land and water uses, activities and development practices.” Yet the objectives related to development should explicitly recognize the quantitative targets of the Growth Plan for the GGH, which were arrived at by the province after extensive study and consultation and taking into account the large areas of land within the Greenbelt which had already been removed from potential development.

Recommendation 2: The objective related to development as stated in 4(i) should be reworded to state: “to allow for growth and development in keeping with the targets of the provincial Growth Plan for the Greater Golden Horseshoe as it

relates to the Lake Simcoe region, while promoting environmentally sustainable land and water uses, activities and development practices...”

Financing

Given that the Bill is enabling legislation, most details as to methods of implementation have been left to the Plan to follow. With respect to how the various plans and activities to maximize the health of the lake will be financed, Section 11 says only that “a strategy for financing the implementation of the Plan” will be a mandatory component.

In particular, we believe that the Lake Simcoe Protection Plan must recognize the role of well-maintained water and waste water infrastructure in ensuring the health of Lake Simcoe.

According to the figures cited by the Government in its Discussion Paper, the main sources of phosphorus in Lake Simcoe are inflowing rivers (37%) and atmospheric deposition (34%). Phosphorus that enters the Lake as a result of waste water from sewage treatment plants accounts for a small percentage of the total amount (7%). Although waste water is only the fourth largest source of phosphorus pollution affecting Lake Simcoe, we believe that several positive steps could be taken to reduce its impact on the Lake Simcoe watershed even further.

Section 3.2.5 of *Places to Grow* features provisions that will minimize the impact of environmental pollution on Lake Simcoe. These include:

- Municipalities should generate sufficient revenue to recover the full cost of providing municipal water and waste water systems;
- Municipalities that share an inland water source and/or receiving body of water should co-ordinate their planning for potable water, stormwater, and waste water systems to ensure that water quality and quantity is maintained or improved;
- Municipalities, in conjunction with conservation authorities, are encouraged to prepare Watershed plans and to use such plans to guide development decisions and water and waste water servicing decisions; and
- Municipalities are encouraged to implement and support innovative stormwater management actions as part of redevelopment and intensification.

In addition to those listed above, further positive steps that could curb the inflow of phosphorus from residential, commercial and industrial uses or developments include proclaiming the *Sustainable Water and Sewer System Act, 2002* or an alternative approach to establish regulations to:

- Require full cost pricing for water;
- Establish mandatory metering to control how much water is used (and ultimately returned to the Lake); and
- Create dedicated reserves to ensure that water and waste water infrastructure is always adequately maintained and operating at peak efficiency.

Financing alternatives were discussed in more detail in RCCAO’s submission in response to the Discussion Paper (posted at www.rccao.com).

We feel that the development of the Lake Simcoe Protection Plan provides an opportunity for Government to partner with the private sector and municipalities to

implement best management practices in sustainable housing development. We encourage the Government to be flexible and creative in considering – and requiring municipalities to consider – non-traditional alternatives, recognizing that standards such as road widths, stormwater management ponds, limitations on batch plant sewage treatment, and many other factors can have major impacts on the volume and quality of storm water and effluent.

In addition, we recommend that the Province prepare a best management practices workbook that can be used to reduce phosphorus in the following areas: (1) agriculture, (2) rural and (3) urban.

Legislative and Policy Primacy

The issue of legislative primacy and potential conflict between various provincial policies is dealt with in several places in the Bill. Most dramatically, Section 6(4) states that:

4) Despite any Act, but subject to a policy described in paragraph 6 of subsection 5 (2), if there is a conflict between a provision of a designated policy set out in the Lake Simcoe Protection Plan and a provision in a plan or policy that is mentioned in subsection (5), ***the provision that provides the greatest protection to the ecological health of the Lake Simcoe watershed prevails.*** [emphasis added]

The plans or policies captured under this section are:

- (a) a policy statement issued under section 3 of the Planning Act;
- (b) the Greenbelt Plan established under section 3 of the Greenbelt Act, 2005 and any amendment to the Plan;
- (c) the Oak Ridges Moraine Conservation Plan established under section 3 of the Oak Ridges Moraine Conservation Act, 2001 and any amendment to the Plan;
- (d) the Growth Plan for the Greater Golden Horseshoe 2006 approved under section 7 of the Places to Grow Act, 2005 and any amendment to the Plan;
- (e) a plan or policy made under a provision of an Act that is prescribed by the regulations; and
- (f) a plan or policy prescribed by the regulations, or provisions prescribed by the regulations of a plan or policy, that is

As with the opening statement of purpose, the risk is that so sweeping a declaration of primacy of Lake protection in a yet unknown Plan over all other carefully considered provincial initiatives ignores the realities of human settlement.

RCCAO agrees that any development in the Lake Simcoe region should proceed in ways that minimize to the greatest degree possible phosphorus loading and other detrimental impacts on the Lake. Rather than simply stating that the Plan will override the Growth Plan or any other provincial policy, we believe that the language should reflect a clear obligation for provincial authorities to direct, and municipal and private actors to comply with, an approach that requires the most ecologically sensitive and creative approaches to development.

