



The Regional Municipality of Durham

Durham Agricultural Advisory Committee Agenda

Tuesday, December 8, 2020

7:30 PM

AMENDED

Council Chambers
Regional Municipality of Durham Headquarters
605 Rossland Road East, Whitby

Please note: In an effort to help mitigate the spread of COVID-19, and to generally comply with the directions from the Government of Ontario, it is requested in the strongest terms that Members participate in the meeting electronically. Regional Headquarters is closed to the public, all members of the public may [view the Committee meeting](#) via live streaming, instead of attending the meeting in person. If you wish to register as a delegate regarding an agenda item, you may register in advance of the meeting by noon on the day prior to the meeting by emailing delegations@durham.ca and will be provided with the details to delegate electronically.

1. Roll Call

2. Declarations of Interest

3. Adoption of Minutes

- A) Durham Agricultural Advisory Committee meeting held on November 10, 2020 ([Attachment 1](#))

4. Presentation

- A) Greater Golden Horseshoe Food and Farming Alliance (GHFFA) Action Plan – Janet Horner, Executive Director, GHFFA (see [GHFFA webpage](#) for additional information)
- B) Review of the Region of Durham's Soil and Groundwater Assessment Protocol – Ashley Yearwood, Project Planner, Region of Durham

5. Discussion Items

- A) Rural and Agricultural Economic Development Update – S. Jibb
- B) 2020 DAAC Workplan ([Attachment 2](#)) and DAAC Terms of Reference ([Attachment 3](#))
- C) COVID-19 Update: Virtual Meetings

6. Information Items

- A) Mayor Bath Hadden Leave of Absence
- B) 2020-P-24 - Envision Durham – Framework for a New Regional Official Plan ([Attachment 4](#))
- C) 2020-P-19 - Review of the Region of Durham's Soil and Groundwater Assessment Protocol ([Attachment 5](#))

7. Other Business

8. Date of Next Meeting

January 12, 2021

Notice regarding collection, use and disclosure of personal information:

Written information (either paper or electronic) that you send to Durham Regional Council or Committees, including home address, phone numbers and email addresses, will become part of the public record. This also includes oral submissions at meetings. If you have any questions about the collection of information, please contact the Regional Clerk/Director of Legislative Services.

If this information is required in an accessible format, please contact 1-800-372-1102 ext. 2097.

The Regional Municipality of Durham

MINUTES

DURHAM AGRICULTURAL ADVISORY COMMITTEE

November 10, 2020

A meeting of the Durham Agricultural Advisory Committee was held on Tuesday, November 10, 2020 in the Council Chambers, Regional Headquarters Building, 605 Rossland Road East, Whitby at 7:35 PM. Electronic participation was offered for this meeting.

1. Roll Call

Present: Z. Cohoon, Federation of Agriculture, Chair, attended the meeting at 8:13 PM
T. Barrie, Clarington
N. Guthrie, Member at Large
B. Howsam, Member at Large
P. MacArthur, Oshawa
G. O'Connor, Member at Large
F. Puterbough, Member at Large, Vice-Chair
D. Risebrough, Member at Large
H. Schillings, Whitby
G. Taylor, Pickering
T. Watpool, Brock, Vice-Chair
***members of the Committee participated electronically**

Also

Present: G. Highet, Regional Councillor

Absent: D. Bath-Hadden, Regional Councillor
K. Kemp, Scugog
K. Kennedy, Member at Large
B. Smith, Uxbridge
B. Winter, Ajax

Staff

Present: K. Allore-Engel, Senior Planner, Department of Planning and Economic Development
A. Brown, Agriculture Economic Development Program Coordinator
R. Inacio, Systems Support Specialist, Corporate Services – IT
S. Jibb, Manager, Agriculture and Rural, Department of Planning and Economic Development
M. Scott, Project Planner, Department of Planning and Economic Development
N. Prasad, Committee Clerk, Corporate Services – Legislative Services

In the absence of the Committee Chair, T. Watpool chaired the meeting.

2. Declarations of Interest

There were no declarations of interest.

3. Adoption of Minutes

Moved by G. O'Connor, Seconded by F. Puterbough,
That the minutes of the Durham Agricultural Advisory Committee
meeting held on October 13, 2020 be adopted.

CARRIED

4. Discussion Items

A) Introductions: New Staff Liaison – Mike Scott, Project Planner

K. Allore-Engel announced that she has moved into a new role with the Planning and Economic Development Department and advised that M. Scott, Project Planner will be the Committee's new staff liaison. M. Scott introduced himself and provided the Committee with an overview of his work experience.

B) Rural and Agricultural Economic Development Update

S. Jibb advised of the following:

- Staff will be working on hosting a few annual general meetings for Durham Farm Fresh and Durham Farm Connections on the Microsoft Teams platform.
- Staff is supporting Durham Farm Connections with their re-branding initiative. A survey will be sent out in the near future to obtain input on the re-branding process.
- Staff is supporting the Works and Finance Departments with rolling out the Farm 911 Program (the Emily Project). They are encouraging people to contact their local municipality to get address signage for rural properties or more information.
- Staff is working with Durham Farm Fresh on a shop local initiative for the holiday season. This will be done through a series of videos with Durham Farm Fresh members and will offer some education around local products that are available throughout the winter season.

- Staff is supporting the rural municipalities of Scugog, Uxbridge and Brock by offering the tools needed to encourage and promote agriculture as an economic driver in their community. They are in the process of developing an agri-food profile for Uxbridge.

A. Brown advised of the following:

- Staff is working with OMAFRA on a Speciality Crops Workshop. A survey was released to gather input from the agricultural community about crops of interest.
- Staff is working on a Mental Health Workshop for farmers this winter.
- Staff is working on a Succession Planning Workshop in partnership with Farm Credit Canada. More information will be available at the next meeting.
- Staff held an Information Night with Durham Health for the Durham Region employer of temporary foreign workers to get an opportunity to speak with Durham Health and address any concerns. There was great feedback and staff is looking to continue the conversation with another information session.
- Staff is working on highlighting existing agricultural career opportunities for Grade 10 high school students.
- The Municipality of Clarington is working on an on-farm special events by-law and will provide more information as it becomes available.

C) Clean Fuel Sub-Committee Update – D. Risebrough

D. Risebrough stated that Environment and Climate Change Canada is proposing a Clean Fuel Standards as part of the next phase of carbon tax reduction. He stated that the Ministry has released some pre cursors to the proposed land use regulations which has brought forward a number of concerns.

D. Risebrough stated that the subcommittee met on October 27th to review various documentation with regards to the policy, one of which was a PowerPoint presentation released by Environment Canada on September 2, 2020. The subcommittee also received a presentation from Grain Farmers of Ontario.

D. Risebrough stated that the subcommittee has 3 areas of concern as follows:

- the certification requirements of the proposed Clean Fuel Standards;

- the suggested set-back requirement from riparian zones and water bodies; and
- previously protected areas (ie. lands that have been cleared).

He stated that although there are concerns, the final proposed regulations have not yet been released and until they are, there is nothing to respond to. He advised that the subcommittee's recommendation is that the DAAC committee wait until there is more information on the proposed regulations before commenting.

Discussion ensued with regards to the possibility of writing to the Durham MPs to advise that DAAC will be requesting substantial time for comment on the topic. It was the consensus of the committee to not take any action until the release of further information by Environment Canada. It was stated that the draft regulations are anticipated to be released for comment by the end of 2020.

K. Allore was asked what other regions or municipalities are doing with regards to the issue and she advised that she will reach out to Janet Horner of the Golden Horseshoe Food and Farming Alliance for some feedback to be reported back at the next meeting.

D) DAAC Farm Tour Award Submissions: Economic Developers Council of Ontario, Awards of Excellence and Durham Farm Connections, Celebrate Agriculture

K. Allore-Engel advised that she has received great feedback on the Virtual Farm Tour that was held this year. She advised that there has been a lot of inquiries from different organizations with regards to how everything was pulled together. She further advised that staff has worked together to enter the video for the following awards: Economic Development Council of Ontario (EDCO); Award of Excellence; and Durham Farm Connections - Celebrate Agriculture.

K. Allore-Engel thanked Councillor Highet for his letter of support and advised that a letter of support was also provided by Janet Horner of The Golden Horseshoe Food and Farming Alliance for the Durham Farm Connections entry.

E) DAAC Farm Tour Video Requests

At this time Z. Cohoon attended the meeting and chaired the meeting.

K. Allore-Engel stated that there has been a lot of interest in the Virtual Farm Tour video and has received inquiries from Municipality of Clarington staff, The Golden Horseshoe Food and Farming Alliance, Farm Connections, and School Boards. She inquired what the committee's thoughts were with regards to sharing the video to some of the groups.

Discussion ensued with regards to the importance of not having the video streamed on social media sites and that it only be made available by request. It was also discussed that since the video showcased farms belonging to T. Watpool and H. Schillings, that their approval be sought before sharing the video.

Moved by D. Risebrough, Seconded by P. MacArthur,
That any sharing of the 2020 DAAC Virtual Farm Tour video be specially approved by T. Watpool, H. Schillings and Z. Cohoon, the Chair of DAAC.

CARRIED

Permission was then sought to share the 2020 DAAC Virtual Farm Video in a password protected format to Economic Development Council of Ontario; Durham Farm Connections; the Golden Horseshoe Food Farming Alliance; and Clarington Agricultural Advisory Committee.

5. Information Items

There were no Information Items.

6. Other Business

A) Share the Road Signage

D. Risebrough stated that Share the Road signage in Scugog has changed and seems to be losing its effectiveness. K. Allore-Engel advised that there will be a presentation from the Works Department at the January DAAC meeting and suggested that this issue be brought up at that time.

7. Date of Next Meeting

The next meeting of the Durham Agricultural Advisory Committee will be held on Tuesday, December 8, 2020 starting at 7:30 PM.

8. Adjournment

Moved by D. Risebrough, Seconded by T. Watpool,
That the meeting be adjourned.

CARRIED

The meeting adjourned at 8:37 PM.

Z. Cohoon, Chair, Durham
Agricultural Advisory Committee

N. Prasad, Committee Clerk



DURHAM AGRICULTURAL ADVISORY COMMITTEE (DAAC) 2020 WORKPLAN

1. Advice on Policy Development and Implementation

a. Provide advice on:

- Proposed amendments to the Durham Region Official Plan.
- Agricultural and rural related planning matters, with a view to:
 - sustaining the viability of farming;
 - protecting and preserving agricultural land as a first priority; and
 - ensuring adequate separation between agricultural land uses and activities and urban residential areas.
- Envision Durham Regional Official Plan Update – Municipal Comprehensive Review.
- Implementation of the Regional Broadband Strategy.
- Durham Community Climate Adaptation Plan—ongoing implementation of the Agriculture Sector Climate Adaptation Strategy.
- Regional Cycling Plan Update.
- Durham Agricultural Strategy Update.
- Vibrant North Durham Plan Update.

2. Communicate/Outreach/Educate

a. Host the 2020 Farm Tour that will:

- assist Local and Regional Councillors, Provincial and Federal government officials as well as Conservation Authorities (including staff), to understand the concerns, opportunities and challenges of the agricultural community;
- reach key industry stakeholders whose mandate may impact the agricultural community;
- assist the educational sector (institutions, boards/superintendents), to understand the opportunities and challenges of the agricultural industry and community;
- emphasize the benefits of the agricultural industry to the Regional economy and the need for succession farming in the industry.

- #### **b. Continue to work with Regional Departments including Planning and Economic Development, Works, Finance and Police Services where necessary to ensure agricultural interests are considered.**

- c. Encourage participation of the Durham agricultural youth organizations.
- d. Investigate other outreach opportunities as they arise.
- e. Municipal representatives on the Committee will continue to dialogue with their respective municipalities including presentations to area municipal Councils on matters of interest where appropriate.
- f. Continue to establish a working relationship with the Durham Environmental Advisory Committee and other Regional Committees.

3. Economic Development and Tourism

- a. Continue to promote the agricultural sector and development of related industries in the Region.
- b. Assist in the update and implementation of the Region of Durham Agricultural Strategy Action Plan.
- c. Continue to promote the development of research and implementation strategies to assist Durham's agricultural/farming sector in achieving higher profitability, thereby ensuring its survival and long-term sustainability.
- d. Participate in the implementation of the Local Food Business Retention & Expansion project.

4. Issues of Interest

- Federal Pickering airport lands.
- Federal Oshawa Port.
- Alternative energy (e.g. solar farms, biomass, wind).
- Farm safety.
- Provincial and federal legislation and policy affecting agriculture (e.g. species at risk, provincial land use plans).
- Commercial fill.
- Aggregate matters, including aggregate pit rehabilitation.
- Implementation of source water protections plans.
- Farmland assessment and taxation.
- Farm animal health and wellness (e.g. DRPS)
- Natural Heritage System protection and construction of new farm infrastructure.
- Minimum Distance Separation Formulae.
- Water and waste water master planning.
- Biosecurity, trespassing and vandalism.
- Municipal Class EA's.

- Regional road projects.
- Conservation Authority matters.
- Energy-from-Waste implementation and monitoring.
- Region's waste diversion programs.
- Durham Community Energy Plan Implementation
- Highway 407 East construction.
- Local food strategy.
- Agricultural training and employment, through continued work with the Durham Workforce Authority (DWA), Durham College, and Ontario Tech University.
- Activities of the Golden Horseshoe Food and Farming Alliance.
- Land use planning matters.
- Other matters affecting the agricultural industry (e.g. Municipal Fire Regulations, By-laws and Permits, Processing).

5. Meeting Schedule

- a. DAAC has scheduled 10 regular meetings for 2020. An additional meeting may be held in August, at the call of the Chair. Resources (Planning and Clerks) will be provided to accommodate this schedule and workload.

- January 14, 2020
- February 11, 2020
- March 10, 2020
- April 14, 2020
- May 12, 2020
- June 9, 2020
- September 15, 2020
- October 13, 2020
- November 10, 2020
- December 8, 2020



Durham Agricultural Advisory Committee (DAAC)

Terms of Reference

Revised March 2020

1. Goal

- 1.1 To provide advice to the Region of Durham on agricultural matters and rural matters as they relate to agriculture.

2. Mandate

- 2.1 The Durham Agricultural Advisory Committee (DAAC) is a volunteer Advisory Committee established by Regional Council in accordance with these Terms of Reference. Committee members are guided by these Terms of Reference.
- 2.2 The Terms of Reference provide for a balance between activities referred from the Planning and Economic Development Department or the Regional Planning and Economic Development Committee or Regional Council and an allowance for the DAAC to be proactive and advise on matters identified on its own initiative.
- 2.3 Matters may be referred to the DAAC from the Regional Planning and Economic Development Department, the Regional Planning and Economic Development Committee, or Regional Council. The DAAC may report directly to the Regional Planning and Economic Development Committee on substantive matters as determined by the Planning and Economic Development Committee. Otherwise, the DAAC shall report through the Regional Planning and Economic Development Department.

3. Scope of Activities

- 3.1 The scope of the DAAC may include activities such as:
 - a) Providing advice on issues and concerns of the agricultural community;
 - b) Providing advice on the implementation of Provincial and Federal legislation, policies, and guidelines related to the agricultural industry;
 - c) Providing advice on agricultural and rural policy directions pursued by the Region. This may include providing advice on Regionally-initiated official plan amendments related to agricultural matters; on Regional agricultural matters through an official plan review; or, other policy directions pursued by the Region;

- d) Providing advice on the identification and implementation of programs which encourage public awareness and education of agricultural and related rural issues; and
- e) Providing advice on matters as they arise, at the request of the Region.

4. Composition

- 4.1 The DAAC will be comprised of sixteen members in total. Fourteen members will be private individuals who do not represent their respective employers or advocacy groups in their capacity as a DAAC member. An additional member will represent the Durham Region Federation of Agriculture. The above fifteen members shall not hold elected office (municipal, provincial or federal). Of these fifteen members, twelve will be bona fide farmers who are directly involved in the agricultural industry¹; and three will be residents who are not directly involved in the agricultural industry. The final member will be a representative of the Planning and Economic Development Committee whose role is to act as liaison.
- 4.2 Membership for regular members shall correspond with the term of Regional Council. At the end of each term, members will be asked to consider their interest in remaining for an additional term. If a member chooses to resign, a replacement will be sought in accordance with Section 5. However, members shall continue to serve until their replacements are appointed by Regional Council.
- 4.3 At the discretion of the DAAC, non-attendance of three consecutive meetings will be sufficient grounds **to recommend** replacement.

5. Membership Selection

- 5.1 For regular members, the Regional Planning and Economic Development Department will place a newspaper advertisement and/or issue a public service announcement to media within each area municipality requesting expressions of interest from individuals willing to volunteer for appointment to the DAAC. Interested individuals will be required to provide a brief resume and statement of interest. Responses from the advertisement will be forwarded to each respective area municipality with a request that the local Council nominate one representative from the applicants who are bona fide farmers directly involved in the agricultural industry². The Regional Planning and Economic Development Department, from the remaining resumes received, will nominate three additional members at large who are bona fide farmers; and three members at

¹ Note: Where an interested bona fide farmer cannot be found to represent an area municipality, as an exception, a non-farm rural resident may be substituted.

² Same note as above.

large who are not directly involved in the agricultural industry, to bring the regular member complement to fourteen.

- 5.2 The Regional Planning and Economic Development Department will formally request the Durham Region Federation of Agriculture (DRFA) to nominate one person to represent the DRFA.
- 5.3 The Regional Planning and Economic Development Committee will recommend individuals for appointment to the DAAC by Regional Council.
- 5.4 Regional Council shall appoint a representative and an alternate to the DAAC from the members of the Planning and Economic Development Committee.
- 5.5 In nominating members to the DAAC, excluding the representative of the Planning and Economic Development Committee, regard shall be given to achieving a diversity of members engaged in varied disciplines of the agricultural industry and members living in the rural community with knowledge of agricultural and related rural issues. Availability to attend meetings will also be considered. All residents of Durham Region are eligible for membership.
- 5.6 In the case of a regular member vacancy, the approach described in Sections 5.1, 5.2 and 5.3 will generally be followed.
- 5.7 An elaboration of the selection criteria is provided in Appendix 1.

6. Officers

- 6.1 A chair and two vice-chairs (first and second) will be elected annually by the membership of the DAAC. The Planning and Economic Development Committee representative will chair the inaugural DAAC meeting.

7. Support Services

- 7.1 The Commissioner of Planning and Economic Development or designate, shall serve as staff liaison to the DAAC. The liaison will provide administrative, procedural and technical support to the DAAC.
- 7.2 The liaison will co-ordinate all requests for advice from the DAAC, through meeting agendas and addenda to meeting agendas. DAAC responses to such requests shall be co-ordinated by the liaison to the Planning and Economic Development Department.
- 7.3 The Region will provide secretarial and other support services. Regional Council will provide a budget to cover the operational expenses of the DAAC, and this budget will be administered by the Planning and Economic Development Department.

