

## Oak Ridges Moraine - Funding Implications

*(City Council on December 14, 15 and 16, 1999, adopted the following recommendations:*

*“It is recommended that:*

- (a) the report dated December 13, 1999, from the Chief Administrative Officer, embodying the following recommendations, be adopted:*

*‘It is recommended that:*

- (1) staff continue discussions with the Toronto and Region Conservation Authority (TRCA) with the intent of a partnership arrangement with respect to costs related to stormwater and servicing issues, hydrogeology and ecology of the Oak Ridges Moraine;*
  - (2) staff report back on the partnership arrangement with the TRCA, including cost estimates and partnership opportunities with the Town of Richmond Hill and the Region of York for independent consulting advice; and*
  - (3) funds of up to \$220,000.00 be allocated from the Corporate Contingency Account for the preliminary estimated cost of outside consultants to be shared with the TRCA and to contribute to TRCA’s legal fees.’;*
- (b) funding, in the amount of \$800,000.00, from the Wastewater budget be set aside in an ‘Oak Ridges Preservation Account’;*
- (c) Council establish a Steering Committee, to report through the Planning and Transportation Committee, and sequential reporting to the Works Committee, with recommendations regarding how best the City of Toronto can support the protection of the Oak Ridges Moraine, in addition to the recommendations embodied in the report dated December 13, 1999, from the Chief Administrative Officer;*
- (d) the Steering Committee consist of the Chair of the Planning and Transportation Committee and Councillors Adams, Balkissoon, Cho, King, Layton, Miller and O’Brien;*
- (e) the Chief Administrative Officer be requested to appoint an executive staff lead to assist the Steering Committee; and*
- (f) the City seek party status at the Ontario Municipal Board hearings and the City Solicitor be directed to advise the Ontario Municipal Board accordingly at the Richmond Hill OMB hearings, as described in Option 2 embodied in the report dated December 13, 1999, from the Chief Administrative Officer.”)*

**The Policy and Finance Committee reports having requested the Chief Administrative Officer and the CAO and Secretary Treasurer of the Toronto and Region Conservation Authority to submit comments to the meeting of Council scheduled to be held on December 14, 1999, respecting this matter.**

**The Policy and Finance Committee submits the following report (December 6, 1999) from the City Solicitor:**

Purpose:

To advise, as directed, on the funding implications of participating at Ontario Municipal Board hearings dealing with the Oak Ridges Moraine

Financial Implications and Impact Statement:

In the event Council determines that the City should pursue party status and the Board confirms the City's party status, an amount of up to \$1,657,000.00 be allocated from the Corporate Contingency Account to cover the costs to present the City's position at the Ontario Municipal Board as set out in this report.

The Chief Financial Officer and Treasurer has reviewed this report and concurs with this financial impact statement.

Recommendations:

It is recommended that:

- (1) in the event that Council determines it wishes to seek party status, that the City Solicitor be directed to advise the Ontario Municipal Board accordingly at the Richmond Hill and Uxbridge Ontario Municipal Board hearings;
- (2) in the event that the City seeks party status, staff be directed to retain outside legal counsel, outside consultants and additional staff as set out in this report as may be necessary to effectively present the City's position;
- (3) in the event that the City seeks party status, funds up to \$1,657,000.00 be allocated from the Corporate Contingency Account in support of the City's position; and
- (4) in the event that the City is not granted party status at the Ontario Municipal Board, the City Solicitor report further on the implications and the financial impacts which may flow therefrom.

Background:

City Council at its meeting held on November 23, 24 and 25, 1999 adopted a Motion with respect to development on the Oak Ridges Moraine, which required among other matters, that the City Solicitor report to the Policy and Finance Committee meeting of December 7, 1999, on the financial implications of the City's participation at the Ontario Municipal Board hearings, including the cost of staffing and the retention of outside consultants and legal counsel as necessary.

Council has recognized the importance of the Oak Ridges Moraine by adopting a Motion at its meeting of October 26 and 27, 1999 supporting the protection of the Moraine and opposing development on the Moraine which does not protect or enhance the health of the river systems and watersheds. Council also adopted a Motion at its meeting held on November 23 - 25, 1999 which further strengthens Council's intention to support the protection of the Moraine. In addition, Council at its meeting on December 14,15 and 16, 1999, will have before it a report from the Acting Commissioner of Urban Planning and Development Services and the City Solicitor identifying steps that the City of Toronto can take to advance the City's interests in preserving the Oak Ridges Moraine as a natural resource.