Ontario has a unique opportunity to demonstrate in the Lake Simcoe region that growth and environmental protection can proceed hand-in-hand. Future growth patterns have already been severely restricted by the Greenbelt and Places to Grow. The latter recognizes that there are areas within the watershed where growth should and must proceed, most notably Barrie and surroundings. Therefore, the language in the Bill and ultimately the plan should reflect a better balance between the needs.

Recommendation 3: Section 4 should be amended to state that: “if there is a conflict between a provision of a designated policy set out in the Lake Simcoe Protection Plan and a provision in a plan or policy that is mentioned in subsection (5), the provisions shall be interpreted together to approve a solution which ensures the greatest protection to the ecological health of the Lake Simcoe watershed while allowing the other growth and protection mandates to be met.”

Application Beyond the Lake Simcoe Watershed

Section 13 provides for the Minister to amend the Plan to apply to an area outside the Lake Simcoe watershed and to propose policies to deal with “activities in the proposed area that directly affect or would directly affect the ecological health of the Lake Simcoe Watershed...”

In discussions, Government representatives have stated that what is foreseen in such a provision is to potentially define very limited additions on the west side of the watershed, where the land strip adjacent to the lake is very narrow. They have also indicated that there is no interest in dealing with activities far beyond the watershed.

However, that is not what the language says. The background papers have stated that a significant portion of the phosphorus loading in the Lake results from airborne deposition from activities such as agriculture and construction sites which can potentially be well beyond the watershed.

Sub-section 15.(2) does restrict an amendment to make the Plan applicable outside the watershed by stating that it could only proceed if, *inter alia*:

(b) the proposed amendment does not make any policy that would affect a decision under the Planning Act or the Condominium Act, 1998 applicable to the prescribed outside area.

This is somewhat reassuring in that most construction-related considerations would presumably fall under Planning Act “protection.” But this is not ironclad, and even so does nothing to address the concerns of farmers in Oxford County or aggregate

operations in Dufferin County who some future Minister might decide are having detrimental impacts on the far off Lake.

Recommendation 4: Sub-section 15(2) should be amended by adding a further condition under which the Minister shall not approve a proposed amendment that would make any provision of the Lake Simcoe Protection Plan applicable to an area outside the Lake Simcoe Watershed unless: “(c) the prescribed outside area is contiguous to the Lake Simcoe watershed and as limited in reach beyond the watershed as necessary to meet the minimum protection goals.”

The Lake Simcoe Coordinating Committee

Section 19 would provide for the establishment of a Lake Simcoe Coordinating Committee whose functions would include:

1. Provide a forum to,
 - i. co-ordinate implementation of the Lake Simcoe Protection Plan, and
 - ii. identify and resolve issues that arise in relation to the implementation of the Lake Simcoe Protection Plan.
2. Provide advice to the Minister on any issues or problems related to the implementation of the Lake Simcoe Protection Plan.
3. With respect to threats to the ecological health of the Lake Simcoe watershed that are identified by the Lake Simcoe Science Committee, provide advice to the Minister on the types of measures that could be taken to deal with the threats, including,
 - i. policies that could be included in the Lake Simcoe Protection Plan, or
 - ii. regulations that could be made under this or any other Act.

These are very important roles and ensuring a fair representation of all interest on the Committee will be critical.

Sub-section 19(4) provides that the Minister shall recommend persons who represent a range of interests including environmental groups, municipalities, aboriginals, the Ministries of Ontario and:

4. The interests of the agricultural, commercial and industrial sectors of the Lake Simcoe watershed's economy, including small business interests.

Nowhere are the development and construction sectors mentioned, even though they are a far larger economic agent than most of the groups listed and essential to meeting

the provincial projections for growth in the region. Arguably, they might be included under “commercial” interests, but the idea that home builders and developers have only the same concerns or interests, and vice versa, is unreasonable.

If the Coordinating Committee is to have credibility and meet the identified needs in evaluating threats and providing balanced advice to the Minister, the development and construction sectors must be clearly and separately represented.

Recommendation 5: Sub-section 19(4) should be amended by adding under sub 19(4): “7. The interests of the development and construction sectors and the residential and business customers they serve, with particular consideration of their ability to contribute to meeting the province’s objectives as stated in the Growth Plan for the Greater Golden Horseshoe.”

Conclusion

RCCAO supports the principle of environmental stewardship and believes that in order for the Government’s strategy to sustain and preserve Lake Simcoe to be relevant, it must be consistent with and reinforce the principles and approaches laid out in *Places to Grow*.

We hope the Minister of the Environment will consider seriously our proposed amendments to Bill 99. We look forward to the opportunity to work with the Ministry of the Environment, the Ministry of Energy and Infrastructure, the Ministry of Municipal Affairs and Housing and all other relevant stakeholders to shape an effective, innovative and balanced Protection Plan for Lake Simcoe.