8. Meetings

- 8.1 Regularly scheduled meetings of DAAC will be held at the Durham Regional Headquarters, unless otherwise stated. The DAAC, will establish a meeting schedule taking into account the business needs and the schedule of Council and the Planning and Economic Development Committee. The Planning and Economic Development Committee will be provided with a schedule of DAAC meetings each December for the following year. Special meetings may be held at the call of the Chair. The Planning and Economic Development Committee is to be kept informed of such meetings.
- 8.2 All meetings will be open to the public. As a formal advisory Committee to the Region, the DAAC is subject to the Regional Procedural By-law, unless otherwise specified in the Terms of Reference.
- 8.3 Quorum shall consist of a majority of the sitting members.

9. Delegations of Committee Meetings

- 9.1 Any person(s) wishing to appear before the DAAC as a delegate must submit a request to delegations@durham.ca, advising of the topic or item to which they wish to speak, which will then be forwarded to the staff liaison in the Regional Planning and Economic Development Department. All requests for delegations must be received at least one week prior to the meeting to ensure that the delegation is included on the agenda. Any person wishing to address the DAAC as a delegate, who has not previously arranged to do so, may be granted permission to do so only by Committee resolution.

10. Minutes and Agenda

- 10.1 The minutes of each DAAC meeting will be amended as necessary and approved at the following meeting. The unapproved minutes will be circulated to members of Council as part of the Council Information Package (CIP) prepared by the Clerk. When approved, any amendments will be forwarded to the Planning and Economic Development Committee. The DAAC agendas will be prepared by the staff liaison and the DAAC chair or vice-chair with input from other DAAC members. Agendas will be distributed the week prior to the meeting.

11. Committee Resolutions

- 11.1 The DAAC will seek to achieve consensus on decisions. Recommendations are “carried” if supported by a majority, unless otherwise specified in these Terms of Reference or Regional Council Rules of Procedure. Only resolutions as they appear in the adopted Minutes may be considered as officially representing the position of the DAAC.

12. Annual Reports and Workplan

- 12.1 An annual report summarizing the activities completed in the previous year shall be prepared by the DAAC. The annual report shall be forwarded to the Planning and Economic Development Committee.
- 12.2 An annual workplan with an estimate of the resources necessary and any suggested revisions to the Terms of Reference for the coming year shall also be prepared by the DAAC for consideration and approval by the Planning and Economic Development Committee and Council.
- 12.3 An annual review of the DAAC by the Planning and Economic Development Committee will be completed to examine the effectiveness of the Committee and to ensure continued improvements.

Appendix 1: Membership Eligibility Criteria

To facilitate the nomination and appointment of new members to the DAAC, the following criteria will be considered. The aim is to achieve a diversity of members engaged in varied disciplines of the agricultural industry and community representation with knowledge of agricultural and related rural issues.

1. Residency

Members should reside in Durham Region³.

2. Agricultural Expertise and Knowledge

Applicants engaged in the agricultural industry having the following attributes would be considered as an asset:

- Demonstrated knowledge of agricultural and rural land use issues;
- Relevant farm experience;
- Involvement with activities of the agricultural community;
- Technical training in an agriculture-based field; and
- Knowledge of properties and farm operations within Durham.

3. Rural Experience

For applicants from the non-farm rural community consideration will be given to the duration of residency in the community and the individual's level of knowledge of agricultural related rural issues. The relevance of their interests to the mandate of the DAAC will also be an important consideration.

4. Availability

It is important that an applicant be able to attend as many DAAC meetings as possible and undertake work outside of the regular monthly meetings. An applicant should be able to be contacted or reached during the day in order for meetings to be arranged.

³ Note: Where person who resides in Durham cannot be found, a farmer who owns land in Durham Region may be substituted.

If this information is required in an accessible format, please contact 1-800-372-1102 ext. 2564



The Regional Municipality of Durham Report

To: Planning and Economic Development Committee
From: Commissioner of Planning and Economic Development
Report: #2020-P-24
Date: November 3, 2020

Subject:

Envision Durham – Framework for a New Regional Official Plan

Recommendation:

That the Planning and Economic Development Committee recommends to Regional Council:

- A) That Regional Council endorse the framework for the new Regional Official Plan as outlined in this report; and
 - B) That a copy of Report #2020-P-24 be forwarded to Durham's area municipalities, conservation authorities, the Envision Durham Interested Parties List and the Ministry of Municipal Affairs and Housing.
-

Report:

1. Purpose

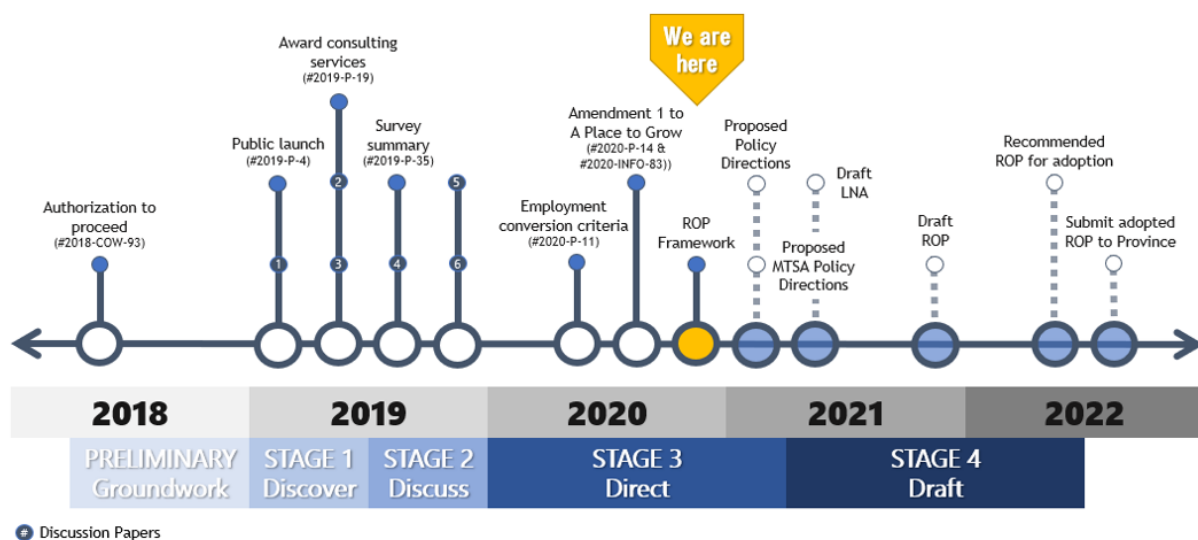
- 1.1 The purpose of this report is to provide an update on Envision Durham, the Region's Municipal Comprehensive Review (MCR), and introduce the framework for the new Regional Official Plan. Envision Durham will replace the current Regional Official Plan (ROP) by establishing a progressive and forward-looking planning vision for the Region to 2051. A new framework, with a streamlined structure and approach will support a new and compelling ROP.

2. Previous Reports and Decisions

2.1 Envision Durham is a multi-year project which has been the subject of several reports to Council as illustrated below in Figure 1. Recent activities have included:

- Receiving, cataloguing and examining feedback received through the discussion paper submissions;
- Undertaking policy reviews and analyses in preparation for upcoming proposed policy directions; and
- Examining and preparing policies and delineations for proposed Major Transit Station Areas, to be provided as a standalone amendment for public review and comment in early 2021.

Figure 1 – Envision Durham stages and reporting milestones



3. A New Regional Official Plan Framework – Need for Change

3.1 The framework of the current ROP dates back to the early 1990s, which has its roots in the structure of the 1976 ROP.

3.2 It is appropriate that the current ROP be repealed and replaced with a new ROP that will implement contemporary land use planning policies, new and updated policies contained in the PPS and the provincial plans which apply to Durham, such as the Growth Plan, the Greenbelt Plan, the Oak Ridges Moraine Conservation Plan and the Lake Simcoe Protection Plan.

- 3.3 A new framework and vision will support a well-defined structure of urban areas and rural settlements, a system of connected environmental features, extensive and productive agricultural areas, a variety of open spaces and a comprehensive, integrated and multi-modal transportation network.

4. Guiding Principles and Desired Outcomes

- 4.1 The following guiding principles will help shape the new ROP:

- **Progressive**— contemporary, compelling and forward-thinking in both subject matter and delivery.
- **Streamlined**— avoiding redundancy while providing meaningful policy direction on matters of provincial and Regional interest, the ROP will be efficient in structure and content while providing appropriate depth.
- **Accessible**—intuitive and user-friendly, the ROP will be clear and easier to read by a wide variety of audiences.

- 4.2 In addition to these three guiding principles, the new ROP will:

- **Anticipate Change.** The ROP will plan for a population of 1.3 million people and 460,000 jobs over the next 30 years. The form of development will not be the same as was experienced over the last 30 years, and the pace and timing of development can never be fully predicted. The new ROP will direct growth to appropriate locations while protecting important environmental features from development.
- **Focus on Results.** The new ROP will establish meaningful performance indicators, so that progress on achieving intended outcomes can be identified, measured and reported on.
- **Have a Strong On-line Presence.** There is a need to modernize the look and feel of the ROP to one that is more accessible for online viewing (including online mapping), is visually pleasing, includes high quality graphics, provides call-out explanations and incorporates other features to make it more useful in an on-line world.
- **Articulate Meaningful Regional Priorities.** Rather than simply reiterating or administering provincial policy, the ROP will articulate strategic Regional priorities. This would include building upon the vision and goals of the Durham Region Strategic Plan, 2020-2024 while enabling detailed land use planning policies and designations through area municipal official plans, as appropriate.

5. Public Opinion Survey

5.1 In early 2019, a Public Opinion Survey was undertaken where participants provided input on some of the most important land use planning issues in the region today and over the next 30 years.

5.2 The survey reveals a desire for greater balance amongst broad objectives, including:

- Increased job opportunities and overall economic prosperity;
- Healthy communities that provide a variety of supports, services and affordable housing options;
- Livable urban areas that preserve lands for greenspace and recreation by shifting from sprawl to more sustainable growth patterns;
- Resilient built and natural environments ready for adaptation and mitigation against the effects of climate change;
- Protected rural landscapes with strong agricultural roots; and
- Transportation networks that support and promote a range of modes, including active transportation and enhanced transit.

When considered together, the priorities identified by residents foster a complete community where our residents want to live, work, play, grow and invest.

6. Proposed Framework

6.1 In addition to broad strategic directions, ambitious goals, pragmatic objectives, and action-based policies, the new ROP will be founded on a strong vision for the region's future. The proposed framework for the new ROP is illustrated in Figure 2 below.

Figure 2 – Illustrating a new ROP framework



- 6.2 The new ROP will incorporate a regional vision presenting Durham as a “community of communities”—diverse, distinct and connected. Staff will work towards developing a broad regional vision that embodies public and stakeholder input.
- 6.3 Seven Strategic Directions will serve as chapters to the new ROP. These directions have been prepared based on over 25 years of experience with the existing ROP, informed by public feedback received to-date and aligned with the broader goals of the Regional Strategic Plan. They are intended present balanced, aspirational, outcome-oriented themes, reflective of the Region’s diverse characteristics:
- **Prosperous Economy**
 - **Healthy Communities**
 - **Supportive Infrastructure**
 - **Vibrant Urban System**
 - **Thriving Rural System**
 - **Protected Greenlands System**
 - **Connected Transportation System**
- 6.4 Goals, objectives and policies will be introduced through proposed policy directions to be released through 2021.
- 6.5 The new ROP should continue to support the essential elements valued most by Durham residents (e.g. access to natural areas, waterfronts, clean air, an abundance of recreational opportunities, protected farmlands, historic downtowns, etc.) while managing the growth and development that will continue to transform Durham over the next 30 years.
- 6.6 For consistency and clarity of language, proposed objectives will begin with one of three verbs of intention, namely: “Support”, “Promote” or “Ensure”.
- **Support**—where the Region has little control over outcomes and will employ tactics to support conditions (e.g. coordinate, guide, monitor, study, research, investigate);
 - **Promote**—where the Region has moderate control over outcomes and will actively influence a particular result (e.g. encourage, maintain, improve, develop, evaluate, review, identify, update); and

- **Ensure**—where the Region has greatest control over outcomes and expects to achieve results through direct actions (require, provide, protect, preserve, establish, delineate, conduct, implement, amend, prepare, adopt).

In addition to creating a consistent structure, this approach helps signal the relative degree of influence the Region has over a particular outcome.

- 6.7 Policy statements will begin with action verbs to give clear direction and convey a sense of imperative.

7. Relationship to Strategic Plan

- 7.1 This report aligns with/addresses the following strategic goals and priorities in the Durham Region Strategic Plan:

a. Environmental Sustainability

- Protect, preserve and restore the natural environment including greenspaces, waterways, parks, trails and farmlands;
- Demonstrate leadership in sustainability and addressing climate change; and
- Expand sustainable and active transportation.

b. Community Vitality

- Revitalize existing neighbourhoods and build complete communities that are walkable, well-connected, and have a mix of attainable housing; and
- Build a healthy, inclusive, age-friendly community where everyone feels a sense of belonging.

c. Economic Prosperity

- Position Durham Region as the location of choice for business;
- Enhance communication and transportation networks to better connect people and move goods more effectively; and
- Provide a supportive environment for agriculture and agri-food industries.

d. Social Investment

- Revitalize community housing and improve housing choice, affordability and sustainability.

e. Service Excellence

- Demonstrate commitment to continuous quality improvement and communicating results.

8. Next Steps

- 8.1 In early 2021, staff will seek authorization to consult on proposed policy directions informed by best practice reviews, research, public engagement and feedback received during Stages 1 and 2 of the Envision Durham process.
- 8.2 Concurrent work is being completed through the Growth Management Study (i.e. Land Needs Assessment), as well as advancing a standalone Major Transit Station Area Regional Official Plan Amendment.
- 8.3 The timeframe for completing Envision Durham and submitting it to the Province is July 1, 2022. Ongoing changes to Provincial Policy have impacted the ability of all GGH Regions to complete their MCRs by the prescribed conformity date. Regional staff will continue to take the steps necessary to meet this deadline.
- 8.4 It is recommended that a copy of this report be forwarded to Durham's area municipalities, conservation authorities, the Envision Durham Interested Parties List and the Ministry of Municipal Affairs and Housing.

Respectfully submitted,

Original signed by

Brian Bridgeman, MCIP, RPP
Commissioner of Planning and
Economic Development

Recommended for Presentation to Committee

Original signed by

Elaine C. Baxter-Trahair
Chief Administrative Officer

If this information is required in an accessible format, please contact 1-800-372-1102 ext. 2564



The Regional Municipality of Durham Report

To: Planning and Economic Development Committee
From: Commissioner of Planning and Economic Development
Report: #2020-P-19
Date: September 8, 2020

Subject:

Review of the Region of Durham's Soil and Groundwater Assessment Protocol, Files:
L14-03-08 and D-04-27-02

Recommendation:

That the Planning and Economic Development Committee recommends:

That this report be received for information.

Report:

1. Purpose

- 1.1 On April 2, 2019, the Planning and Economic Development Committee initiated its review of the Region's Soil and Groundwater Assessment Protocol (SGAP), formerly known as the Site Contamination Protocol (refer to Report #2019-P-15). This report presents an updated Protocol, in draft, for review and comment by affected stakeholders including Area Municipalities.
- 1.2 The draft SGAP attached provides an updated framework for remediating potentially contaminated sites throughout the Region while helping to streamline the development approvals processes under the *Planning Act*.

2. Background

- 2.1 In 1996, the Province of Ontario assigned certain Provincial Plan Review Responsibilities to the Region of Durham including the responsibility to ensure that

human health and the natural environment are adequately protected through the planning process. To fulfil this provincially-assigned role, an internal Regional “Protocol” was developed to deal with the protection of public health and safety in relation to site contamination issues.

- 2.2 The Region’s Protocol has been regularly updated since 1997 (the year of the first Protocol), with the most recent update adopted in October 2014.
- 2.3 The existing SGAP applies to all *Planning Act* applications within the Region. Municipal decisions by the Region and the Area Municipalities must consider soil, and in some cases the groundwater, conditions associated with lands subject to a *Planning Act* application. This requirement is especially critical for “sensitive” land uses such as residential, parkland and certain types of institutional uses, where human habitation and outdoor recreation will take place.
- 2.4 The soil and groundwater standards for land use classifications are established by the Province. For instance, the standard of soil quality is higher for residential uses than it is for industrial uses however, all development, including non-residential development proposals, must be screened for sources of soil and groundwater contamination prior to the approval of any *Planning Act* application.

3. Research and Findings

- 3.1 The Planning and Economic Development Department’s review of the existing SGAP so far has included a review of legislative and regulatory updates, an analysis of other jurisdictions within the province and consultation with the Region’s area municipalities and industry stakeholders.
- 3.2 Changes to the *Environmental Protection Act*, have also been incorporated into the draft SGAP update. Recent changes to environmental legislation introduced through Ontario Regulation 407/19 (O.Reg. 407/19) have generally reduced the requirements associated with brownfield redevelopment.
- 3.3 Consultation with stakeholders included meetings with representatives from the Ministry of the Environment, Conservation and Parks (MECP), the Area Municipalities; Conservation Authorities, the Region’s existing environmental Peer Review Consultants, Environmental Consulting firms and representatives from the Building Industry and Land Development Association (BILD).

- 3.4 Input received from stakeholders regarding the existing SGAP identified elements of the Protocol that were working well. Conversely, it also identified areas of the Protocol that were outdated and needed improvement.
- 3.5 Research and stakeholder consultation have generated discussions surrounding proposed changes to the SGAP which are intended to offer greater flexibility and streamline the Region's processes associated with site contamination screening and remediation of contaminated sites. To date, preliminary feedback on the proposed changes have been well received.
- 3.6 While staff acknowledge the Protocol is technical in nature and may be a challenge to read with its acronyms and terminology, the proposed changes to the SGAP streamline elements of the existing Protocol, provide clarification, and offer more flexibility in a variety of areas. Specific changes include the following:
- a. Record of Site Condition (RSC) updates in accordance with the *Environmental Protection Act*. Recent MECP legislative and regulatory updates regarding RSC requirements have been incorporated into the Protocol. Provincial requirements for the remediation of sites containing various exceedances such as road salt have now been exempted from the requirement of an RSC.
 - b. MECP RSCs and/or Certificate of Property Uses (CPU's) through Risk Assessments. These documents may now be submitted at a later stage of a development proposal, but not beyond the issuance of building permits for above ground construction, subject to criteria that requires the applicant to enter into appropriate agreements to the Region's satisfaction. The current SGAP requires applicants to submit an RSC and/or a CPU prior to Regional sign-off on a zoning by-law amendment, or as part of an area municipality's ("H") Holding Provision on a subject property until such time as the document(s) is received. The proposed change is intended to significantly reduce cost and time for proponents by facilitating below-grade construction prior to final approvals.
 - c. The Site Screening Questionnaire (SSQ) form has been updated to remove questions in the SSQ that are not consistent with O.Reg. 153/04, as amended. This approach has reduced the number of questions on the SSQ form by more than half (from 18 questions down to 8). These changes are intended to save time and eliminate the potential for ambiguity in the completion of the form.

