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May 31, 2019

Planning Act Review
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Hon. Caroline Mulroney
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Public Input Coordinator
Species Conservation Policy Branch
Ministry of the Environment, Conservation and Parks
300 Water Street, Floor 5N
Peterborough, ON
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Submitted online via Environmental Registry of Ontario and mail

Re: ERO Number: 019-0016 – (Schedule 12) – the proposed More Homes, More Choice Act: Amendments to the *Planning Act*

ERO Number 019-0017 – (Schedule 3) – the proposed More Homes, More Choice Act: Amendments to the *Development Charges Act, 1997*

ERO Number: 019-0021 – (Schedule 11) – the proposed More Homes, More Choice Act: Amendments to the *Ontario Heritage Act*

Bill 108: Schedule 9 – Amendments to the *Local Planning Appeals Tribunal Act, 2017.*

Bill 108: Schedule 5 – Endangered Species Act, 2007

To whom it may concern:

ERO Numbers 019-0016, 019-0017, 019-0021 were posted on May 2, 2019 and requested comments on proposed amendments to the *Planning Act, Development Charges Act, 1997*, and the *Ontario Heritage Act*. Comments have been requested to be submitted by June 1, 2019.

The Town has also included comments related to Schedule 9 – proposed amendments to the *Local Planning Appeals Tribunal Act, 2017*; as they relate to the amendments proposed for the *Planning Act* as outlined in Schedule 12.

An amended motion passed unanimously during a Special Council Meeting held on May 27, 2019 in relation to Schedule 5 – proposed amendments to the *Species at Risk Act, 2007* has also been added to these comments for submission to and consideration by the Ministry of the Environment, Conservation and Parks.

Thank you for providing the Town with the opportunity to comment on several of the schedules contained within Bill 108. These comments have been prepared by staff representatives from the Town's Planning and Development Services Department and Finance Department. Comments were presented and endorsed by Council during a Special Council meeting held on Monday May 27, 2019. A copy of the staff report and Council's resolution have been included with these comments as Attachments 1 and 2. The comments for all schedules should be read in conjunction with one another, as the individual changes to the legislation have cumulative impacts.

Bill 108 – General Comments

The 30 day comment period issued on the ERO postings has required municipalities to rush comments. Further, without knowing the details of the prescribed regulations the impacts of the proposed legislation cannot be evaluated comprehensively. The following are general comments that apply to Bill 108 as a whole:

Comment: That the Province extend the commenting timelines on the Environmental Registry of Ontario beyond June 1, 2019; for an additional 90 days to enable Councils to endorse comments over the summer recess.

Comment: That the Province conduct a transparent and thorough stakeholder consultation process on Bill 108 and the associated regulations, prior to the Bill coming into force, so that municipalities can comprehensively analyze the cumulative impacts, financial and otherwise, that will result from the proposed legislation.

Comment: That the Province enshrine revenue neutrality in the proposed legislation in order to protect taxpayers in growing municipalities.

Schedule 12 Comments – Amendments to the Planning Act (ERO 19-0016)

1. Reduction of Decision Timelines

Bill 108 proposes to reduce the timelines for making decisions related to Official Plans and Amendments, Zoning By-law Amendments and Plans of Subdivision. The following table outlines the existing timelines, the proposed timelines, and the timelines prior to enactment of Bill 139 in December of 2017.

Table 1: Planning Act Application Decision Timelines

Planning Act Application Type	Pre Bill 139 Timelines (prior to December 2017)	Existing Timelines (following Bill 139)	Proposed Timelines (Bill 108)
Official Plans and Amendments	180 days	210 days	120 days
Zoning By-laws and Amendments	120 days	150 days	90 days
Plans of Subdivision	180 days	180 days	120 days

As shown in Table 1, the timelines for a Planning Authority to make a decision on certain applications under the *Planning Act* were lengthened under Bill 139. Part of the rationale for extending the timelines was to help reduce backlogs in appeals to the Local Planning Appeals Tribunal (LPAT)/Ontario Municipal Board (OMB), providing necessary time for applicants and municipalities to resolve issues and make decisions effectively. Reducing timelines below the pre Bill 139 timelines will only exacerbate the number of appeals, which will also create further backlogs at LPAT.

Comment: That staff do not support the reduction of decision timelines as proposed in Schedule 12, as this will ultimately only lead to more appeals to the LPAT, and delay the delivery of housing.

2. Grounds for Appeal

The Town participated in the consultation on the OMB Review that began in 2016, submitting comments in December 2016 in response to discussion questions provided by the Province. The Town commented that greater deference to municipal planning decisions should be taken by:

i) Limiting appeals on municipal plans that implement provincial legislation and policy;
ii) Requiring land use planning decisions be based on municipal policies in place at the time of the decision; and
iii) Limiting *de novo* hearings.