#### Comments:

On November 19, 1999, staff from the Legal Services attended at the Ontario Municipal Board Prehearing Conference in Richmond Hill where private Official Plan Amendments propose adding 752 hectares to the urban area and the Town is proposing to add approximately 200 hectares of land on the Moraine to its urban area. The Board has scheduled further prehearing conferences for January 27 and 28, 2000 and March 30 and 31, 2000 with a full hearing scheduled to take a minimum of twelve weeks and potentially up to 20 weeks commencing on May 1, 2000.

On November 29 and 30, 1999, staff from Legal Services Division attended at the Ontario Municipal Board Prehearing Conference in Uxbridge where a major expansion of 456 hectares of the Uxbridge Urban Area onto the Moraine is proposed by private landowners. The Town of Uxbridge and the Region of Durham are opposed to the development. The Board heard a motion by the Town of Uxbridge and the Region of Durham to dismiss the applications because of the lack of servicing capacity. The Board has reserved its decision. In the event that the hearing proceeds, it is anticipated that a prehearing will be scheduled for sometime in February 2000 and a full hearing could potentially be scheduled to commence in April or May 2000 for a minimum of twelve weeks.

In general, in order to be entitled under the Planning Act to receive notice of meetings and hearings, and participate in Board hearings, the City must become involved in the planning process at a much earlier stage than the hearing itself. If an individual or municipality has not expressed an interest in a matter, either orally at public meetings or in written submissions before by-laws are adopted, then the Board can rule that the individual or municipality cannot participate in the hearings at all. Since any development application or Official Plan or Zoning proposal can potentially end up before the Board, the City would need to actively participate in the local planning process with respect to any significant development or planning proposals that may have an adverse impact on the City's interests. In order to have meaningful participation,

the City should be monitoring, reviewing, analyzing and commenting with respect to all significant development applications and municipal planning proposals on the Oak Ridges Moraine. This is an enormous and costly undertaking for which City staff and departmental financial resources do not currently exist.

Furthermore although the City is automatically a party at Ontario Municipal Board hearings regarding proposals within its boundaries, the City does not have an automatic right to be added as a party in hearings pertaining to matters outside its municipal boundaries. The City must show that it has an interest in the proceedings and that the City will be deleteriously affected by the development of the lands. The City has been put on notice that any attempt by the City to be made a party at the Richmond Hill hearing will likely be opposed by the landowners.

Possible City status at the Ontario Municipal Board hearings ranges from a watching brief, which is essentially a monitoring role to full party status. A watching brief would have the least financial impact on the City but would be the least effective for putting forward the City's position, as we would not be permitted to call witnesses or make submissions. Participant status means that the City may present evidence but may not cross-examine witnesses or make arguments. This status is similar to ratepayers who appear at Ontario Municipal Board hearings to provide the Board with their personal statement of the impact of the development on them. Participant status will have greater cost implications than a watching brief but the City's opportunities to put forward an effective case are still limited.

Full party status, if granted by the Board, allows the City to present evidence, cross-examine all witnesses and present arguments. Party status would provide the City with the greatest opportunity to present a full case to the Board. Naturally, it is the most costly option as it requires a lawyer to be present for the majority of the hearing and to present a full case including calling witnesses, cross-examining witnesses and making arguments and submissions.

There are currently no City Planning staff resources available to provide planning witnesses and support at the two hearings and additional resources would therefore, be required. These would consist of a senior policy consultant and a planning assistant retained on a contract basis. A senior policy consultant would require Ontario Municipal Board experience, the skills and experience necessary to negotiate on behalf of the City at a senior staff level, and a solid understanding of the planning process, the City's interests and the policy environment. A planning assistant would be required to carry out an administration and support function.

Allowing for up to twelve months of work, including hearing preparation and any delays or extensions in either hearing, the cost of a senior policy consultant would be approximately \$96,000.00. The cost of a planning assistant would be approximately \$41,000.00, for a total of \$137,000.00. This approach is more cost-effective than hiring a planning consulting firm, where the general per diem rate for a senior level planner is much higher. The fact that the Richmond Hill and Uxbridge hearings will overlap may present some additional difficulties in supporting both hearings simultaneously and a contingency amount of \$20,000.00 has thus been added, bringing the total amount to \$157,000.00.