- d. Greater flexibility in the content of ESA Reports. Environmental Site Assessment (ESAs) reports are still required to be prepared in accordance with O.Reg. 153/04. However, the draft SGAP provides the QPs with an option of submitting ESA reports that are consistent with O.Reg 153/04, so long as the reports can identify how the investigation and reporting requirements deviate from the Ministry's Regulation. The proposed change may result in cost reductions and time for proponents as well as provide flexibility to the Region's Peer Review Consultants when reviewing ESA reports;
- e. The Region's Reliance Letter and Certificate of Insurance requirements. The Region's Reliance letter has been contemporized in a variety of areas. One significant change includes the removal of the audit requirement clause. The clause often caused concern for reports submitted in support of development applications not subject to the provincial RSC process.
- f. Enhanced Timelines for Addressing Non-Potable Groundwater Requests. The timing of conditional approval letters for Non-Potable Groundwater Requests was often problematic for the development industry. The proposed Protocol extends the Region's conditional approval from 15 days to 6 months. The extension of time was deemed essential by proponents given RSC filing requirements are quite onerous and often cannot be achieved within 15 days.
- g. Greater flexibility for Evaluating Enhanced Investigation Properties (EIPs). Regional requirements surrounding the consideration of EIPs and the completion of the SSQ was often unclear and often required the services of a Qualified Person. The updated SSQ permits the completion of an SSQ by an Authorized Officer/Owner for minor development proposals (e.g. small accessory buildings, development within an existing building). Major development proposals (e.g. gas stations, automobile wreckers' yard or a bulk liquid dispensing facility) where sub-surface contamination exists and requires significant site alteration typically requiring MECP approval (in accordance with the SGAP) will still require a Qualified Person to complete the necessary due diligence review of a proposed development site. The updated process also allows for the consideration of the Region's Peer Review process where an EIP is identified as a potential contamination source.
- h. Streamlining the Region's Peer Review process. The review of Planning Applications often involves the review of technical reports. The Region's peer review process for technical reports addressing potentially contaminated sites

can be slowed by detailed technical reviews by the proponent's consultant and the Region's peer review consultant. The requirement for additional information is necessary for the complete analysis required to arrive at a final conclusion and recommendation. The proposed changes are intended to streamline the peer review process by enabling the Region's Peer Review Consultants to directly request/clarify any minor additional supplementary information required to complete the peer review assignment directly from the proponent's consultant. The proposed change eliminates the requirement for unnecessary meetings where only minor details may be required.

4. Next Steps

- 4.1 The proposed updated SGAP will be circulated to a variety of stakeholders, including: the Ministry of the Environment, Conservation and Parks; the Ministry of Municipal Affairs and Housing (MMAH); Area Municipalities; the Region's five Conservation Authorities; Works Department; Health Department; Legal Division; Risk Management Division; the Durham Environmental Advisory Committee (DEAC); the Building Industry and Land Development Association (BILD) as well as Environmental firms supporting Geoscientists and Qualified Professional Engineer firms (including the Region's existing environmental Peer Review Consultants) familiar with the Region's SGAP requirements. A 90-day comment period is being provided.
- 4.2 The Planning and Economic Development Department will report back to this Committee with a final Protocol that has considered input from all Regional stakeholders.

5. Conclusion

- 5.1 Following receipt of agency comments, a final SGAP will be prepared for endorsement by the Planning and Economic Development Committee and Council in early 2021.
- 5.2 This report and the draft Protocol were prepared in consultation with Regional Legal and Works staff.

6. Attachments

Attachment #1: Draft 2020 Durham Region's Soil and Groundwater Assessment Protocol

Attachment #2: Region of Durham Soil and Groundwater Assessment Protocol,
Five Year Review Report (#2019-P-15)

Respectfully submitted,

Original signed by

Brian Bridgeman, MCIP, RPP
Commissioner of Planning and
Economic Development

Recommended for Presentation to Committee

Original signed by

Elaine C. Baxter-Trahair
Chief Administrative Officer

Soil and Groundwater Assessment Protocol

September 8, 2020

Table of Contents

Soil and Groundwater Assessment Protocol	1
1. Introduction.....	3
2. Purpose	4
3. Administration	5
4. Development Application Requirements	6
4.1 Lot Creation.....	6
4.2 Land Use Approvals	6
4.3 Other Site-Specific Applications	6
4.4 Pre-Consultation.....	6
5. Documentation Requirements	7
5.1 Site Screening Questionnaire (SSQ).....	7
5.2 Environmental Site Assessments (ESA).....	7
5.3 Enhanced Investigation Properties (EIPs).....	13
5.4 Multiple Consulting Firms Conducting Various ESA Work.....	14
5.5 Regional Land Acquisition	14
5.6 Miscellaneous Inquiries	15
Appendices	16
Appendix A: Category of Sensitive Property Uses	17
Appendix B: Site Screening Questionnaire Requirements	18
Appendix C: Site Screening Questionnaire (SSQ) Form	20
Appendix D: List of Potentially Contaminating Activities	25
Appendix E: Detailed Environmental Site Assessment Processes.....	28
Appendix F: Regional Municipality of Durham Reliance Letter	31
Appendix G: Regional Municipality of Durham Certificate of Insurance	35
Appendix H: Detailed Record of Site Condition Process	38
Appendix I: Detailed Site Assessment Chart for Records of Site Condition	45
Appendix J: Peer Review Process for Brownfield sites	49
Appendix K: Non-Potable Groundwater Requests	52
Appendix L: Non-Potable Groundwater Request Standards and Procedures	53
Appendix M: Procedure to Assess Enhanced Investigation Properties.....	58
Appendix N: Soil and Groundwater Assessment Protocol Flow Chart	61
Appendix O: Non-Potable Request Flow Chart.....	63
Appendix P: Enhanced Investigation Properties Flow Chart	65
Appendix Q: Glossary of Terms	67

1. Introduction

The *Planning Act* recognizes that the protection of public health, safety and ecological systems (e.g. the natural environment) is matters of provincial interest. Matters of provincial interest must be integrated with municipal planning decisions. The Ontario Provincial Policy Statement (PPS) requires that contaminated sites, either in land and/or, water be assessed and remediated, as necessary, prior to any activity on a site associated with a proposed use, such that there will be no adverse effects on human health and the natural environment.

In 1996, the Province of Ontario assigned certain Provincial plan review responsibilities to the Regional Municipality of Durham (**Region¹**), including the responsibility of ensuring compliance with Ontario Regulation 153/04 made under the *Environmental Protection Act*, as amended (O.Reg. 153/04) in relation to site contamination issues to adequately protect human health and the natural environment through the planning process.

In support of its mandate, the **Region** adopted its first Soil and Groundwater Assessment Protocol² (Protocol) in 1997, which is periodically updated to reflect changes to legislation, policies and **development** practices.

¹ Words that are in 14-point **blue**, bold calibri font are defined terms in the Glossary of Terms in Appendix Q.

² The Soil and Groundwater Assessment Protocol was originally called the Site Contamination Protocol.

2. Purpose

The purpose of this Protocol is to ensure that:

- planning applications submitted for approval anywhere in the **Region** are screened to confirm that site contamination issues are appropriately addressed in accordance with O.Reg. 153/04;
- the protection of human health and the natural environment are kept to the highest standard through Regional and Area Municipal review of **development** approval processes under the *Planning Act*;
- an effective **development** review and approval process that balances the need for due diligence with process efficiencies are established;
- meaningful guidance to Regional and Area Municipal staff are provided when reviewing and commenting on planning applications, in relation to site contamination matters;
- industry stakeholders are made aware of the **Region's** requirements when submitting a **Site Screening Questionnaire** and/or **Environmental Site Assessment (ESA)** and related reports that support planning applications, which may be impacted by site contamination; and
- a framework for processing requests to use non-potable groundwater standards as set out by the Ministry of the Environment, Conservation and Parks (**MECP**) is provided for sites in the **Region**.

This Protocol must be read in its entirety to ensure that relevant sections are appropriately applied.

3. Administration

This Protocol applies to any **development** application submitted under the *Planning Act* within the **Region** regardless of the municipal approval authority. The Regional Planning and Economic Development Department is responsible for reviewing site contamination matters for various planning applications. Where planning decisions are not reviewed by the **Region** but are made by the **Area Municipality**, the **Region** and Regional Council expects that such decisions will also be consistent with this Protocol.

Area Municipal Chief Building Officials are also responsible for reviewing matters pertaining to brownfield redevelopment proposals where a **Record of Site Condition (RSC)** is required subject to applicable law under the *Building Code Act*, 1992.

Regional and Area Municipal staff will administer this Protocol to ensure the protection of human health and the natural environment through the development review and planning approval processes.

The attached Appendices form part of this Protocol.

4. Development Application Requirements

Development applications located within the **Region** made under the *Planning Act* are required to comply with this Protocol.

4.1 Lot Creation

Where the Applicant submits an application to divide land (e.g. subdivision, condominium, land division and/or part lot control), the **Region** may impose conditions requiring compliance with this Protocol. Regional clearance of conditions will only be granted once the Applicant satisfies the requirements of this Protocol.

4.2 Land Use Approvals

Where the Applicant submits a **development** application to amend an official plan and/or zoning by-law not involving the division of land, the **Region** may request that the **Area Municipality** include policies or requirements regarding the use of a Holding (H) provision on the property through a zoning by-law amendment. The (H) provision may be lifted upon the Applicant satisfying all Regional requirements, including the requirements of this Protocol.

4.3 Other Site-Specific Applications

All other site-specific planning applications, regardless of the authority approving the application (excluding Minor Variances), must be accompanied by either a completed “Regional **Site Screening Questionnaire**” (**SSQ**) as set out in **Appendix B** or **Environmental Site Assessment (ESA)** work as set out in **Section 5.2** and **Appendix E**.

4.4 Pre-Consultation

Where pre-consultation occurs prior to the submission of a planning application, depending on the nature of the **development** proposal, the **Region** at its sole discretion may provide the Applicant with the option to submit an **SSQ** or an **ESA**.

However, where an **SSQ** identifies the potential for site contamination and the need for further environmental investigation, this Protocol will require the Applicant to submit (at a minimum) a **Phase One ESA** with the planning application.

5. Documentation Requirements

The following documentation may be required to achieve compliance with this Protocol.

5.1 Site Screening Questionnaire (SSQ)

An **SSQ** is a screening tool that identifies the potential for previous contaminating activities on, or in proximity to, a subject property. **SSQs** are intended for **development** proposals which do not require significant analysis or the completion of an **ESA**. **SSQs** are completed by either the Owner or an Authorized Agent for most planning applications. **Appendix B** outlines the requirements for an **SSQ**. The **Region** decides whether **SSQs** need to be signed by a **Qualified Person (QP)** and affixed with their seal depending on the complexity of the proposal. A copy of the **SSQ** is provided in **Appendix C**

The **SSQ** provides a series of questions to determine whether a subject property or lands in proximity to it (at least within 250 metres) could be considered potentially contaminated (see **Appendix D** for a list of **Potentially Contaminating Activities**).

5.2 Environmental Site Assessments (ESA)

ESAs are environmental investigation reports prepared by a **QP** and are required when site contamination is suspected on, or in proximity to, a subject property.

All ESAs must include documentation indicating they have been prepared by a **QP** in accordance with O. Reg 153/04. Alternatively, if a QP cannot prepare an ESA report in accordance with O. Reg 153/04, the **Phase One ESA** must demonstrate how the investigation is consistent with O. Reg 153/04 and how the investigation and report deviates from the requirements of O.Reg 153/04. The **Region** will not consider due diligence ESAs that are prepared in accordance with the Canadian Standards Association (CSA Z768-01, CSAZ769-00) to be adequate to satisfy this Protocol.

A **Phase One ESA** is required where an **SSQ** identifies the potential for site contamination or where an **SSQ** is not provided.

5.2.1 Phase One Environmental Site Assessment (ESA)

A **Phase One ESA** requires a **QP** to conduct background research (e.g. aerial/orthophotography, title searches, site visits, interviews, zoning reviews,

Environmental Risk Information Services etc.) to determine whether **Potentially Contaminating Activities (PCAs)** previously occurred and are currently located on the subject property or neighbouring properties.

Depending on factors such as current site conditions, topography, surface and groundwater flow etc., a **QP** will recommend whether any identified **PCAs** should be further investigated in soil, groundwater and/or sediments to identify **Areas of Potential Environmental Concern (APECs)** on the subject property.

1. No APECs Identified

If the **Phase One ESA** does not identify any **APECs** on the subject property, the QP must complete and submit a Regional **Reliance Letter** and **Certificate of Insurance** (see **Appendices F** and **G**).

2. APECs Identified

If at least one **APEC** is identified on the subject property, a **Phase Two ESA** is required.

5.2.2 Phase Two Environmental Site Assessment (ESA)

A **Phase Two ESA** consists of a detailed site investigation arranged by a QP. Samples of soil, groundwater and/or sediment are analyzed and compared to the applicable **MECP Site Condition Standards (SCS)** – Tables 1 to 9. The test results would ultimately determine whether soil, groundwater and sediment exceedances (through horizontal and vertical delineation testing) exist on a site (see **Appendix E**).

1. No Exceedances Identified in Phase Two ESA

Where the **Phase Two ESA** does not identify any exceedances, it must also be accompanied by a Regional **Reliance Letter** and **Certificate of Insurance** completed by the Applicant's QP (see **Appendices F** and **G**). However, where the **Reliance Letter** and **Certificate of Insurance** are not submitted to the satisfaction of the **Region** with the application(s), the **Region** may require that a condition be imposed on the approval of an application (e.g. land division, subdivision and/or condominium) or may request that a (H) Holding Provision be included in a zoning by-law to ensure that the documents are completed to the **Region's** satisfaction prior to **development**.

2. Exceedances Identified in Phase Two ESA

If a **Phase Two ESA** identifies exceedances, the following four options are available to achieve conformity with the Protocol:

a. Site Remediation – Option 1

Where the proposal involves site remediation and the site is not being developed for a more sensitive use, the **QP** will be required to prepare an updated **Phase Two ESA** report in accordance with O.Reg. 153/04. The updated report must demonstrate that the subject property has been remediated and tested to ensure that it does not contain any exceedances, and that it has met the applicable **MECP SCS**.

b. Record of Site Condition (RSC) – Option 2

An **RSC** is mandatory under the *Environmental Protection Act*, when a **development** proposes a **Prescribed Change in Use**.

Depending on the circumstance (see **Appendix H**), if a **QP** submits an RSC to be filed on the Environmental Site Registry, prior to Regional sign-off on a **development** application, the **QP** will only be required to provide the **Region** with the following:

- **MECP's** acknowledgement letter, noting that the **RSC** was filed on the Environmental Site Registry; and
- any associated new or updated documents that were revised and requested by **MECP**.

Where significant soil removal is proposed in support of a complex **development** application (e.g. where below-grade parking or significant below-grade infrastructure and excavation/removals is proposed), the **Region's** requirement for an **RSC** may be deferred until prior to the issuance of a building permit for any above-ground construction work, subject to a condition that Area Municipal staff (e.g. Planning and Building), the Applicant and the Applicant's **QP** provide implementation strategy for soil removal in consultation with the **Region's** Planning Division, for inclusion within an appropriate Area Municipal **development** agreement.

Once the **Region** receives the **RSC**, Regional clearances may be granted and Area Municipal building permits may be issued for above-ground work.

If the **MECP's** acknowledgement letter for the **RSC** was issued more than 18 months prior to the date of submission of the planning application, the **Region** will require the **QP** to prepare an updated letter identifying the property's current condition, and provide a recommendation whether any further environmental site investigation should be required.

c. Risk Assessment – Option 3

If the Applicant and their **QP** determines that it is unreasonable to remediate the subject property due to significant contamination to **MECP** SCS Standards, a **Risk Assessment (RA)** must be prepared and submitted to **MECP** for review and acceptance.

MECP may also require a **Certificate of Property Use (CPU)** in accordance with the *Environmental Protection Act* and O.Reg. 153/04 to ensure risk management mitigation measures detailed in the RA are complied with, and are registered on title. **RAs** typically include an **RSC**, but may include a Risk Management Plan and a Public Communication Plan.

Should the Applicant pursue an **RA**, the **Region** and its **Area Municipalities** must receive confirmation that **MECP** has processed a [Risk Assessment Pre-Submission form](#).

Similar to Option 2 above (**RSC**), the **Region's** acknowledgement of receipt of an RA may be deferred until prior to the issuance of a building permit for above-ground construction work subject to the same conditions. Additional information on the **Region's** RA process is provided within **Appendix H**.

Once the **MECP** approves the **CPU**, it would issue its notice of a **CPU** to the Regional and Area Municipal Clerks. Once processed, the **MECP** will require the Owner to incorporate property-specific risk management conditions/measurements on-title for the subject property.

d. Peer Review – Option 4

Where minor exceedances have been identified on the subject property through the **SSQ** or **Phase One ESA**, the **Region** may undertake a **peer review** as an alternative to site remediation.

The **Region** has established a roster of consultants to provide **peer review** services qualified to review **ESAs** under O.Reg. 153/04.

The **Peer Review Consultant** may request supplementary supporting information to assist in their review of **ESA** reports in order to determine the appropriateness of the Applicant's **QP's** recommendations.

Provided that the proposal does not propose a **Prescribed Change in Use**, the **Region** may consider a **peer review** option to review **ESAs** and any supplementary information at the owner's expense under the following circumstances:

- if the Applicant's **QP** determines that minor soil, groundwater and sediment exceedances on a property pose little or no risk to human health and the environment; or
- if Area Municipal staff disputes the **QP's** findings and the recommendations of an **SSQ** or any **ESA** work.

Upon successful completion of a **peer review** and the receipt of the **QP's** completed Regional **Reliance Letter** and a **Certificate of Insurance**, the **Region** may waive the RSC requirement.

For matters relating to a Regional Interest, **Area Municipalities** may circulate **ESA** materials to the **Region** for **peer review**. **Area Municipalities** also have the option to undertake their own **peer review** process using a suitably qualified environmental consulting firm, provided that matters surrounding human health and the natural environment are not compromised. Additional information on the **Region's Peer Review Consultants** Roster and related procedures are provided in **Appendix J**.

Summary of Phase Two ESA Scenario Options

Development Scenario	No Exceedances (as determined by Phase Two ESA)	Exceedances (as determined by Phase Two ESA)
Development does not propose a Prescribed Change in Property Use	Option 1 <ul style="list-style-type: none"> No further investigation required Application may proceed 	Option 4 <ul style="list-style-type: none"> RSC Required, but if exceedance is minor the applicant may request a peer review process at the owner's sole expense
Development proposes a Prescribed Change in Property Use	Option 2 <ul style="list-style-type: none"> RSC Required pursuant to O. Reg 153/04 	Option 3 <ul style="list-style-type: none"> O.Reg. 153/04 applies Remediation and RSC are mandatory

5.2.3 Non-Potable Requests

If a **development** is within the **Region's** serviced urban area, a **QP** may request to use non-potable groundwater **MECP Site Condition Standards (SCS)**, where water is provided from a municipal drinking water supply. The **Region** may approve the use of **MECP's** Tables 3, 7 and 9 groundwater SCS for a site, subject to the process and criteria outlined in **Appendix L** of this Protocol on a case-by-case basis. Additional information on non-potable requests are provided in **Appendix K**.

This Protocol requires QP's to submit non-potable requests to the Clerk of the **Region** and the **Area Municipality**. This request must be filed with the applicable supporting environmental documents and fees.

1. *Regional Acceptance to use Non-Potable Site Condition Standards*

Where the Applicant meets the **Region's** non-potable request criteria (as identified under **Appendix L**), the **Region** may agree to use a non-portable standard and issue a non-objection letter. This letter would also be provided to **MECP** along with the supporting environmental reports and materials if the **development** proposal requires an **RSC** or an **RA**.

2. Regional Objection to the Non-Potable Site Condition Standards

Where a proposed **development** proposal cannot meet the **Region's** criteria for a non-potable request, the **Region** will issue a letter objecting to the request and will require the Applicant to use the potable groundwater **MECP SCS**.

5.3 Enhanced Investigation Properties (EIPs)

This Protocol assesses the appropriateness of evaluating **developments** impacted by **EIPs** as defined under O.Reg. 153/04. **EIP** uses consist of: **industrial** uses and the following **commercial** uses:

- a **garage** (i.e. an automotive repair facility);
- a **bulk liquid dispensing facility**; (including **gasoline outlets**); or
- a **dry-cleaning equipment operation**.

Following the submission of a **Phase One** and **Two ESA**, **EIP development** proposals are evaluated under two scenarios:

5.3.1 Scenario 1: Major Development Proposals and EIPs

A **development** proposal may be considered a **Major Development Proposal** where site contamination exists, or where significant site alteration is required. Depending on the levels of contamination, the Applicant or their QP may apply to use Options 2, 3 or 4 as described in **Section 5.2.2.2** of this Protocol in addition to the criteria provided in **Appendix M**.

5.3.2 Scenario 2: Minor Development Proposals and EIPs

Minor Development Proposals are proposals where the **EIP development** proposes minor or no site alteration (e.g. small accessory buildings, **development** within an existing building etc.). Under these circumstances, the requirement for an **ESA** associated with an **EIP** (in whole or in part) maybe waived at the **Region's** discretion on a case-by-case basis, provided that the Applicant can provide information to the satisfaction of the **Region** to demonstrate how the proposed **development** is considered minor.

5.3.3 Prescribed Change of Use Properties Previously Identified as an EIP

A property in whole or in part that was previously used as an **EIP** and an **RSC** was accepted/filed by the **MECP** on its Environmental Site Registry for sensitive property use (e.g. **residential, institutional, parkland** etc.) is no longer considered an EIP.

See **Appendix M** for more information on **EIP's**.

5.4 Multiple Consulting Firms Conducting Various ESA Work

This Protocol does not regulate an Applicant's ability to select an environmental consulting firm. Should an Applicant select multiple consulting firms to conduct ESA work for the same site (e.g. one firm prepares a **Phase One ESA**, whereas the other firm prepares a **Phase Two ESA**), the following is required:

1. That each environmental consulting firm involved in any environmental work on the subject property complete and submit a **Reliance Letter** and **Certificate of Insurance** in accordance with this Protocol; or
2. That the Applicant's preferred environmental consulting firm prepares and submits all supporting environmental work along with the associated **Reliance Letter** and **Certificate of Insurance** in accordance with this Protocol.

5.5 Regional Land Acquisition

All **development** applications that result in the transfer of land to the **Region** (e.g. **road** widenings, infrastructure improvements etc.) must ensure that the lands proposed to be conveyed to the **Region** are remediated or kept to a condition satisfactory for the **Region's** purposes. This may require demonstrated compliance in accordance with one of the following options on a case-by-case basis identified below:

1. That the acquired lands be transferred in a satisfactory state as determined by the **Region**; or
2. That the acquired lands are remediated to the applicable **MECP SCS**, which may require the following:

- a **QP** submitting an **RSC** to be filed on the Environmental Site Registry and that a receipt of the **MECP's RSC** in accordance with **Section 5.2.2.2 (b)** of this Protocol; or
- an Owner entering into an Indemnity Agreement with the **Region** (subject to Regional Council approval).

See **Appendix E** for more information on the Regional **ESA** process.

5.6 Miscellaneous Inquiries

All other inquiries relating to potential site contamination that are not specifically described within this Protocol will be reviewed by Regional staff on a case-by-case basis, in keeping with the intent of this Protocol and in accordance with O.Reg. 153/04.

Appendices

Appendix A:

Category of Sensitive Property Uses

Category of Sensitive Property Uses

The *Environmental Protection Act* prohibits prescribed changes in property use subject to an **RSC** being filed on the Environmental Site Registry for the property, which includes the proposed property use (**Prescribed Change in Property Use**). Generally, an **RSC** is required where an Applicant proposes to change the property use to a more sensitive use. Where a property consists of **mixed-uses** between two or more different categories, the most sensitive **Site Condition Standards (SCS)** applies. Applicants should refer to the *Environmental Protection Act* and O.Reg. 153/04 for a complete list of the **Prescribed Changes in Property Use** that require an **RSC** under the *Act*.

In accordance with Section 3 of O.Reg. 153/04, the following categories illustrate property uses from least to most sensitive.

Categories of Property Uses		
Least Sensitive		Most Sensitive
Category 1	Category 2	Category 3
Industrial	Residential	Agricultural
Commercial	Parkland	Other
Community	Institutional	-

Appendix B:

Site Screening Questionnaire Requirements

Prior to the submission of a **development** application, the Applicant must assess the property's sub-surface conditions to determine if it is potentially contaminated. This initial assessment will be undertaken as set out below.

All site-specific planning applications regardless of the approval authority that requires Regional concurrence, must complete (at a minimum) an **SSQ** form.

The following provides the **Region's SSQ** requirements for **development** proposals requiring a planning application(s):

Planning Applications that Require Owner/Agent Signature

- Minor Official Plan Amendments that propose limited **physical development** and/or not requiring a **Record of Site Condition (RSC)** under O.Reg. 153/04, including the following;
 - Temporary sales trailers;
 - Uses within an existing **residential** building or accessory buildings (e.g. secondary dwelling units; duplexes; triplexes; rental housing conversions; and home-based businesses etc.) not proposing a **Prescribed Change in Property Use**;
 - Proposals within existing **industrial**, **commercial** and/or **community** buildings not proposing a prescribed change of use, which only recommends broadening the range of permitted uses on a property;
- Minor Zoning By-law Amendments that propose limited **physical development** (as noted above) and not requiring an **RSC** under O.Reg. 153/04;
- Consent/Land Division:
 - Easements (for more than 21 years);
 - Leases;
 - Mortgages;
 - Title corrections;
 - Re-establishment of lot lines that have inadvertently merged;
 - Minor lot line adjustments (to the **Region's** discretion), affecting both the severed and retained parcels;
- Site Plan Review (where approved **SSQ/ESA** reports were completed within 18 months of a complete application being received); and

- Part Lot Control Exemption (where approved **SSQ/ESA** reports were completed within 18 months of a complete application being received).

Planning Applications that Require Both Owner/Agent and QP Signatures

- Major Official Plan Amendments (not going to a **Prescribed Change in Property Use** and requires **physical development**);
- Major Zoning By-law Amendments (not going to a **Prescribed Change in Property Use** and requires **physical development**);
- Draft Plans of Subdivision;
- Draft Plans of Condominium;
- Consent – both severed and retained parcels for:
 - New lot creation;
 - Major lot line adjustments (to the **Region's** discretion); and
- Any other **development** application at the **Region's** discretion not listed above, such as, but not limited to the following: Minister's Zoning Orders; Environmental Compliance Approvals; Class Environmental Assessments; or comments on a **development** proposal requested by any other external agency.

If the Applicant or the **QP** answers “Yes” to any question on the **SSQ**, a **Phase One ESA** will be required.

Environmental Site Assessment Exemptions for Consent Applications

Where an Owner/Agent answers “Yes” on the **SSQ**, on Consent applications for the sole purpose of an easement, lease, mortgage or title correction the requirement for additional environmental work may be waived, provided that the following can be demonstrated to the satisfaction of the **Region**:

- Conformity to the current area municipal zoning by-law; and
- The **development** does not pose any **physical development**.

Minor Variance Applications

If an Applicant submits a minor variance application, the **Region** encourages its **Area Municipalities** to use the **SSQ** form provided in **Appendix C**. However, **Area Municipalities** in consultation with the **Region**, may develop their own form for minor variance applications.

Where a minor variance application proposes a **prescribed change in property use** in accordance with O.Reg. 153/04, an **RSC** is mandatory.

Appendix C:

Site Screening Questionnaire (SSQ) Form



Regional Municipality of Durham
Planning and Economic Development Department
605 Rossland Road East
Whitby, ON L1N 6A3
Telephone: 905.668.7711
Toll Free: 1.800.372.1102
www.durham.ca

Site Screening Questionnaire for Identifying Potentially Contaminated Development Sites in the Regional Municipality of Durham.

This form must be completed for all planning applications unless two original copies and a digital copy of the applicable Environmental Site Assessment (ESA) work prepared in accordance with Ontario Regulation (O.Reg.) 153/04, as amended, is submitted to the approval authority in support of this development proposal. If you have any questions about this questionnaire, please contact the Regional Municipality of Durham as identified above.

Landowner Name: _____

Mailing Address (Street No. and Name): _____

Location of Subject Lands (Municipal Address): _____

Lot(s): _____ Concession(s): _____ Registered Plan #: _____

Former Township: _____ Municipality: _____

Related Planning Application(s) and File Number(s) _____

1. What is the current use of the property? Check the appropriate use(s):

Category 1: ☐ Industrial ☐ Commercial ☐ Community

Category 2: ☐ Residential ☐ Institutional ☐ Parkland

Category 3: ☐ Agricultural ☐ Other

Note: daycare facilities and a property that contains a religious building(s) are considered institutional uses. See Ontario Regulation 153/04, as amended, for definitions.

2. Does this development proposal require a change in property use that is prescribed under the *Environmental Protection Act* and O.Reg. 153/04 (e.g. a change to a more sensitive use from Category 1 to Category 2 or 3 as identified under Question 1)?
- ☐ Yes ☐ No
3. Has the property or any adjacent lands ever been used as an Enhanced Investigation Property (e.g. industrial uses; chemical warehousing; automotive repair garage; bulk liquid dispensing facility, including a gasoline outlet and/or a dry-cleaning equipment)?
- ☐ Yes ☐ No
4. Has fill ever been placed on the property?
- ☐ Yes ☐ No
5. Is the property or any adjacent lands identified as a wellhead protection zone (to confirm, please check the Ministry of the Environment, Conservation and Parks' [Source Protection Information Atlas](#))?
- ☐ Yes ☐ No
6. Is the property within 250 metres from an active or decommissioned landfill/dump, waste transfer station or Polychlorinated Biphenyl (PCB) storage site?
- ☐ Yes ☐ No
7. Has the property ever stored/generated/accepted hazardous materials requiring Hazardous Waste Information Network (HWIN) registration or other permits?
- ☐ Yes ☐ No
8. Does the subject lands or lands abutting it previously or currently support one or more of the Potentially Contaminating Activities identified in Table 2 of Schedule D of O.Reg 153/04, as amended (see attachment)?
- ☐ Yes ☐ No

If Yes was selected in any of the questions above, a Phase One ESA (and possibly a Phase Two) at a minimum prepared in accordance with O.Reg. 153/04, is required. Please submit two hard copies and a digital copy of the Phase One and/or a Phase Two ESA with satisfies the requirements of O.Reg 153/04, as amended. ESA's maybe waived at the Region's discretion provided that the Applicant/Qualified Person (QP) can satisfactorily demonstrate that the response(s) does not pose a risk to human health and the environment.

The Region must be granted third party reliance on all ESA work through the completion of its Reliance Letter and Certificate of Insurance. Regional third-party reliance is not required if the Ministry of the Environment, Conservation and Parks (MECP) approves a Record of Site Condition and/or gives notice of a Certificate of Property Use where applicable.

* In accordance with Appendix M, the Region may scope the Environmental Site Assessment requirements for minor development proposals on Enhanced Investigation Properties (e.g. accessory structures) or determine if additional environmental work is required.

Declarations:

A Qualified Person sign-off may not be required for all planning applications. Exemptions include, but are not limited to: land division applications for leases; mortgages; title corrections; re-establishment of lot lines (where title inadvertently merged) or minor lot line adjustments. For a full list of QP exemptions, please see Appendix B of the Regional Municipality of Durham's Soil and Groundwater Assessment Protocol.

To the best of my knowledge, the information provided in this questionnaire is true, and I do not have any reason to believe that the subject property contains contaminants at a level that would interfere with the proposed property use. I am a Qualified Person in accordance with Ontario Regulation 153/04 and carry the required liability insurance in accordance with Appendix F of the Regional Municipality of Durham's Soil and Groundwater Assessment Protocol.

Qualified Person:

Name (Please Print) _____

Signature: _____

Name of Firm: _____

Address: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Date: _____

Professional Seal:

Property Owner, or Authorized Officer:

Name (Please Print) _____

Signature: _____

Name of Company (if Applicable): _____

Title of Authorized Officer: _____

Address: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Date: _____

Regional File Number: _____

Area Municipal File Number: _____

Appendix D:

List of Potentially Contaminating Activities

Table 2 – Ontario Regulation 153/04

Records of Site Condition – Part XV.1 of the *Environmental Protection Act*

Ministry of the Environment, Conservation and Parks

Item	Potentially Contaminated Activity (PCAs)
1.	Acid and Alkali Manufacturing, Processing and Bulk Storage
2.	Adhesives and Resins Manufacturing, Processing and Bulk Storage
3.	Airstrips and Hangars Operation
4.	Antifreeze and De-icing Manufacturing and Bulk Storage
5.	Asphalt and Bitumen Manufacturing
6.	Battery Manufacturing, Recycling and Bulk Storage
7.	Boat Manufacturing
8.	Chemical Manufacturing, Processing and Bulk Storage
9.	Coal Gasification
10.	Commercial Autobody Shops
11.	Commercial Trucking and Container Terminals
12.	Concrete, Cement and Lime Manufacturing
13.	Cosmetics Manufacturing, Processing and Bulk Storage
14.	Crude Oil Refining, Processing and Bulk Storage
15.	Discharge of Brine related to oil and gas production
16.	Drum and Barrel and Tank Reconditioning and Recycling
17.	Dye Manufacturing, Processing and Bulk Storage
18.	Electricity Generation, Transformation and Power Stations
19.	Electronic and Computer Equipment Manufacturing
20.	Explosives and Ammunition Manufacturing, Production and Bulk Storage

Item	Potentially Contaminated Activity (PCAs)
21.	Explosives and Firing Range
22.	Fertilizer Manufacturing, Processing and Bulk Storage
23.	Fire Retardant Manufacturing, Processing and Bulk Storage
24.	Fire Training
25.	Flocculants Manufacturing, Processing and Bulk Storage
26.	Foam and Expanded Foam Manufacturing and Processing
27.	Garages and Maintenance and Repair of Railcars, Marine Vehicles and Aviation Vehicles
28.	Gasoline and Associated Products Storage in Fixed Tanks
29.	Glass Manufacturing
30.	Importation of Fill Material of Unknown Quality
31.	Ink Manufacturing, Processing and Bulk Storage
32.	Iron and Steel Manufacturing and Processing
33.	Metal Treatment, Coating, Plating and Finishing
34.	Metal Fabrication
35.	Mining, Smelting and Refining; Ore Processing; Tailings Storage
36.	Oil Production
37.	Operation of Dry-Cleaning Equipment (where chemicals are used)
38.	Ordnance Use
39.	Paints Manufacturing, Processing and Bulk Storage
40.	Pesticides (including Herbicides, Fungicides and Anti-Fouling Agents) Manufacturing, Processing, Bulk Storage and Large-Scale Applications
41.	Petroleum-derived Gas Refining, Manufacturing, Processing and Bulk Storage
42.	Pharmaceutical Manufacturing and Processing
43.	Plastics (including Fibreglass) Manufacturing and Processing
44.	Port Activities, including Operation and Maintenance of Wharves and Docks
45.	Pulp, Paper and Paperboard Manufacturing and Processing

Item	Potentially Contaminated Activity (PCAs)
46.	Rail Yards, Tracks and Spurs
47.	Rubber Manufacturing and Processing
48.	Salt Manufacturing, Processing and Bulk Storage
49.	Salvage Yard, including automobile wrecking
50.	Soap and Detergent Manufacturing, Processing and Bulk Storage
51.	Solvent Manufacturing, Processing and Bulk Storage
52.	Storage, Maintenance, Fueling and Repair of Equipment, Vehicles, and Material used to Maintain Transportation Systems.
53.	Tannery
54.	Textile Manufacturing and Processing
55.	Transformer Manufacturing, Processing and Use
56.	Treatment of Sewage equal to or greater than 10,000 litres per day
57.	Vehicles and Associated Parts Manufacturing
58.	Waste Disposal and Waste Management, including thermal treatment, landfilling and transfer of waste, other than use of biosoils as soil conditioners
59.	Wood Treating and Preservative Facility and Bulk Storage of Treated and Preserved Wood Products*

The above-noted PCAs may change from time-to-time. Please refer to O.Reg.153/04 for the official list of PCAs.

Appendix E:

Detailed Environmental Site Assessment Processes

Phase One Environmental Site Assessment (ESA) Report

A **Phase One Environmental Site Assessment (Phase One ESA)** involves the study of a property by a **Qualified Person (QP)**, a person defined by O.Reg. 153/04, to determine the likelihood that one or more soil, groundwater and/or sediment contaminants are present in or on a subject property. A **Phase One ESA** typically consists of records review, interviews and site visits/reconnaissance.

If a **QP** concludes that there are no **Potentially Contaminating Activities (PCA)** on or within 250 metres of the subject property, the **QP** will be required to complete and submit a Regional **Reliance Letter** and **Certificate of Insurance** (see **Appendices F** and **G**). Once received, no further site investigation will be required.

If a **QP** concludes that one or more PCAs on or within 250 metres of the subject property is considered an **Area of Potential Environmental Concern (APEC)** as described under the Terminology section of this Protocol in **Appendix Q**, a **Phase Two ESA** and the associated criteria identified under Section 5.2.2 of this Protocol will be required.