The Works and Emergency Services Department advises that if participation were approved at the level of a watching brief, internal resources could be used to monitor the hearings and outside

consultants would be used to carry out peer review. The cost of participation for applications in Richmond Hill will be higher as the watercourses in York Region drain into the City of Toronto and the City provides their water supply. The Toronto and Region Conservation Authority are already a party at both hearings. There is likely to be commonality of interest. The expected cost at a watching brief level could be a minimum of \$30,000.00 plus staff time for the hearings related to Richmond Hill and \$20,000.00 for the hearings in Durham.

If Council directs participation at a greater lever, the Work and Emergency Services Department would provide the staff resources but the outside consulting costs would be much higher. Party status would have the greatest cost as staff and consultants would require preparation time and attendance at the hearings. Both hearings would require consultants related to servicing and stormwater, hydrology and ecology. The estimated cost of consultants in these areas would be approximately \$400,000.00 for the Richmond Hill hearing and \$100,000.00 for the Uxbridge hearing together with applicable staff time. With costs in this range, it may be appropriate to partner with parties with like interests and particularly the Toronto and Region Conservation Authority.

The Legal Division also does not have the resources to participate in the Oak Ridges Moraine hearings as the Division is having difficulty meeting its current obligations in a timely manner. In view of the difficulties experienced by the Division in hiring staff and the lag time in getting new staff on board, it is recommended that outside counsel be retained. As there is potentially a time conflict between the Richmond Hill and Uxbridge hearings, two separate outside counsel will be required to adequately represent the City at both hearings. In addition, the length and complexity of the hearings will require substantial preparation time in addition to the actual hearing days.

A conservative estimate for outside solicitors in a full party status situation for one hearing only would be approximately \$500,000.00 depending on the length of the hearings. It should be noted that outside counsel representing the Town of Uxbridge and the Region of Durham publicly advised the Board that each of their legal costs will be approximately \$750,000.00 for a twelve week hearing resulting in a potential tax increase in those municipalities. The estimate would double if the City is to participate in both hearings. The City Solicitor has not yet approached any law firms with respect to their availability or to obtain a written estimate of costs. Given that the hearing dates are approaching quickly, outside counsel must be approached expeditiously in order to begin preparing for the January prehearings.

Naturally, if Council decides that the City should not seek party status or if the Board does not grant party status to the City, the City's costs will be substantially reduced.

#### Conclusions:

**Existing departmental staff and financial resources do not permit participation at the Oak Ridges Moraine hearings. In order to have meaningful participation at the hearings and to effectively present Council's position, additional resources are required. At this preliminary stage, it is estimated that if the City were to participate at the hearings as a party at both hearings, legal costs would be approximately \$1,000,000.00, planning costs**

would be approximately \$157,000.00 and servicing, hydrogeological and ecological costs would be approximately \$500,000.00, for an estimated City total of \$1,657,000.00. In view of the magnitude of costs, Council may wish to consider a partnership arrangement with other parties with common interests such as the Toronto and Region Conservation Authority.

**This report was prepared in consultation with the City Planning Division and the Works and Emergency Services Department.**

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*(City Council on December 14, 15 and 16, 1999, had before it, during consideration of the foregoing Clause, the following report (December 13, 1999) from the Chief Administrative Officer:*

Purpose:

*To provide comments on the City Solicitor's report dated December 6, 1999 setting out the cost implications of the City's party status at the Richmond Hill and Uxbridge Ontario Municipal Board hearings and to advise of partnership opportunities with the Toronto Region Conservation Authority (TRCA).*

Financial Implications and Impact Statement:

*In the event that Council adopts the recommendations set out in this report an amount of up to \$220,000.00 should be allocated from the Corporate Contingency Account to contribute to TRCA's retention of outside hydrogeological consultants and to its legal fees.*

*In the event that Council determines the City should maintain a watching brief status at the Uxbridge and the Richmond Hill Ontario Municipal Board Hearings, an amount of up to \$357,000.00 should be allocated from the Corporate Contingency Account to retain on contract a policy consultant and planning consultant and partner with the TRCA to retain outside consultants.*

*In the event that Council determines that the City should pursue party status at the Richmond Hill hearing, an amount of up to \$1,037,000.00 should be allocated from the Corporate Contingency Account to retain outside counsel and outside consultants.*

*In the event that Council determines that the City should pursue party status at the Richmond Hill and Uxbridge hearings, an amount of up to \$1,657,000.00 should be allocated from the Corporate Contingency Account to retain outside counsel and outside consultants.*

*The Chief Financial Officer and Treasurer has reviewed this report and concurs with this financial impact statement.*