Phase Two Environmental Site Assessment (ESA) Report

A **Phase Two ESA** involves the study of a property by a **QP** to determine the location and concentration of one or more contaminants in the soil and/or groundwater of a subject property. This is typically done through soil and/or groundwater testing in areas where **APECs** are identified on a subject property. Soil and/or groundwater samples are analyzed to determine whether the concentration of one or more contaminants exceed the applicable **MECP Site Condition Standards**.

Where a **Prescribed Change in Property Use** is proposed for a site, an RSC is mandatory pursuant to the *Environmental Protection Act* and O.Reg. 153/04. Under these circumstances, a **Phase Two ESA** may be submitted to the **Region** in support of any planning application.

Where a **Prescribed Change in Property Use** is not proposed at a site, the **Region** will require a **Phase Two ESA** where the Phase One ESA identifies one or more **APECs** on a subject property. Examples of various **APECs** are:

- A potential for site contamination that may be present because of current or historical uses and activities on the site;
- Exportation and importation of soil/fill moved to the subject property from an off-site location;
- An **Enhanced Investigation Property (EIP)**; and
- A **Potentially Contaminating Activity (PCA)** as set out in Table 2 of Schedule D of O.Reg. 153/04, as amended (**Appendix C**), is located on or within 250 metres of a subject property.

Phase Two ESA Exemptions

Where a QP concludes that the **Phase One ESA** for a subject property does not identify the potential for site contamination or a prescribed change of use is not proposed, a **Phase Two ESA** requirement will be waived and the planning application may proceed toward approval, subject to all other requirements of the approval authority being met.

In addition, where a planning application does not propose a prescribed change of use and where **physical development** is not proposed, a **Phase Two ESA** requirement may be waived for a subject property based on its current site conditions, but not limited to: topography; the direction of surface and/or groundwater flow; and the completion of previous environmental work.

A **Phase Two ESA** will also not be required where an RSC was previously filed on the Environmental Site Registry on or after July 1, 2011 and a Phase One ESA Update Report or Update Letter confirms that the environmental conditions on the subject property have not changed the filing of the RSC on the Environmental Site Registry.

RSCs filed on the Environmental Site Registry before July 1, 2011 are no longer acceptable by the **Region** for the purposes of this Protocol. The July 1, 2011 date represents the date the **MECP** changed the **MECP Site Condition Standards (SCS)**.

Under these circumstances, **Updated ESA Documents** must be submitted to confirm that the site meets the current **MECP SCS** unless the **Updated ESA Documents** concludes that a **Phase Two ESA** is not required.

Reliance Letters and Certificate of Insurance Forms

Phase One and **Phase Two ESA's** (including all supporting/updated documentation) must be accompanied by a **QP** signed and sealed Regional **Reliance Letter** (see **Appendix D**) granting third-party reliance on the report(s), and a completed Regional **Certificate of**

Insurance (see **Appendix G**). If the **QP** is unable to grant the **Region** third-party reliance on the **QP's ESA** work, the **Region** may require the Applicant to file an **RSC**. **QPs** are also required to carry liability insurance with a minimum indemnity limit of \$2 million per claim and \$4 million in aggregate.

The **Region** encourages these forms to be completed in their entirety through the submission of a planning application(s). However, these forms may be submitted prior to final approval provided that conditional approval can be granted through the application process.

QPs are not required to submit **Reliance Letter** or **Certificate of Insurance** forms to the **Region** when the **QP** confirms they are submitting the same ESA reports to **MECP**, or its successor as part of an **RSC** or **RA** approval process.

Environmental Site Assessment Reporting Requirements

All **Environmental Site Assessment (ESA)** documents must:

- Be prepared by a **Qualified Person (QP)** in accordance with the *Environmental Protection Act* (EPA) and O.Reg. 153/04;
- Satisfy the regulatory requirements of O.Reg. 153/04, as amended; and
- Be based on current work (e.g. the date of the report must be completed within 18 months from when a planning application is deemed complete by the **Region** or the **Area Municipality**, where appropriate).

If an ESA document exceeds 18 months, the **Region** will require the **QP** to submit updated material or **Updated ESA Documents** (Phase One/Two) which validates that no significant changes to the site or its soil/groundwater/sediment conditions have occurred following the completion of the original **ESA** work.

The **Region** will not consider due diligence site assessments that are prepared in accordance with the Canadian Standards Association (CSA) requirements.

Appendix F:

Regional Municipality of Durham Reliance Letter



Reliance Letter
Regional Municipality of Durham
Planning and Economic Development Department
605 Rossland Road East
Whitby, ON L1N 6A3
Telephone: 905.668.7711
Toll Free: 1.800.372.1102
www.durham.ca

Reliance Letter (to be presented on Company ABC's letterhead)

At the request of Property Owner or Developer's Name and for other good and valuable consideration, ABC Engineering Ltd. represents and warrants to the Regional Municipality of Durham ("Region") that the reports and work are completed in accordance with Ontario Regulation 153/04 (O.Reg.153/04), unless stated otherwise in the documents, for the purposes of filing a Record of Site Condition in accordance with O.Reg. 153/04 and was completed by or under the supervision of a Qualified Person within the meaning of the *Environmental Protection Act* and O.Reg. 153/04, as amended from time to time.

[ABC Engineering Ltd.] agrees that the Region and its Peer Review Consultants may rely upon the reports listed herein referenced by the Region as [File No. xxx], including the representations, assumptions, findings, and recommendations contained in the reports:

Phase I ESA, date, report type, author (QP), company (mandatory)

Phase II ESA, date, report type, author (QP), company (mandatory)

Other Environmental Site Assessment Documentation, RSC, PSF, RA, CPU (if applicable)

[ABC Engineering Ltd.] further agrees that that in the case of any inconsistency between this Reliance Letter and any limitations set out in the aforementioned reports, this letter shall take priority.

[ABC Engineering Ltd.] understands and agrees that it is appropriate to extend reliance to the Region in relation to the reports listed herein so as to assist the Region in its assessment of the environmental suitability of the site and/or request to use non-potable groundwater standards.

[ABC Engineering Ltd.] further agrees that it will promptly notify the Region upon receipt of notice by the Ministry of the Environment, Conservation and Parks that the Ministry intends to audit any report listed herein and if so, to provide the Region with written confirmation of the results of the audit (Only applicable if filing the report as part of RSC or RA).

[ABC Engineering Ltd.] represents and warrants that it complies with all applicable insurance provisions contained within O.Reg. 153/04, as amended.

[ABC Engineering Ltd.] shall provide the Region with proof of insurance and maintain a minimum Professional Liability insurance coverage of \$2,000,000 per claim and \$4,000,000 aggregate.

[ABC Engineering Ltd.] agrees that its liability to the Region shall not be limited to an amount less than the Region's minimum insurance requirements set out immediately above.

[ABC Engineering Ltd.] agrees that it shall be responsible to indemnify and save the Region harmless from any and all claims, demands, causes of action, costs, including defending against any legal proceedings or other damages howsoever arising from the Region's direct or indirect reliance upon the representations, findings, assumptions and conclusions contained in the reports prepared by [ABC Engineering Ltd.] listed herein save and except any damages, claims, demands, actions or causes or action arising out of or as a result of the negligent actions of the Region, its agents or employees.

Signed and Sealed by Qualified Person:

_____ Date: _____

Signed by person authorized to bind Consulting Firm:

_____ Date: _____

Signed by Property Owner or Authorized Officer: _____

Name (please print): _____

Name of Company (if applicable): _____

Title of Authorized Officer: _____

Address: _____

Telephone: _____

Fax/Email: _____

Date: _____

Note: Edits to this document are only permitted in areas underlined and marked in italics
e.g. [ABC Engineering Ltd.]

Appendix G:

Regional Municipality of Durham Certificate of Insurance



**The Regional Municipality of
Durham**
**Finance – Insurance and Risk
Management**

Certificate of Insurance

**Proof of liability insurance will be
accepted on this form only.**

**This form must be completed and signed
by your agent, broker or insurer.**

**All insurers shown must be licensed to
operate in Canada**

This is to certify that the Named Insured hereon is insured as described below

Named Insured:

Address of the Named Insured

Location and operations of the Named Insured for which Certificate is issued: All
operations performed for the Region of Durham

Insuring company	Policy numbers	Limit of coverage	Effective date	Expiry date
	Commercial General Liability	Per Claim / Annual Aggregate Deductible, if any	D/M/Y	D/M/Y
	Excess Liability (if applicable)	Per Claim / Annual Aggregate	D/M/Y	D/M/Y

Provisions of Amendments or Endorsements of Listed Policy(ies)

Professional Liability – Claims Made Basis – ☐Yes ☐No

Insuring company	Policy numbers	Limit of coverage	Effective date	Expiry date
	Professional Liability	Per Claim / Annual Aggregate	D/M/Y	D/M/Y

Insuring company	Policy numbers	Limit of coverage	Effective date	Expiry date
		Deductible, if any		
	Excess Professional Liability (if applicable)	Per Claim / Annual Aggregate	D/M/Y	D/M/Y

Is the limit inclusive of indemnity and claims expenses - ☐Yes ☐No

If the policy is on a claims made basis have there been any claims notices given for this policy term – ☐Yes ☐No

Commercial General Liability is issued on an 'occurrence' basis form and is extended to include Personal Injury Liability, Contractual Liability, Non-Owned Automobile Liability, Owner's and Contractor's Protective Coverage, Products/Completed Operations, Contingent Employer's Liability, Cross Liability Clause and Severability of Interest Clause.

With respect to Commercial General Liability Insurance, The Regional Municipality of Durham is added as an Additional Insured but only with respect to its liability arising out of the operations of the Named Insured.

The policy(ies) identified above shall apply as primary insurance and not excess to any other insurance available to The Regional Municipality of Durham.

If cancelled or changed so as to reduce the coverage as outlined on this certificate, during the period of coverage as stated herein, thirty (30) days, prior written notice by registered mail will be given by the Insurer(s) to: The Regional Municipality of Durham, Attention: Insurance and Risk Management, Finance Department, 605 Rossland Road East, Whitby, ON, L1N 6A3

I certify that the insurance is in effect as stated in this certificate and that I have authorization to issue this certificate for and on behalf of the insurer(s).

Date

Name, Address, Fax and
Telephone Number of
Certifying Party

Signature of Authorized
Representative or Official

Print Name of above
Authorized Representative
or Official

Appendix H:

Detailed Record of Site Condition Process

Records of Site Condition (RSC)

Under Part XV.1 of the *Environmental Protection Act* (EPA), **RSCs** are submitted by a **QP** to the Ministry of the Environment, Conservation and Parks (**MECP**). The RSC provides a “snapshot” in time summary of the environmental condition for the subject property.

RSCs are filed on the **MECP’s** Environmental Site Registry. Documents submitted in support of an **RSC** filing may include ESA reports, remediation reports, **Risk Assessment** reports, reports prepared in response to a **MECP** order or a **MECP** request and any other reports relating to the presence of a contaminant on, in or under the property.

In cases where an **RSC** is required by the *Environmental Protection Act*, or this Protocol, a copy of the **RSC** and supporting documentation, including the **MECP’s** acknowledgement letter, updated reports and any audit and review correspondence including orders or **Certificates of Property Use (CPU)** issued by **MECP** must be submitted to the **Region** and the **Area Municipality** before Regional final clearance of conditions or approval can be provided. To determine whether the **MECP** has previously accepted/filed an **RSC**, please see the following links:

- for **RSC’s** filed [between October 1, 2004 and June 30, 2011](#); and
- for **RSC’s** filed [since July 1, 2011](#).

Notwithstanding the foregoing, in some cases the requirements associated with the filing of an **RSC** and the municipality’s receipt of the **RSC** for a subject property may vary and may be secured through the following:

- through official plan policy which directs the submission of the required documentation through a subsequent planning approval such as a zoning by-law amendment (rezoning), a subdivision or site plan application;
- as a condition imposed through a rezoning application which precludes the removal/lifting of a Holding (H) Zone provision;
- as a condition of approval to be fulfilled prior to final approval of a related application (e.g. subdivision, condominium, consent);

- on a case-by-case basis in consultation with the **Area Municipality**, the Applicant and the Applicant's **QP** which coordinates a strategy to the **Region's** satisfaction through an appropriate subsequent planning application process prior to any building permit approvals for aboveground construction; and
- as a requirement of applicable law under the *Building Code Act*, 1992, as amended prior to the issuance of a building permit (where there are no approvals required under the *Planning Act*, excluding Minor Variances).

Where an **RSC** may not be achievable, or there may be other measures that could be applied to address specific environmental issues, the Applicant's **QP** must contact the York-Durham District **MECP** office to discuss available options.

Detailed Site Assessment

The following **development** scenarios are intended to assist the Applicant and their **QP** to determine whether an **RSC** is required in accordance with this Protocol. See **Appendix I** for a chart which details each scenario.

Scenario A – Development does not Propose a Prescribed Change in Property Use and No Exceedances

For **developments** not proposing a **Prescribed Change in Property Use**, an **RSC** is not required where the **Site Screening Questionnaire (SSQ)** or **Phase One ESA** does not reveal any exceedances or where the **Phase Two ESA** reveals that the sub-surface conditions are within the applicable **MECP Site Condition Standards (SCS)**. Under these circumstances, the Applicant will not be required to conduct further environmental investigations, provided that they provide the following:

- a **Region** of Durham **SSQ** form is completed in accordance with **Appendix C**; or
- a professional statement in an **Environmental Site Assessment (ESA)** confirming no further investigations and that the site is suitable for proposed property use and supported with the following Regional documents:
 - **Reliance Letter** (completed in accordance with **Appendix F**); and
 - **Certificate of Insurance** (completed in accordance with **Appendix G**).

Scenario B – Development does not Propose a Prescribed Change in Property Use and Exceedances

An **RSC** is optional if the **Phase Two ESA** findings reveal sub-surface conditions which exceed the **MECP SCS** but does not propose a **Prescribed Change in Property Use**. In accordance with Section 5.2.2.2 of this Protocol, the Applicant has the following options:

- update the **Phase Two ESA** (post remediation);
- an **RSC**;
- a **Risk Assessment (RA)**; or
- arrange to have the **Region peer review** the reports.

Whichever option the Applicant and the Applicant's **QP** selects, the **Region** will require the submission of the associated supporting materials prior to the Municipality issuing its final approval for the proposed **development**.

Scenario C – Development Proposes a Prescribed Change in Property Use

In accordance with the O.Reg. 153/04, an **RSC** is mandatory if the **development** proposes a **Prescribed Change in Property Use**, regardless whether or not exceedances are discovered on the subject property. This scenario will require the Applicant to provide the **Region** (and the **Area Municipality**, if requested) a copy of the **RSC** filed on the Environmental Site Registry, the written acknowledgement provided by the **MECP**, along with any additional supporting materials before the planning application can be approved.

Scenario D – Minor Variances which Propose a Prescribed Change in Property Use

As noted in **Appendix B**, where a more **Prescribed Change in Property Use** is introduced through a Minor Variance application an **RSC** is also mandatory.

Detailed Site Assessment for Mixed-Use Properties

This Protocol is developed in accordance with O.Reg 153/04. The following scenarios provide updated regulatory changes for **mixed-use development** proposals that may require an **RSC** (for the complete list of regulatory changes, please refer to O.Reg. 153/04).

Scenario E – Conversion of an Existing Low-Rise Commercial/Community Building to Accommodate Mixed-Uses

An **RSC** is not required to convert an existing low-rise **commercial** and/or **community** building into a **mixed-use development** which also includes **residential/institutional** use(s) provided that the following criteria is met:

- a Regional **SSQ** Form is completed in accordance with **Appendix C**; or
- a professional statement in an **Environmental Site Assessment (ESA)** confirming no further investigations and that the site is suitable for proposed property use and supported with the following:
 - Regional **Reliance Letter** (completed in accordance with **Appendix F**); and
 - **Certificate of Insurance** (completed in accordance with **Appendix G**).

In either scenario above, the **QP** must also demonstrate the following:

- that the building has no more than six storeys before the change and will be no more than six storeys after the change;
- that **residential** and/or **institutional** uses are restricted to floors above the ground floor;
- that the existing building envelope must remain unchanged and no proposed horizontal and/or vertical addition(s) to the exterior portions of the building; and
- that the subject property containing the existing building is not used or has not been historically used in whole or in part as an **Enhanced Investigation Property (EIP)** (e.g. **industrial**, a **garage**, a **bulk liquid dispensing facility**, and/or a **dry-cleaning equipment establishment**).

Scenario F – Conversion of Existing Mixed-Use Buildings to Support Only Residential or Institutional Land Uses

An **RSC** is not required for **development** proposals on a subject property intending to convert an existing **mixed-use** building(s) supporting **community** or non-**EIP commercial** use(s) and **residential** or **institutional** uses to only include **residential** or **institutional** land uses provided that the following criteria is met:

- a Regional **SSQ** Form is completed in accordance with **Appendix C**; or

- a professional statement in an **Environmental Site Assessment (ESA)** confirming no further investigations and that the site is suitable for proposed property use and supported with the following:

In either scenario above, the **QP** must also demonstrate the following:

- that a part of the building was used for either **residential** or **institutional** uses and the other part of the building was used for either **commercial** or **community** uses before the proposed change in use to the building;
- that the existing building envelope remain unchanged and there would not be any horizontal and/or vertical addition(s) to the exterior portions of the building after the change in use to the building;
- that the subject property containing the existing building is not used or has not ever been used in whole or in part as an **EIP**; and
- if a fully **commercial/community** building was not previously converted into a **mixed-use** building.

Scenario G – Conversion of Existing Buildings Used for the Indoor Gathering of People for Religious Purposes

In accordance with O.Reg. 153/04, religious buildings are categorized as **institutional** uses.

An **RSC** is not required to convert a religious building (used for the indoor gathering of people for religious purposes) to a **residential** use or a daycare establishment in the same building.

In accordance with O.Reg 153/04, an **RSC** is mandatory if a property used for **industrial/commercial/community** purposes is legally converted to a religious building.

Scenario H – Mixed-Use - All Other Change of Uses

An **RSC** is mandatory for all other **mixed-use development** proposals that are not described in Scenarios E to G above.

Approaches to Remediating Sites and Filing an RSC

Various approaches to remediating contaminated sites in Ontario are provided below:

1. a site can be remediated to meet the Typical Background Conditions which are set out in Table 1 of the **MECP Site Condition Standards (SCS)**;

2. a site can be remediated to meet Generic Site Condition Standards for the proposed use(s) which are set out in Tables 2 through 9 of the **MECP SCS**; and
3. a site can be remediated or meet the **Property Specific Standards** developed through a **Risk Assessment** prepared by a **QPRA**.

All approaches are based on **MECP SCS** for soil, groundwater and sediment as part of O.Reg. 153/04. Tables 1 to 9 in the **MECP SCS** set out prescribed contaminants and the maximum concentration for various property uses. Each approach is described below.

Approach 1 – Remediating to Table 1 Standards

Table 1 soil standards are typical background conditions derived from the Ontario Typical Range values for specific property uses and reflect typical province wide background concentrations in soils that are not contaminated. The groundwater standards in Table 1 are considered to be the most pristine and were derived to provide the highest level of protection to human health and ecosystems.