*Recommendations:*

*It is recommended that:*

- (1) staff continue discussions with the TRCA with the intent of a partnership arrangement with respect to costs related to stormwater and servicing issues, hydrogeology and ecology of the Oak Ridges Moraine;*
- (2) staff report back on the partnership arrangement with the TRCA including cost estimates and partnership opportunities with the Town of Richmond Hill and the Region of York for independent consulting advice; and*
- (3) funds of up to \$220,000.00 be allocated from the Corporate Contingent Account for the preliminary estimated cost of outside consultants to be shared with the TRCA and to contribute to TRCA's legal fees.*

*Background:*

*At its meeting held on December 7, 1999, Policy and Finance Committee considered the report of the City Solicitor dated December 6, 1999 respecting the funding implications of the City's participation at the Richmond Hill and Uxbridge Ontario Municipal Board hearings dealing with the Oak Ridges Moraine. The City Solicitor advised that if the City were to participate as a party at both hearings, an estimated amount of up to \$1,657,000.00 would be required to retain outside counsel and consultants in order to effectively present the City's position.*

*At its December 7, 1999 meeting, Policy and Finance Committee requested the Chief Administrative Officer and the TRCA to submit comments to the meeting of Council scheduled to be held on December 14, 1999 respecting this matter. A meeting of all parties has not been held prior to this Council meeting but is scheduled for later in December to further understand issues, process and timelines and to explore the details of the proposed partnership with TRCA.*

*Comments:*

*Council has acknowledged the importance of the Oak Ridges Moraine to Toronto and the impact of development of the Moraine on wetlands and watercourses, aquifers, surface and ground water and Lake Ontario. Council adopted a Motion at its meeting of October 26 and 27, 1999 supporting the protection of the Moraine and opposing development on the Moraine which does not protect or enhance the health of the river systems and watersheds and environmentally sensitive areas. Council further directed the City participate at Ontario Municipal Board hearings in Uxbridge and Richmond Hill.*

### *Uxbridge Hearing*

*Development applications on the Uxbridge portion of the Oak Ridges Moraine may impact on watercourses and their ecosystems as it relates to the quality of water in Lake Ontario. Although there will be an impact, the Uxbridge applications do not have the same direct impact on the City of Toronto as the Richmond Hill applications.*

*As noted in the City Solicitor's report, the Town of Uxbridge and the Region of Durham oppose the expansion of the Uxbridge Urban Area onto the Moraine as proposed by private landowners. In addition, the Lake Simcoe and Region Conservation Authority rather than the TRCA as indicated in the City Solicitor's report, is participating in the hearing. On November 29 and 30, 1999, the Ontario Municipal Board considered a motion by the Town and the Region to dismiss the development applications based on a lack of servicing capacity. In the alternative, the Board was requested to adjourn the hearing pending the result of an environmental assessment. The Board's decision on the motion has not yet been released.*

*The position taken by the Town of Uxbridge, the Region of Durham and the Lake Simcoe and Region Conservation Authority is the same as the position which would potentially be taken by the City of Toronto at any future hearing. One could therefore conclude that Toronto's concerns would be adequately addressed by those bodies and that Toronto's participation at any hearing would be a duplication of effort and costs.*

*Although not recommended Council has the option to maintain a watching brief to monitor the Uxbridge hearing. A watching brief would reduce the cost estimates set out in the City Solicitor's report by \$600,000.00 (\$500,000.00 in legal fees and \$100,000.00 in consulting fees).*

### *Richmond Hill Hearing*

*The development applications in Richmond Hill are of particular interest to Toronto. The servicing proposals may impact on the quality and quantity of watercourses draining from the Moraine to Toronto. Toronto has an interest to ensure that proper protection measures and management practices are put in place.*

*The Town of Richmond Hill, the Region of York and the TRCA are parties at the Richmond Hill hearing. In particular, the TRCA has the mandate and an interest in common with the City to protect the natural environment. The Ontario Municipal Board has scheduled prehearing conferences in January and March with a full hearing scheduled to take a minimum of twelve weeks and potentially much longer commencing on May 1, 2000.*

*Preliminary discussions have taken place with TRCA and staff are confident that there are partnership opportunities relating to the environmental issues associated with the watershed which can reduce costs for all the public sector interests. The partnership opportunities range from sharing costs with TRCA to a partnership arrangement with TRCA, Richmond Hill and the Region of York to fund common consultants under the administration of TRCA. A partnership arrangement is recommended to avoid a duplication of effort and costs by the public sector.*



*It should be noted however, that a partnership arrangement is only possible with respect to issues and matters relating to the natural environment. If Council wishes to pursue broader issues relating to transportation or efficient land use, a partnership with TRCA on these matters is unlikely.*

*Although not recommended Council has the option to maintain a watching brief status at both hearings and partner with the TRCA and potentially with the Town of Richmond Hill and the Region of York. A partnership arrangement would reduce the cost estimates set out in the City Solicitor's report by \$680,000.00 (\$460,000.00 in legal fees and a reduction of \$220,000.00 in outside consulting fees).*

#### *Summary of Estimated Potential Costs*

*The table that follows sets out the four options Council has before it today. The recommended option would not see direct City involvement at the OMB hearings other than the support we provide through the City's partnership with TRCA.*

*The Motion adopted by Council at its meeting held on November 23-25, 1999, directed among other matters, that staff develop strategic policy initiatives to address the protection of the Moraine. In order to satisfy this direction, the City Planning Division would require additional resources in the amount of \$137,000.00 as set out in the City Solicitor's report for a senior policy consultant and a planning assistant to be retained on a contract basis. These additional resources would permit the City to monitor both hearings and their related policy and planning documents and development applications as pointed out in the City Solicitor's report. Options 1,2, and 3 set out in the table below include the additional resources that would be required to fulfil this direction.*

*Options 3 and 4 propose to contribute to TRCA's legal fees.*

*The chart below sets out the City's estimated costs based on four options: (1) full party status at both hearings; (2) full party status at the Richmond Hill hearing and a watching brief in Uxbridge; (3) watching brief at both hearings and a partnership arrangement with the TRCA; (4) partnership arrangement with TRCA and no direct City involvement at the hearings. A further report will be forthcoming once the partnership arrangement has been determined.*

*According to the TRCA the preliminary estimate of costs for its participation as a party at the Richmond Hill OMB hearing on the Oak Ridges Moraine is approximately \$350,000.00 These costs include legal fees, hydrogeological and related consulting fees and the additional resources required to prepare evidence and testimony. Should York Region, the Town of Richmond Hill and the City all partner with TRCA the estimated costs may be somewhat less than set out below. Staff will be reporting further in this regard.*

Preliminary Estimated Costs of Options

	<u>Option (1)</u> <u>party status at</u> <u>both hearings</u>	<u>Option (2)</u> <u>party status at</u> <u>Richmond Hill</u> <u>hearing &amp; watching</u> <u>brief in Uxbridge</u>	<u>Option (3)</u> <u>watching brief at</u> <u>at both hearings</u> <u>&amp; partnership</u> <u>with TRCA</u>	<u>Option (4)</u> <u>partnership with</u> <u>TRCA</u>
<i>Additional Planning Costs</i>				
Senior Policy Consultant	\$ 96,000.00	\$ 96,000.00	\$ 96,000.00	
Planning Assistant	\$ 41,000.00	\$ 41,000.00	\$ 41,000.00	
Contingency	\$ 20,000.00	---	---	
<i>Subtotal</i>	<u>\$ 157,000.00</u>	<u>\$ 137,000.00</u>	<u>\$ 137,000.00</u>	
<i>Works &amp; Emergency Services</i>				
Consultants for servicing, stormwater, hydrogeology and ecology	\$ 500,000.00	\$ 400,000.00	\$ 180,000.00	\$ 180,000.00
<i>Subtotal</i>	<u>\$ 500,000.00</u>	<u>\$ 400,000.00</u>	<u>\$ 180,000.00</u>	<u>\$ 180,000.00</u>
<i>Legal</i>				
Outside counsel	\$1,000,000.00	\$ 500,000.00	\$ 40,000.00	\$ 40,000.00
<i>Subtotal</i>	<u>\$1,000,000.00</u>	<u>\$ 500,000.00</u>	<u>\$ 40,000.00</u>	<u>\$ 40,000.00</u>
<b>TOTAL</b>	<b>\$1,657,000.00</b>	<b>\$1,037,000.00</b>	<b>\$ 357,000.00</b>	<b>\$ 220,000.00</b>

Conclusions:

While staff are supportive of the protection of the Oak Ridges Moraine and its importance to the City, the cost of party status at the Richmond Hill and Uxbridge Ontario Municipal Board hearings is significant with a duplication of effort among the public sector interests. These costs can be substantially reduced if the City does not become a party at the hearings as there are other major parties with the same interest as the City. Opportunities to partner with the TRCA would be the most efficient means to obtain maximum results without duplicating scarce public sector resources and hence Option 4 is recommended.)