Approach 2 – Remediating to Table 2 through 9 Standards

Tables 2 through 9 of the **MECP SCS** are generic conditions where the Province has utilized a set of assumptions to develop standards that can be applied to all sites throughout the Province for different property uses. Each Table is applied to specific circumstances (e.g. proximity to bedrock and bodies of surface water).

Tables 2, 4, 6 and 8 of the **MECP SCS** are typically used in rural areas, where properties are serviced by private wells (potable groundwater). Tables 3, 5, 7 and 9 of the **MECP SCS** may be applied in municipally serviced urban areas, provided that the **QP** can demonstrate that surrounding property uses (e.g. within 250 metres of the subject property) will not adversely impact existing serviced private wells as discussed in detail under **Section 5.2.3** and **Appendix K** of this Protocol.

Based on the existing **MECP SCS** applicable to the **Region's** geography, this Protocol will recognize the use of all Full Depth Tables. Where the Applicant proposes to use the Stratified Soil **MECP SCS** (either Table 4 or 5 of the **MECP SCS**) in support of a planning application, the Applicant may be required to engage in the **Region's peer review** process.

Approach 3 - The Risk Assessment Process

The **Risk Assessment** approach is used when the Applicant determines that it is unreasonable to remediate a **development** site to meet the generic standards set out in the **MECP SCS**. If pursued, the Applicant's **QP** will be required to prepare and submit all documents in support of a **Risk Assessment**. Similar to **RSC's**, these reports may consist of, but are not limited to the following: **ESAs**; remediation; **Risk Assessment**; any other reports prepared in response to an **MECP** order or an **MECP** request and any other reports relating to the presence of a contaminant on, in or under the property.

Appendix I:

Detailed Site Assessment Chart for Records of Site Condition

Scenarios	RSC Required	Materials Required to Satisfy the Region's Soil and Groundwater Assessment Protocol
Proposed development site does not contain site contamination and does not propose a Prescribed Change in Property Use (typically a more sensitive property use)	No	<ul style="list-style-type: none"> A Regional Site Screening Questionnaire (SSQ) (completed in accordance with Appendix C) A professional statement in an Environmental Site Assessment (ESA) confirming no further investigations and that the site is suitable for proposed property use and supported with the following: <ul style="list-style-type: none"> Regional Reliance Letter; and Certificate of Insurance
Proposed development site does not contain site contamination but proposes a Prescribed Change in Property Use	Yes	<ul style="list-style-type: none"> Proof that an RSC (post July 1, 2011) was filed on the Environmental Site Registry. If the filing of the RSC exceeds 18 months, Updated ESA Documents from a Qualified Person (QP) will be required
Proposed development site contains site contamination but does not propose a Prescribed Change in Property Use	Yes	<ul style="list-style-type: none"> An updated ESA report, which documents the remediation methods undertaken on the subject property; or Proof that an RSC (post July 1, 2011) was filed on the Environmental Site Registry. If the filing of the RSC exceeds 18 months, Updated ESA Documents from a QP may be required; or Receipt of a Certificate of Property Use, where site contamination is intended to meet Property Specific Standards established through a Risk Assessment; or

Scenarios	RSC Required	Materials Required to Satisfy the Region's Soil and Groundwater Assessment Protocol
		<ul style="list-style-type: none"> The completion of a successful peer review paid entirely by the Applicant
Proposed development site contains site contamination and proposes a Prescribed Change in Property Use	Yes	<ul style="list-style-type: none"> Proof that a Record of Site Condition (post July 1, 2011) was filed on the Environmental Site Registry. If the filing of the RSC exceeds 18 months, Updated ESA Documents from a QP will be required.
Existing mixed-use Commercial / Community – Residential / Institutional Development site proposes a more sensitive land use	No	<ul style="list-style-type: none"> A Regional SSQ (completed in accordance with Appendix C); or A professional statement in an ESA confirming no further investigations and that the site is suitable for proposed property use supported with the following: <ul style="list-style-type: none"> Regional Reliance Letter; and Certificate of Insurance; In either scenario above, the QP must also demonstrate the following <ul style="list-style-type: none"> That the existing building envelope will remain unchanged and no addition(s) are proposed to the exterior portions of the building That the change to a residential and/or institutional use is restricted to floors above the ground floor; That the building has no more than six storeys before the change and will be no more than six storeys after the change; and That the subject property containing the existing building is not used or has not been ever used in whole or in part as an EIP

Scenarios	RSC Required	Materials Required to Satisfy the Region's Soil and Groundwater Assessment Protocol
<p>Existing mixed-use Commercial / Community – Residential / Institutional Development site proposes only Residential/Institutional (sensitive) uses throughout the existing building</p>	<p>No</p>	<ul style="list-style-type: none"> • A Regional SSQ (completed in accordance with Appendix C); or • A professional statement in an ESA confirming no further investigations and that the site is suitable for proposed property use supported with the following: <ul style="list-style-type: none"> ○ Regional Reliance Letter; and ○ Certificate of Insurance; • In either scenario above, the QP must also demonstrate the following <ul style="list-style-type: none"> ○ That a part of the building was used for either residential or institutional uses and the other part of the building was used for either commercial or community uses before the proposed change in use to the building; ○ That the existing building envelope will remain unchanged and no addition(s) are proposed to the exterior portions of the building; ○ That the subject property containing the existing building is not used or has not been ever used in whole or in part as an EIP; and ○ That the existing mixed-use was not exempt from filing an RSC when the property was converted to mixed-uses.

Scenarios	RSC Required	Materials Required to Satisfy the Region's Soil and Groundwater Assessment Protocol
A development site that proposes to convert an existing Industrial / Commercial / Community use building to a place of worship	Yes (After January 1, 2021)	<ul style="list-style-type: none"> • A Regional SSQ (completed in accordance with Appendix C); or • A professional statement in an ESA confirming no further investigations and that the site is suitable for proposed property use supported with the following: <ul style="list-style-type: none"> ○ Regional Reliance Letter; and ○ Certificate of Insurance

Appendix J:

Peer Review Process for Brownfield sites

If the **QP** determines that exceedances on a subject site pose little or no risk to human health and the environment, the Applicant may submit a written request along with the associated fees and documents to the Regional Planning and Economic Development Department requesting the **Region** to conduct a **peer review** in support of the **development** proposal. The **Region** will review the request to confirm whether it is eligible for a **peer review**. Any application that proposes a **Prescribed Change in Property Use** is not eligible for **peer review** and must submit a letter or acknowledgement from the Ministry of the Environment, Conservation and Parks (**MECP**) that a **Record of Site Condition (RSC)** was filed on the Environmental Site Registry.

Should the **peer review** process be deemed appropriate, the **Region** will select the next **Peer Review Consultant** from the Council-approved roster and ask the Consultant to provide the following:

- cost estimates to review any **ESA** reports and any associated materials requested by the **Region** in support of the **development** proposal (per submission);
- any potential conflicts of interest;
- project Team list and their job title(s) assigned to the **peer review**;
- anticipated time schedule required to complete the **peer review**; and
- anticipated completion date of the **peer review**.

Regional **Peer Review Consultants** should consider the following questions as guidelines in support of their technical review response of the **ESA** work and any associated materials for the **development** proposal:

- were the **ESA** reports submitted prepared in accordance (or consistent) with Provincial legislation (i.e. O.Reg. 153/04) and Regional requirements? If a **QP** considers their report “consistent with” Provincial and Regional requirements, has the **QP** identified how their investigation and reporting requirements deviate from O.Reg. 153/04 and this Protocol?
- are any additional supporting documents/materials required?

- what, if any, are the potential or expected impacts on human health and the environment within the study area?
- are further environmental investigations required? (e.g. have **APECs** been properly identified and investigated and has suitable work been completed in accordance with O.Reg. 153/04?)
- are adverse off-site impacts (including potable wells) expected based on the on-site and study area investigations?
- do you agree that environmental conditions at the site are appropriate for the proposed property use(s) (e.g. **residential/parkland** or **industrial/commercial**)?
- is the Applicant's environmental work completed by their environmental consultant team comprehensive and does it satisfactorily demonstrate the soil, groundwater and sediment conditions of the subject property?
- does the study area outlined in the **ESA** reports sufficiently cover any potential off-site migration?
- do the environmental reports submitted accurately represent the environmental conditions on and off site?
- do you agree with the Applicant's **QP's** analysis, assessment results, conclusions and recommendations?
- does the Applicant's environmental consultant team meet regulatory **QP** credential requirements?

Amending the Terms of Reference where Necessary

Upon receipt of the **Peer Review Consultant's** cost estimate, Regional staff will provide a letter to the Applicant for their acceptance of the cost estimate and the required fees (in accordance with the applicable Regional Planning Fee By-law), made payable to the **Region**.

If the Applicant signs and accepts the cost estimate and provides the associated fees, Regional staff will prepare a letter to its **Peer Review Consultant**, confirming the Applicant's concurrence to initiate the **peer review** process.

The **Peer Review Consultant** is required to complete and submit a copy of the draft **peer review** report to staff for review within 30 days from the date the assignment is awarded. Regional staff will review the draft report to ensure there are no concerns with its content prior to the Consultant finalizing the report.

If the **Peer Review Consultant** concludes that the **QP's** supporting documents satisfactorily demonstrates that the site conditions on the subject property represents minor exceedances to the **MECP Site Condition Standards (SCS)** and that the contaminants pose little to no risk to human health and the environment, the **Peer Review Consultant** should include an opinion statement noting the same.

If the **Peer Review Consultant** concludes that the **QP's** supporting documents cannot conclude or cannot satisfactorily demonstrate that the **SCS** represent minor exceedances to the **MECP SCS**, the Applicant's **QP** would have to prepare one or both of the following:

- conduct further analysis and resubmit additional supporting information and fees as requested by the **Peer Review Consultant** and the **Region**; or
- file an **RSC** on the Environmental Site Registry and or have a **Risk Assessment (RA)** accepted by **MECP**.

If the Applicant and their **QP** disagrees with the **Peer Review Consultant's** conclusions, a meeting with the consultants (at the Applicant's expense) may be required to determine an acceptable and expeditious course of action.

Appendix K:

Non-Potable Groundwater Requests

Section 35 of O.Reg. 153/04 identifies two standards for groundwater conditions: Potable and Non-Potable. “Potable Standards” apply to areas where the drinking water source is from private wells, whereas “Non-Potable Groundwater Standards” typically apply to areas where the predominant drinking water source is from a municipal water supply.

Requests to utilize the less stringent Non-Potable Groundwater Ministry of the Environment, Conservation and Parks’ **(MECP’s) Site Condition Standards (SCS)** are made by the Applicant’s **QP** and are submitted for properties in urban areas where municipal services are available and where reliance on private wells for drinking water or gardening is low. Since vulnerable groundwater areas exist within many of the serviced areas of the **Region**, requests to use Non-Potable Groundwater **MECP SCS** in municipally serviced areas are evaluated on a case-by-case basis.

The **Region** may approve the use of Tables 3, 7 and 9 ground water **MECP SCS** for a property prior to completion and filing of a **Record of Site Condition (RSC)** provided certain conditions are met. The procedure the **Region** will use to assess requests to use the non-potable groundwater standard is set out in **Appendix L**.

Other Resources

The York Durham District **MECP** office in the Town of Ajax can assist Applicants, **QP’s** and other stakeholders to identify properties with site contamination potential. The Ajax office can be contacted as follows

Ministry of the Environment, Conservation and Parks

230 Westney Road South, Fifth Floor

Ajax, Ontario L1S 7J5

General Inquiries: 905.427.5600

Toll Free: 1.800.376.4547

Fax: 905.427.5602

The Ministry of Municipal Affairs and Housing (MMAH) “[Brownfields Ontario](#)” website also provides additional resources and can answer questions surrounding brownfields and site contamination.

Appendix L:

Non-Potable Groundwater Request Standards and Procedures

The Ontario Ministry of the Environment, Conservation and Parks (**MECP**) allows municipalities to develop their own procedures surrounding Non-Potable Groundwater Requests. This Protocol assesses the appropriateness of Non-Potable Requests through the use of Tables 3, 7 or 9 of **MECP Site Condition Standards (SCS)** within the **Region**.

The process ensures that appropriate **Environmental Site Assessment (ESA)** documentation is submitted with a request and that any **brownfield sites** and potentially contaminated sites are appropriately identified and remediated if necessary. This process also ensures that there are no adverse impacts to public or private drinking water supplies within the **Phase One Study Area** in urban areas. In accordance with O.Reg. 153/04, the **Region** must respond to Non-Potable Requests within 30 days of receipt.

Circulation of Written Notification/Requests

If a **Qualified Person (QP)** seeks permission to use the Non-Potable Groundwater **MECP SCS** for a property, they must submit a written notice/request to the Clerk of both the **Region** and the **Area Municipality**.

The Regional Legislative Services Division will circulate the request and supporting materials to the Regional Planning Division for review and comment.

Coordinated Regional Response

There are two scenarios for a **QP** to file a Non-Potable Request. These scenarios consist of Requests requiring or not requiring a **Record of Site Condition (RSC)** and/or **Risk Assessment (RA)**.

The **Region** will not process incomplete Non-Potable Groundwater Requests. For a Non-Potable Groundwater Request to be considered complete, the following materials must be included at a minimum:

- a covering letter indicating the request, address, Applicant's name and groundwater standard proposed;
- the **Environmental Site Assessment** Report(s);
- the required processing fee, in accordance with the applicable Regional Planning Division's Fee By-law; and

- any associated supporting documents under the heading “Procedures for Non-Potable Requests Not Requiring an RSC or an RA” (if required by the **Region**).

If the supporting materials noted above have not been prepared to the **Region’s** satisfaction, Regional staff will issue an objection letter to the Applicant’s **QP** and the applicable Area Municipal Clerk in response to the use of the Non-Potable Groundwater Standards request. Once the supporting materials are updated and submitted, the **Region** will reevaluate the Non-Potable Groundwater Request.

If the Applicant’s **QP** provides the **Region** with satisfactory supporting materials, Regional staff will issue a follow-up letter to the Applicant’s **QP**, and the applicable **Area Municipality** either objecting or not-objecting to the Non-Potable Groundwater Standard request.

Procedures and requirements for Non-Potable Requests Requiring an RSC or an RA

Non-Potable Groundwater Requests requiring an **RSC** and/or an **RA** submission to **MECP** must include the following:

- a covering letter indicating the request, address, Applicant’s name and groundwater standard proposed;
- the **Environmental Site Assessment** Report(s) prepared by the **QP**;
- the required processing fee, in accordance with the applicable Regional Planning Division’s Fee By-law; and (if applicable)
- any associated supporting documents.

Following Regional review of the above-noted materials, a letter either objecting to or not objecting to the Applicant’s **QP’s** request for the use of the non-potable standard will be issued to the Applicant’s **QP** and the applicable **Area Municipality**.

If the **Region** issues a non-objection letter (in accordance with the Evaluation Criteria below) granting conditional approval to consider the use of Non-Potable Groundwater Standards, the Applicant’s **QP** must submit the Regional letter to **MECP**. The Applicant’s **QP** must provide the **Region** with **MECP’s RSC** Acknowledgment Letter and/or a copy of the **RA** Submission within 6 months of the Request being granted Conditional Approval.

If the Regional receipt of **MECP’s** clearance letter exceeds 6 months, in accordance with O.Reg. 153/04, its Conditional Approval will lapse and the **QP** will be required to update their Non-Potable Groundwater Request with the **Region**.

Procedures for Non-Potable Requests Not Requiring an RSC or an RA

Non-Potable Groundwater Requests not requiring an **RSC** and/or an **RA** submission to **MECP** must include the following:

- all **ESA** reports, processing fees and any associated supporting documents noted above;
- a completed Regional **Reliance Letter** and **Certificate of Insurance** from the **QP** in order for the **Region** to rely on all of the supporting documents;
- a well record survey provided by **MECP's** Well Record Mapping;
- a description of the methodology used to demonstrate that residences, businesses and **other uses** in the above noted areas do not rely on groundwater-based water sources [e.g. no private wells on or within 250 metres (m) of the subject property used for drinking water purposes, this could be more than 250 m depending on nearby **Potentially Contaminated Activity (PCA)** property uses, soil conditions, topography, direction of groundwater flow, etc.]. **MECP** water well records may also be used to assess potential groundwater usage within the **Phase One Study Area**;
- a description of previous and proposed uses of the subject property;
- a description of the type and nature of any contamination and representation of any proposed/required remediation of the site;
- the use and servicing details of **residential** dwellings, businesses and other properties within 250 metres (m) of the subject property;
- confirmation that the subject property will not create adverse impacts on Wellhead Protection Areas;
- confirmation that the subject property is not located within an **Area of High Aquifer Vulnerability** on the Oak Ridges Moraine;
- a professional opinion statement by **QP** confirming that the site will be developed in accordance with the applicable **MECP SCS** or applicable Site-Specific **RA** Standard Levels;
- confirmation that present or future surface water or groundwater sources of drinking water will not be adversely affected including water for **agricultural** and aquaculture uses; and
- any other information deemed reasonably necessary by the **Region** or the applicable **Area Municipality**.

Following the **Region's** review of the above-noted materials, a letter either objecting to or not objecting to the Applicant's **QP's** Non-Potable Groundwater Request will be issued to the Applicant's **QP** and the applicable **Area Municipality**.

A letter objecting to the Non-Potable Request may be issued for a **development** proposal under the following circumstances:

- if it proposes a threat that will impact potable water supply;
- if it is located within a Wellhead Protection Area; and
- if it is located in an **Area of High Aquifer Vulnerability** within the Oak Ridges Moraine.

If the **Region** issues a non-objection letter in response to the Non-Potable Groundwater request (in accordance with the Evaluation Criteria below), the **development** proposal may proceed (provided that there are no other outstanding matters of Regional Interest) eliminating any concerns surrounding potential groundwater exceedances.

Any proposed cleanup/remediation of **brownfield sites** and potentially contaminated sites in the rural area must use the "potable groundwater" **MECP SCS** to protect the Regional groundwater resources. This includes **Areas of High Aquifer Vulnerability**, which extend beyond wellhead protection areas. Please note that Non-Potable Groundwater Requests will not be considered within the Regional rural and unserved areas.

Evaluation Criteria

Requests to utilize the non-potable groundwater standard will be considered when the supporting documentation confirms:

- that the site and all properties within 250 m of the subject property are supplied by a municipal drinking water system or that there are no wells within 250 m of the subject property used for drinking water purposes. The Applicant's **QP** may recommend a study area of more than 250 m, if a nearby **PCA** has the potential to impact the subject property based on its property use history and/or soil conditions, topography, direction of groundwater flow, etc. The Applicant's **QP** may utilize other methods to confirm that there are no potable wells affected by on site contamination. For example, a registered notice could be sent to all property owners within the study area to advise residents of the proposed use and the request to use non-potable groundwater **MECP SCS** to remediate the property;

- it is reasonable and appropriate to use the less stringent Table 3, 7 or 9 **MECP SCS** for the site;
- the on-site conditions will not detrimentally impact: Wellhead Protection Areas; **Areas of High Aquifer Vulnerability**; areas of natural significance and water bodies; and
- that the present and future surface water and groundwater sources of drinking water will not be adversely affected, including water for **agricultural** and aquaculture uses.

Appendix M:

Procedure to Assess Enhanced Investigation Properties

Assessing Enhanced Investigation Properties (EIPs)

This Protocol will assess the appropriateness of evaluating **development** proposals concerning EIPs as defined under O.Reg. 153/04, as amended, within the **Region**. EIP uses typically consist of: **industrial** uses and the following **commercial** uses: a **garage** (i.e. an automotive repair facility), a **bulk liquid dispensing facility** (including **gasoline outlets**), or the operation of **dry-cleaning equipment**.

This process intends to streamline **development EIP** proposals that are considered either major or minor in nature. Depending on the proposed level of **development**, this procedure is intended to ensure no adverse impacts to human health, and the environment within the **Phase One Study Area**.

ESA documentation submitted with the request must demonstrate that any **brownfield sites** and potentially contaminated sites are appropriately identified and remediated. This process ensures that there are no negative impacts to public or private drinking water supplies within the **Phase One Study Area**.

A flow chart which outlines the **Region's EIP** process is provided in **Appendix P**.

Major Development Proposal Containing Site Contamination on an Enhanced Investigation Property

If a **major development** proposal intends to temporarily or partially remediate a site due to the nature of the permitted use (e.g. **gasoline outlets**, automobile wreckers yards, or a **bulk liquid dispensing facilities**) or were significant **physical development** is proposed, the Applicant has the option of completing the following:

- submitting an **RSC** or a **Risk Assessment** through **MECP**; or
- engaging in the **Region's peer review** process.

In addition to the mandatory **Phase One** and **Two ESA** reports, where an Applicant opts for a **peer review** process, the **Region** may request that the Applicant submit a Contaminant Management Plan (CMP), which outlines the following to address risk management:

- a list of the existing and/or proposed bulk fuels/chemicals stored, manufactured or processed on the subject property and within any buildings/structures;
- a procedure on how any potential risk of release of fuels/chemicals to abutting lands will be mitigated and managed; and
- a procedure demonstrating the proposed safety measures to be implemented on the subject property and abutting lands impacted by existing and/or proposed fuels/chemicals.

In addition to the CMP requirements noted above, the following additional records listed in Section 3(2)(14) of Schedule D, of O.Reg. 153/04 be also provided in support of a **peer review**:

- regulatory permits and records related to **Areas of Potential Environmental Concern (APEC)**;
- material Safety Data Sheets (MSDS);
- underground utility drawings;
- inventory of chemicals, chemical usage and chemical storage areas;
- inventory of above ground storage tanks and underground storage tanks;
- environmental monitoring data, including data created in response to an order or request of the Ministry;
- waste management records, including current and historical waste storage locations and waste generator and waste receiver information maintained pursuant to Regulation 347 of the Revised Regulations of Ontario, 1990 (General — Waste Management) made under the *Environmental Protection Act*, or its predecessors;
- process, production and maintenance documents related to **APECs**;
- records of spills and records of discharges of contaminants of which notice is required to be given to the **MECP** under the *Environmental Protection Act* and records of such spills and discharges required to be kept pursuant to Ontario Regulation 675/98 (Classification and Exemption of Spills and Reporting of Discharges) made under the *Environmental Protection Act*;
- emergency response and contingency plans, including spill prevention and contingency plans prepared pursuant to section 91.1 of the *Environmental Protection Act*, and Ontario Regulation 224/07 (Spill Prevention and Contingency Plans) made under the *Environmental Protection Act*;
- environmental audit reports; and

- a site plan of the facility showing all buildings, storage areas, areas of production and manufacturing.

For proposals relating to the bulk liquid dispensing facilities, the **Region** may also request the coordination of/documentation from the Technical Safety Standards Authority (**TSSA**).

Minor Development Proposal within an EIP

At the **Region's** discretion, an **SSQ** (at a minimum) may suffice where a **minor development** on an **EIP** site (e.g. small accessory structures, **development** within an existing building) is proposed. However, at the **Region's** sole discretion, depending on the **SSQ's** findings, an Applicant may be required to prepare ESA reports and file the applicable documents/materials identified above under **major developments**.

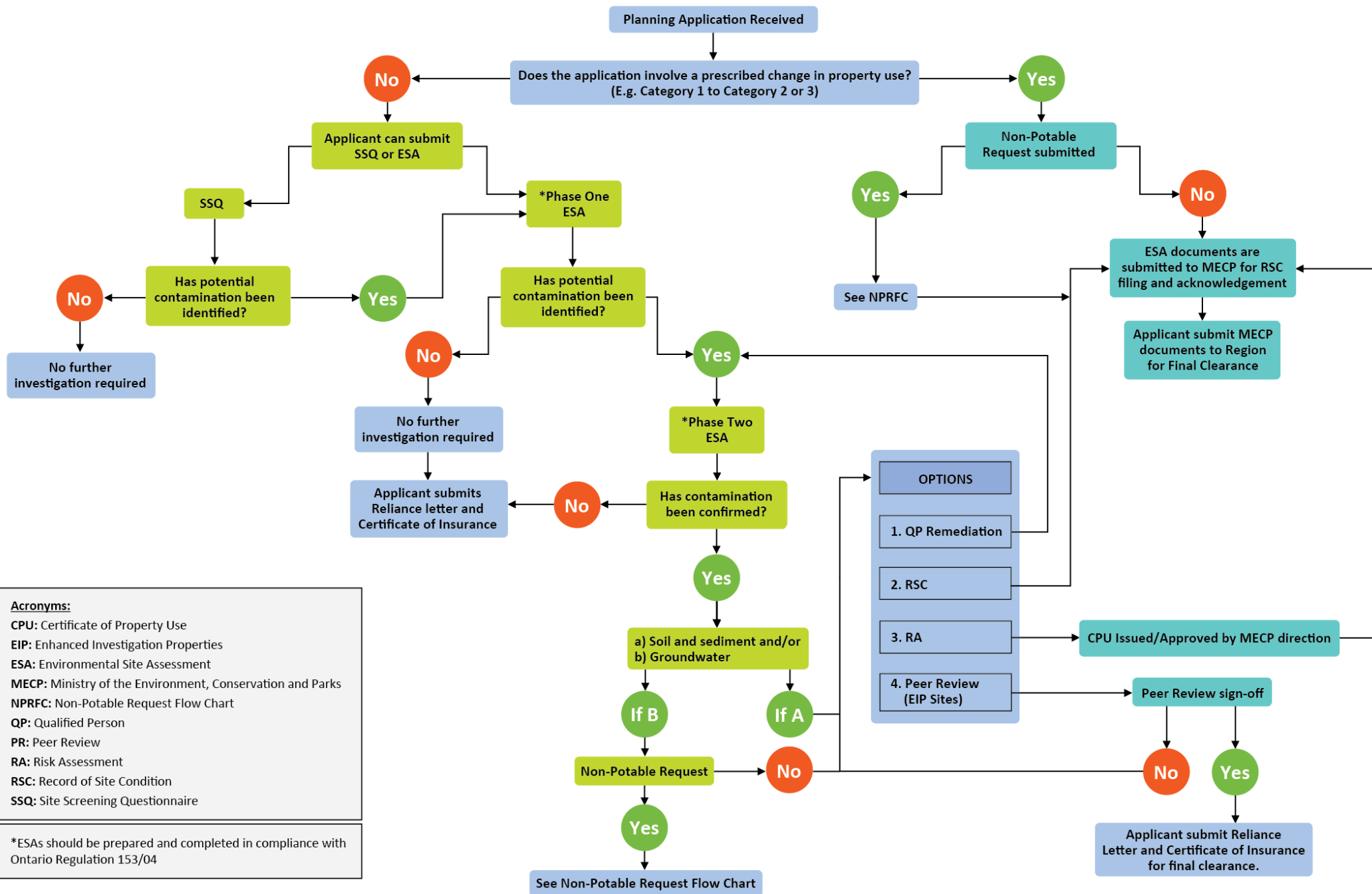
Properties Previously used as Enhanced Investigation Properties

Properties in whole or in part that were previously used as an **EIP** and have since filled an RSC on the **MECP's** Environmental Site Registry for a sensitive property use (e.g. **residential, institutional, parkland** etc.) are no longer considered an **EIP**.

Appendix N:

Soil and Groundwater Assessment Protocol Flow Chart

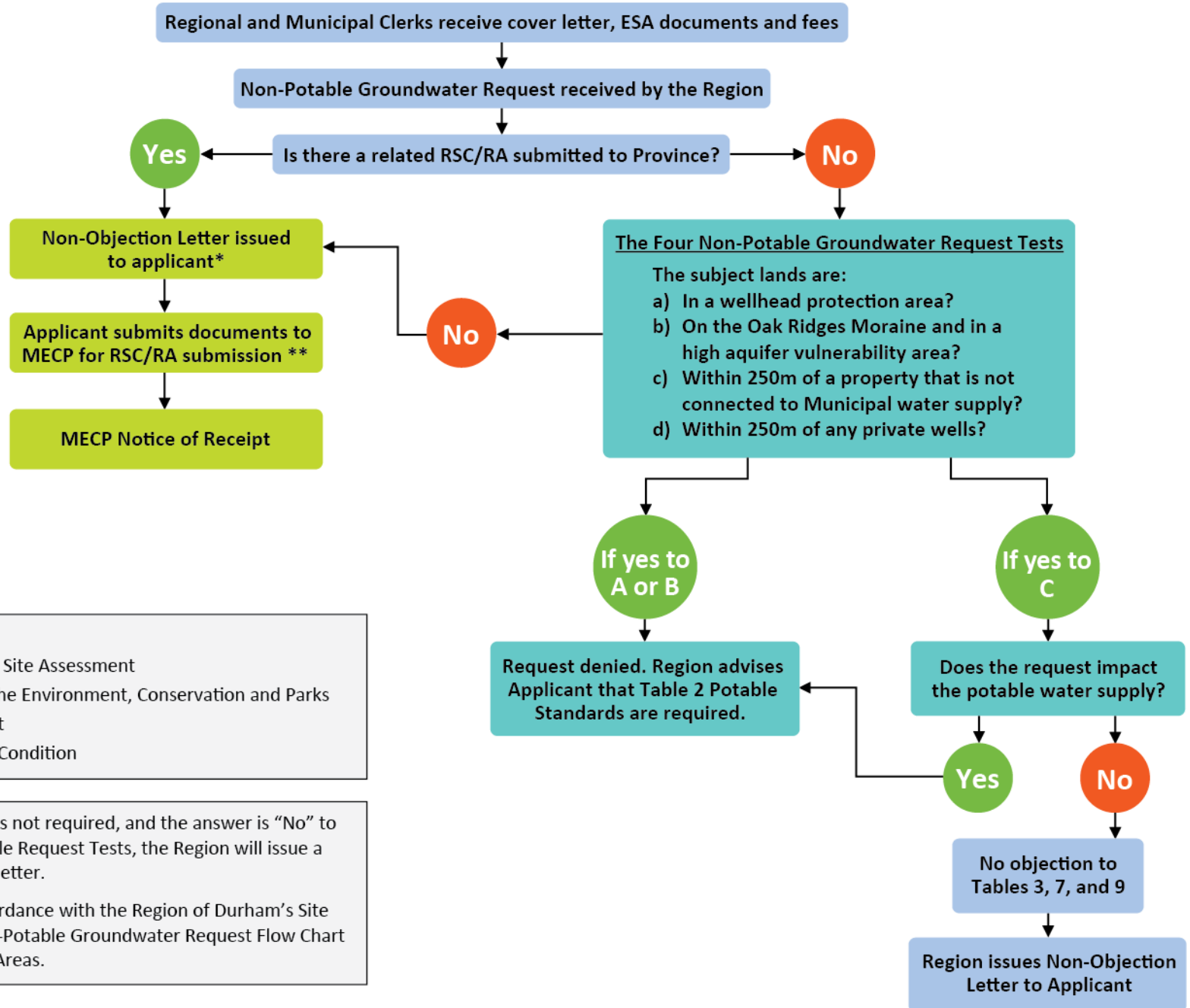
Soil and Groundwater Assessment Protocol Flowchart



Appendix O:

Non-Potable Request Flow Chart

Non-Potable Groundwater Request Flowchart for Urban Serviced Areas



Acronyms:

ESA: Environmental Site Assessment

MECP: Ministry of the Environment, Conservation and Parks

RA: Risk Assessment

RSC: Record of Site Condition

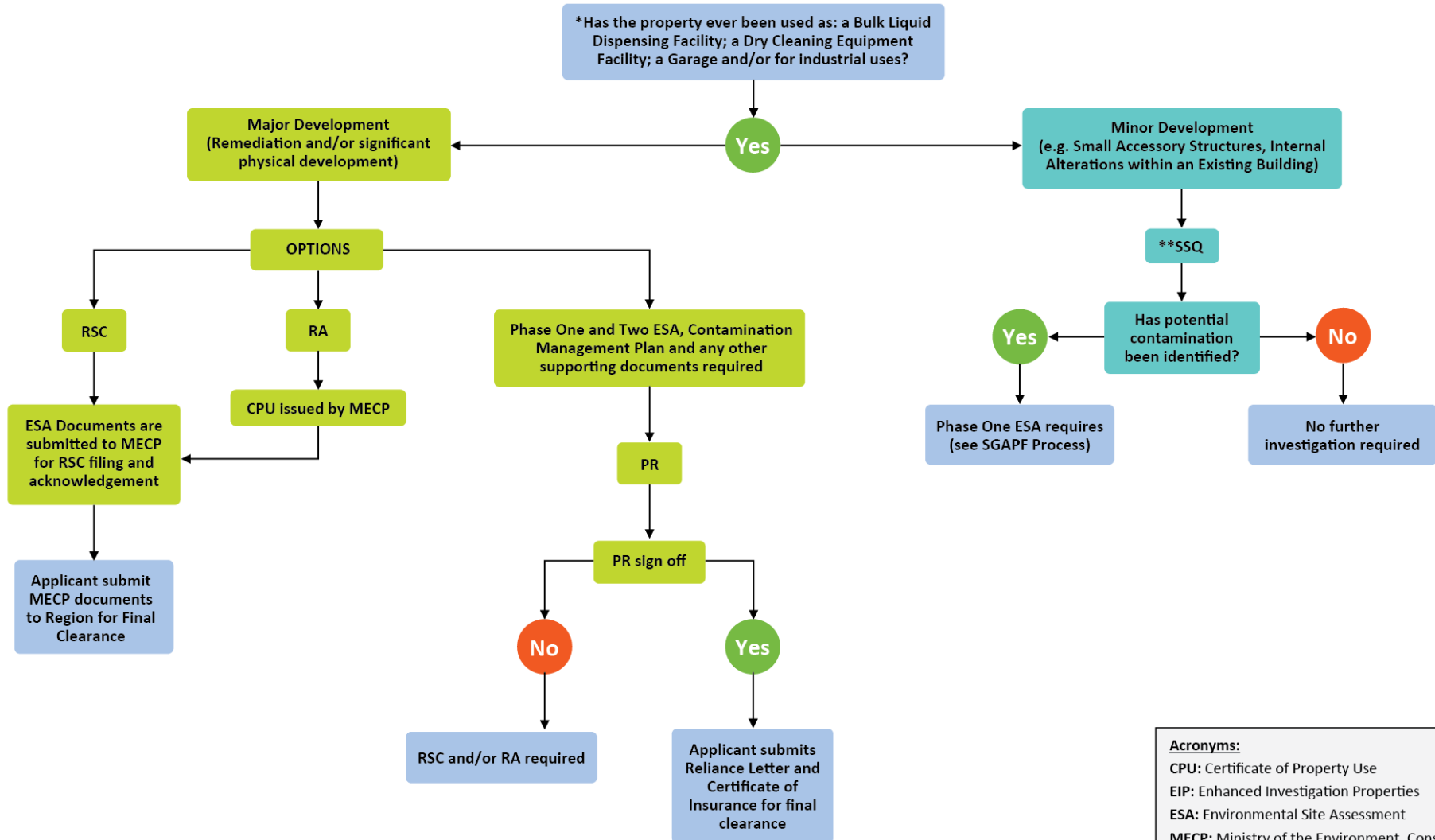
* When an RSC/RA is not required, and the answer is "No" to the Four Non-Potable Request Tests, the Region will issue a final non-objection letter.

** Prepared in accordance with the Region of Durham's Site Contamination Non-Potable Groundwater Request Flow Chart for Urban Serviced Areas.

Appendix P:

Enhanced Investigation Properties Flow Chart

Enhanced Investigation Properties Flowchart



*A property in whole or in part that was previously considered an EIP and has filed an RSC on the Environmental Site Registry for a sensitive property use no longer considered an EIP.
 **ESA reports maybe required depending on the SSQ's findings

Acronyms:
 CPU: Certificate of Property Use
 EIP: Enhanced Investigation Properties
 ESA: Environmental Site Assessment
 MECP: Ministry of the Environment, Conservation and Parks
 PR: Peer Review
 RA: Risk Assessment
 RSC: Record of Site Condition
 SGAPF: Soil Groundwater Assessment Protocol Flowchart
 SSQ: Site Screening Questionnaire

Appendix Q:

Glossary of Terms

Applicable terminology referenced by O.Reg. 153/04 and the Protocol are provided below. The following definitions found under O.Reg. 153/04 are provided for convenience purposes only and may be subject to change from time-to-time. Please refer to O.Reg.153/04: Records of Site Condition – Part XV.1 of the *Environmental Protection Act*, where applicable to confirm the official terminology.

Agricultural or Other Use

Means any of the following in accordance with Part I of O.Reg. 153/04:

1. The use of land, or a building on the property for an agricultural purpose, including, but not limited to, animal husbandry, aquaculture, beekeeping, dairying, field crops, forestry, fruit farming, horticulture, market gardening, poultry raising and the operation of glass- or plastic covered greenhouses; or
2. Any other use of land or a building on the property, other than a commercial use, community use, industrial use, institutional use, parkland use or residential use.

Area Municipalities

Means any or all of the following municipalities within the Regional Municipality of Durham: the Town of Ajax; the Township of Brock; the Municipality of Clarington; the City of Oshawa; the City of Pickering; the Township of Scugog; the Township of Uxbridge; and the Town of Whitby.

Area of High Aquifer Vulnerability

Means lands (in accordance with the Durham Region Official Plan) whose uppermost aquifer is most vulnerable to contamination as a result of surface activities or sources, due to the thickness and permeability of the rock and soil above the aquifer. Vulnerability is expressed as an intrinsic susceptibility index calculated using methods established by the Ministry of the Environment Conservation and Parks. Lands with an index value of less than 30 are considered to be of high vulnerability.

On the Oak Ridges Moraine, means an Area of High Aquifer Vulnerability as prescribed in the Oak Ridges Moraine Conservation Plan.

Areas of Potential Environmental Concern (APEC)

Means the area on, in or under a Phase One Property where one or more contaminants are potentially present, as determined through the phase one Environmental Site Assessment, including through,

1. Identification of past or present uses on, in or under the Phase One Property; and
2. Identification of Potentially Contaminating Activity.

Brownfield sites

Means undeveloped or previously developed properties that may be contaminated. They are usually, but not exclusively, former industrial or commercial properties that may be derelict, underutilized, or vacant.

Bulk Liquid Dispensing Facility

Means premises at which solvents; gasoline or associated products are stored in one or more storage tanks and dispensed for sale.

Certificate of Insurance

Means a Regional form completed and signed by the QP's Insurer that meets the Region's minimum Professional Liability insurance coverage to the satisfaction of the Region.

Certificate of Property Use (CPU)

Means a legal document is issued by MECP to enforce risk management measures (RMM) for a contaminated site. The CPU is registered on the title of the property for notification purposes so future property owners, municipal officials, and occupants of a property will be aware of any property use restrictions, building restrictions or equipment installation required to ensure that contaminants remaining on a site meet the site-specific Risk Assessment standard levels. The CPU requires Owners to:

1. Prevent or eliminate any problems with contamination on the property;
2. Monitor contamination; and/or
3. Follow specified land use or building restrictions set out in the Risk Assessment.

Contaminants of Concern (COC)

Means any of the following:

1. One or more contaminants found on, in or under a property at a concentration that exceeds the applicable Site Condition Standards for the property, or
2. One or more contaminants found on, in or under a property for which no applicable site condition standard is prescribed under Part IX (Site Condition Standards and Risk Assessment) and which are associated with Potentially Contaminating Activity.

Commercial

Means any of the following uses of land or a building on the property for an enterprise or activity involving the exchange of goods or services, including the following uses:

1. Use as a hotel, motel, hostel or similar accommodation.
2. Use as an office building.
3. In respect of the classification of occupancies in Table 3.1.2.1 of Division B of Ontario Regulation 332/12 (Building Code) made under the Building Code Act, 1992, use that falls within,
 - a) Group D, business and personal services occupancies; or
 - b) Group E, mercantile occupancies.

Community

Means any of the following uses:

1. Land on the property for a road.
2. A building on the property for,
 - a) Indoor recreational activities,
 - b) Travel purposes, such as use for a railway station or an airport passenger terminal, or like purposes,
 - c) An indoor gathering of people for civic, or social purposes.
3. In respect of the classification of occupancies in Table 3.1.2.1 of Division B of Ontario Regulation 332/12 (Building Code) made under the *Building Code Act*, 1992, use of a building on the property that falls within,
 - a) Group A, Division 1, assembly occupancies intended for the production and viewing of the performing arts,
 - b) Group A, Division 3, assembly occupancies of the area type, or
 - c) Group A, Division 4, assembly occupancies in which occupants are gathered in the open air and that is used for a stadium.

4. Use of a classroom in a building on the property by,
 - a) A university that is authorized to operate pursuant to section 3 of the *Post-Secondary Education Choice and Excellence Act*, 2000;
 - b) A college established under the Ontario Colleges of Applied Arts and Technology Act, 2002;
 - c) Any institution other than an institution mentioned in subparagraph i. or ii. above with authority to grant a degree or part of a degree under the *Post-Secondary Education Choice and Excellence Act*, 2000; or
 - d) A private career college as defined and approved under the *Private Career Colleges Act*, 2005.

Development

Means the creation of a new lot, a change in land use, or the construction of buildings and structures, requiring approval under the *Planning Act*, but does not include:

1. Activities that create or maintain infrastructure authorized under an environmental assessment process;
2. Works subject to the *Drainage Act*; or
3. For the purposes of policy 2.1.4(a) underground or surface mining of minerals or advanced exploration on mining lands in significant areas of mineral potential in Eco Region 5E, where advanced exploration has the same meaning as under the Mining Act. Instead those matters shall be subject to policy 2.1.5(a).

Dry Cleaning Equipment

Means dry cleaning equipment as defined in Ontario Regulation 323/94 made under the *Environmental Protection Act*.

Enhanced Investigation Property (EIP)

Means a property that is being used or has been used, in whole or in part, for an industrial use or for any of the following commercial uses:

1. As a garage;
2. As a bulk liquid dispensing facility, including a gasoline outlet; or
3. For the operation of dry-cleaning equipment.

If the property is currently used for an agricultural or other use, or a community use, an institutional use, a parkland use or a residential use it is not an EIP if an RSC has been filed in the Registry since it was last used for an industrial or one of the specified commercial uses.

Environmental Site Assessment (ESA)

Means in accordance with Part II of O. Reg 153/04, an investigation in relation to land to determine the environmental condition of property, and includes a phase one Environmental Site Assessment and a phase two Environmental Site Assessment

Garage

Means a place or premises where motor vehicles are received for maintenance or repairs for compensation.

Gasoline Outlet

Means any premises to which the public is invited, at which gasoline or an associated product is sold and is put into fuel tanks or motor vehicles or floating motorized watercraft, or into portable containers.

Industrial

Means any of the following uses of land or of a building on the property for:

1. An enterprise or activity involving assembling, fabricating, manufacturing, processing, producing, storing, warehousing or distributing goods or raw materials;
2. In respect of the classification of occupancies in Table 3.1.2.1 of Division B of Ontario Regulation 332/12 (Building Code), use that falls within:
 - a) Group F, Division 1, high hazard industrial occupancies,
 - b) Group F, Division 2, medium hazard industrial occupancies, or
 - c) Group F, Division 3, low hazard industrial occupancies;
3. Research or development in association with an enterprise or activity described in paragraph 1;
4. The transportation of goods or people by railway or by airplane, but not including use for a gathering of people for travel purposes, such as use as a railway station or an airport passenger terminal;
5. A waste disposal site as defined in Section 25 of the *Environmental Protection Act*, except a site for organic soil conditioning as defined in regulation 347 of the Revised Regulations of Ontario, 1990 made under the Act;
6. In connection with sewage works described in subsection 53 (6.1) of the *Ontario Water Resources Act*;
7. Production of oil or gas, or mining or quarrying;

8. In connection with a water treatment facility;
9. In connection with a sewage treatment facility;
10. Use for the generation or transformation of electricity;
11. Use for the storage, maintenance, fueling or repair of equipment, vehicles or material used to maintain transportation systems;
12. Use as a salvage yard, including and automotive wrecking yard or premises;
13. Use of a building where both of the following circumstances apply:
 - a) The building was previously used for an industrial use, commercial use or community use.
 - b) The building is used for the cultivation, growing and harvesting of agricultural commodities, where the cultivation and growing of the agricultural commodities is achieved through hydroponics or other methods that do not rely on cultivating and growing the commodities using the soil from the property;

Institutional

Means any of the following uses of land or a building on the property for:

1. A day-care centre. within the meaning of the *Child Care and Early Years Act*, 2014;
2. A school as defined in the *Education Act*;
3. A private school as defined in the *Education Act*; or
4. A building on the property for an indoor gathering of people for religious purposes.

MECP

Refers to the Government of Ontario Ministry of the Environment, Conservation and Parks or its successors.

MECP Site Condition Standards (SCS)

Refers to the “Soil, Groundwater and Sediment Standards for Use Under Part XV.1 of the *Environmental Protection Act*” published by the Ministry and dated April 15, 2011. It is anticipated that the Ministry’s criteria for the standards may be amended from time to time.

Mixed-Use Property, most sensitive use

Means if a property is used for more than one type of property use, the Site Condition Standards that are applicable to the property are the standards that are applicable to the most sensitive type of property use. O. Reg. 153/04, s. 3 (1).

The following rules apply in determining which type of property use is the most sensitive type of property use:

1. An agricultural or other use is the most sensitive of any type of property use;
2. A residential use, parkland use, or institutional use is more sensitive than an industrial use, commercial use or community use. O. Reg. 153/04, s. 3 (2).

Parkland

Means any of the following uses of land or of a building on the property for:

1. Outdoor recreational activities, including use for a playground or a playing field;
2. A day camp, an overnight camp or an overnight camping facility;
3. An outdoor gathering of people for civic or social purposes; or
4. In respect of the classification of occupancies in Table 3.1.2.1. of Division B of Ontario Regulation 332/12 (Building Code), use that falls within Group A, Division 4, assembly occupancies in which occupants are gathered in the open air other than use for a stadium.

Peer Review

Means a process the Regional Municipality of Durham may use to ensure the sufficiency and accuracy of environmental documents and opinions submitted through ESA reports to support a planning application.

Peer Review Consultant

Refers to an environmental consultant (Qualified Person Risk Assessment) hired by the Regional Municipality of Durham to provide technical advice on contaminated development sites.

Phase One Environmental Site Assessment (Phase One ESA)

Means an assessment of property conducted in accordance with the regulations by or under the supervision of a qualified person to determine the likelihood that one or more contaminants have affected any land or water on, in or under the property. In accordance with Part VII of O. Reg. 153/04, a Phase One ESA shall include the following components:

1. A records review
2. Interviews
3. Site reconnaissance
4. An evaluation of information from records review, interviews and site reconnaissance;
5. A Phase One ESA report; and
6. The submission of the Phase One ESA report to the owner of the Phase One Property.

Phase One Property

Means the property that is the subject of a Phase One Environmental Site Assessment.

Phase One Study Area

Means the area that includes a Phase One Property, any other property that is located, wholly or partly, within 250 metres from the nearest point on a boundary of the Phase One Property and any property that the Qualified Person determines should be included as part of the Phase One Study Area under clause 3 (1) (a) of Schedule D of O.Reg 153/04, as amended.

Phase Two Environmental Site Assessment (Phase Two ESA)

Means an assessment of property conducted in accordance with the regulations by or under the supervision of a qualified person to determine the location and concentration of one or more contaminants in the land or water on, in or under the property. In accordance with Part VIII of O. Reg. 153/04, a Phase Two ESA shall include the following components:

1. The planning of a site investigation;
2. A site investigation;
3. A review and evaluation of the information gathered through the site investigation;
4. A Phase Two Environmental Site Assessment report; and
5. The submission of the Phase Two Environmental Site Assessment report to the owner of the Phase Two Property.

Phase Two Property

Means the property that is the subject of a phase two Environmental Site Assessment.

Physical Development

For the purpose of this Protocol means the creation of a new lot a change in land use, or the construction of buildings and structures requiring approval under the *Planning Act*.

Potentially Contaminating Activity (PCA)

Means a use or activity set out in Column A of Table 2 of Schedule D of O.Reg. 153/04 that is occurring or has occurred in a Phase One Study Area.

Prescribed Change in Property Use

Refers to a proposed change in property use that is prohibited by the *Environmental Protection Act* and O.Reg. 153/04 unless a Record of Site Condition is filed on the Environmental Site Registry. The change in property uses that are prohibited are generally changes to more sensitive uses either between different Categories (Category 1 – Industrial, Commercial or Community to Category 2 – Residential, Parkland, Institutional, and/or Category 3 – Agricultural/Other Use) and/or within the same Category (e.g. an Industrial land use to a Commercial Day Care Establishment). The higher the Category number the more sensitive the land use.

Property Specific Standards

Refers to the development of Risk Assessment based site specific standards that are developed for a property when MECP Site Condition Standards are unobtainable physically or financially. The site-specific standards are approved by MECP at levels that protect the uses, such as residential, that are proposed for the property; see Risk Assessment (RA).

Qualified Person – Other than Risk Assessment (QP)

Means an individual who may conduct or supervise an ESA in accordance with the *Environmental Protection Act* (EPA) and O. Reg. 153/04, as amended. Section 5 of O.Reg. 153/04 outlines the qualifications for a QP conducting a Phase One and/or Phase Two ESA.

Qualified Person – Risk Assessment (QPRA)

Means an individual who may conduct or supervise a Risk Assessment. Section 6 of O.Reg. 153/04 outlines the qualifications for a QP conducting a Risk Assessment (RA).

Region means the Regional Municipality of Durham or its successor.

Reliance Letter means a Regional letter copied onto the QP's Environmental Consulting Firm's letterhead and signed by the QP and a person who can bind the Consulting Firm, which allows the Region to rely upon the findings of the ESA report and any associated documents. The Reliance Letter template form is provided in Appendix F.

Record of Site Condition (RSC) means a Record of Site Condition under Part XV.1 of the *Environmental Protection Act*. This document provides a summary of the environmental conditions of a property as certified by a QP at a certain point in time. It also provides the landowner with limited protection from environmental cleanup orders when filed in the Brownfields Environmental Site Registry (BESR).

Residential

Means any of the following uses of land or of a building on the property for:

1. A home or mobile home, or as a residence not otherwise described in this definition, but not including use as a hotel, motel, hostel or similar accommodation;
2. In respect of the classification of occupancies in Table 3.1.2.1. of Division B of Ontario Regulation 332/12 (Building Code), use that falls within:
 - a) Group B, Division 1, detention occupancies;
 - b) Group B, Division 2, care and treatment occupancies; or
 - c) Group B, Division 3, care occupancies;
3. A health care facility as defined in Ontario Regulation 170/03 made under the *Safe Drinking Water Act*, 2002;
4. A place of custody or detention for the purposes of the *Youth Criminal Justice Act* (Canada) or a correctional institution established or continued under section 14 of the *Ministry of Correctional Services Act*, whether the institution is operated or maintained by the Crown or any other person;
5. A penitentiary as defined in the *Corrections and Conditional Release Act* (Canada) or as a prison as defined in the *Prisons and Reformatories Act* (Canada);
6. A residence associated with any of the following:
 - a) A university that is authorized to operate pursuant to section 3 of the *Postsecondary Education Choice and Excellence Act*, 2000;
 - b) A college established under the *Ontario Colleges of Applied Arts and Technology Act*, 2002;
 - c) A private career college as defined and approved under the *Private Career Colleges Act*. O. Reg. 153/04, s.1 (3); O. Reg. 511/09, s.1 (7,10,11,13); O. Reg. 179/11, s. 1 (2,3);
 - d) A private career college as defined and approved under the *Private Career Colleges Act*. O. Reg. 153/04, s. 1 (3); O. Reg. 511/09, s. 1 (7, 10, 11, 13); O. Reg. 179/11, s. 1 (2, 3); O. Reg. 333/13, s. 1; O. Reg. 407/19, s. 1 (3-9).

Risk Assessment (RA)

Means a decommissioning approach which is conducted by a specialized Risk Assessment QP (RA) to assess the risks posed to humans, plants, wildlife and the natural environment by exposure to on site contaminants. The QP (RA) may recommend engineered measures to manage, control the movement of, or reduce the concentrations of contaminants over time. The QP (RA) may also recommend site specific environmental standards for the site including various monitoring and maintenance requirements implemented through a risk management plan.

Road

Means the part of a common or public highway, street, avenue, parkway, square, place, bridge, viaduct or trestle that is improved, designed or ordinarily used for regular traffic and includes the shoulder.

Site Screening Questionnaire (SSQ)

Refers to a form that must be completed by a Qualified Person and/or the Owner/Proponent for all planning applications (with certain exceptions) and/or non-potable groundwater standard requests submitted to the Region for comment and/or approval. The SSQ is an effective tool to help identify potentially contaminated sites.

TSSA

Refers to the Technical Safety Standards Authority or its successors.

Updated ESA Documents

Means updated ESA work that is typically provided in a report or letter format, prepared by a QP when the last ESA report completed for a Phase One Property was conducted more than 18 months prior to the submission of the planning application. Completion of the updated ESA work must ensure that the investigated site conditions have not substantially changed since the most recent ESA report and will not pose any adverse impacts on human health and the environment to the satisfaction of the Regional Municipality of Durham.

If this information is required in an accessible format, please contact 1-800-372-1102 ext. 2564



The Regional Municipality of Durham Report

To: Planning and Economic Development Committee
From: Commissioner of Planning and Economic Development
Report: #2019-P-15
Date: April 2, 2019

Subject:

Region of Durham Site Contamination Protocol, Five Year Review, Files: L14-03-08 and D-04-27-02

Recommendation:

That the Planning and Economic Development Committee recommends:

That this report be received for information.

Report:

1. Purpose and Background

- 1.1 The purpose of this report is to advise the Planning and Economic Development Committee of the forthcoming review of the Region's Site Contamination Protocol (SCP).
- 1.2 The SCP update is intended to identify efficiencies and to provide an updated framework for remediating potentially contaminated sites throughout the Region and allow opportunities to streamline development approval processes under the *Planning Act*.
- 1.3 In 1996, the Province of Ontario assigned certain Provincial Plan Review Responsibilities to the Region of Durham including the responsibility to ensure that human health and the natural environment are adequately protected through the

planning process. To fulfil this provincially-assigned role, an internal Regional “Protocol” was developed to deal with the protection of public health and safety in relation to site contamination issues.

- 1.4 The Region’s first Protocol was adopted by Council in 1997; the current version of the SCP was included in Commissioner’s Report 2014-P-51 and adopted by Council in October of 2014. It is appropriate to review the document at this time to ensure that it reflects current legislation, standards, and best practices.
- 1.5 The existing SCP applies to all development applications in the Region. Prior to any development being undertaken, it is important for the approval authority (the Region or an Area Municipality as the case may be) to know the soil, and in some cases the groundwater, conditions of a property. This requirement is especially true for “sensitive” land uses like residential, parkland and certain types of institutional uses, where human habitation and outdoor recreation will take place. Soil and groundwater standards for various classifications of development are set by the Province. The bar of soil quality is higher for residential uses than it is for industrial uses, but even for non-residential development proposals, the Region is required to consider these types of site conditions before approvals are given.

2. Next Steps

- 2.1 The Planning and Economic Development Department’s review of the SCP will include: consultation with stakeholders; the review of applicable Provincial legislative updates and trends; as well as undertake a comparative analysis of other municipalities and identify various SCP best practices.
- 2.2 Stakeholder consultation will include: The Ministry of the Environment, Conservation and Parks (MECP); The Ministry of Municipal Affairs and Housing (MMAH); Area Municipalities; Conservation Authorities within the Region’s six watersheds; Works Department; Legal Division; Risk Management Division; the Region’s SCP Peer Review Roster; as well as Geoscientist and Professional Engineer firms familiar with the Region’s SCP requirements.
- 2.3 A draft SCP will be presented to the Planning and Economic Development Committee by the Summer of 2019. The report will present research findings and provide an overview of stakeholder feedback.
- 2.4 Planning Division staff will report back to this Committee and Council with staff’s final recommendations in the fall of 2019.

3. Conclusion

3.1 A copy of this report will be forwarded to all relevant agencies and stakeholders.

Respectfully submitted,

Original signed by

Brian Bridgeman, MCIP, RPP
Commissioner of Planning and
Economic Development