During the OMB Review it was identified that the OMB should be updated into a true appeal body and a last resort for dealing with faulty decisions, rather than substituting themselves as the planning decision-maker. This was achieved through the creation of the LPAT, with the mandate to review decisions on Official Plans/Amendments, Zoning By-law Amendments and non-decisions on Draft Plans of Subdivision, based on consistency and/or conformity with provincial legislation and plans, and Official Plan policy. Returning to criteria for appeals on the basis of “apparent land use planning grounds” and not the requirement to demonstrate inconsistency/inconformity with provincial statements and plans, and municipal official plans returns to a system that creates further uncertainty with broad appeals, reduces deference to municipal decisions, and results in lengthy and costly appeals.

Since the introduction of LPAT as a true independent appeals tribunal, the limited ability to introduce new evidence and enhancements to the municipal record to be submitted to the LPAT, the quality of development applications submitted to the Town has significantly improved. The improvement of the submissions has enabled staff to review and process applications more quickly, spending less time following up to obtain outstanding information. Returning to the old system, together with the reduced timelines, will only increase the number of appeals. Not only will this create further delays at LPAT, planners will be required to direct their efforts towards preparing for LPAT appeals rather than processing other applications. This will create further delays and result in higher application fees as a result of hiring more staff to manage workloads.

Comment: That the Town does not support the return to an “OMB style” tribunal and that the Local Planning Appeals Tribunal maintain its role as a true appeal mechanism that evaluates decisions solely on consistency and/or conformity with Provincial Policy and Plans, and Municipal Official Plans.

3. Inclusionary Zoning Policies

The proposed amendment would only permit inclusionary zoning policies to be established in Major Transit Station Areas (MTSA’s) or areas subject to a Development Permit System.

Although staff agree that transit is beneficial for residents who would reside in affordable housing units, municipalities also have Strategic Growth Areas that are identified to be the focus of intensification and higher-density mixed uses in a more compact form; and are planned to be hubs of community services and/or facilities. There are many other Strategic Growth Areas, separate from MTSA's.

For example, Downtown Ajax, a Strategic Growth Area, is a hub of community resources, including the hospital, schools, places of worship, recreation facilities, civic facilities and commercial uses such as grocery stores and financial institutions. Whereas, the Ajax GO Station is an area in transition and has none of the abovementioned resources within walking distance. Only permitting inclusionary zoning policies in MTSA's would actually move affordable housing units away from facilities and resources required to support daily life.

Comment: That inclusionary zoning be permitted in all Strategic Growth Areas, as defined in the Growth Plan, 2019, and identified in municipal Official Plans, to allow affordable housing units to be located near the facilities and resources required to support daily life.

4. Community Benefits Charge (CBC) By-law

Combining the collection of development charges for "soft services", Sections 37 (increased height and density), 42 and 51.1 (parkland dedication) of the *Planning Act*, into a proposed CBC By-law will have substantial implications on how municipalities acquire land for public parks and collect revenue to construct facilities required to support growth. In order for municipalities to construct new facilities (parks, indoor and outdoor recreation, libraries, etc.) that support an increasing population, the cost would be transferred onto the existing property tax base.

The legislation identifies that a maximum amount of community benefit charge will not be permitted to exceed a prescribed percentage of the value of land as of the valuation date. Without knowing the prescribed percentage the Town cannot provide meaningful comments on the appropriateness of this approach, as the financial implications cannot be accurately assessed. However, approximately 25% of the Town's portion of forecasted Development Charges apply to support "soft services" such as recreational facilities, park construction, libraries, and associated debt repayment or studies. If the Province were to prescribe a 5% maximum for the CBC By-law, the Town would lose a significant portion of funding dollars for these projects as 5% is the base rate permitted to be collected for parkland purposes alone.

Additionally, using a maximum percentage of the land value is not an appropriate method to determine a maximum CBC payable, especially when differences between municipalities across the Province can vary greatly and can fluctuate with market forces. Land values between Toronto and Ajax, or even Toronto and Sudbury can vary greatly. However, construction costs would be more closely aligned, especially when comparing costs regionally.

It is also not clear why a new CBC By-Law is being proposed when a framework that is known and understood already exists within the Development Charges Act, 1997. An additional CBC strategy study and passage of an additional by-law will simply add to the cost of land development.

Based on the forgoing, the CBC is not an appropriate mechanism to ensure that municipalities are able to deliver healthy, livable and complete communities as outlined in the Provincial Policy Statement and the Growth Plan, 2019.

Comment: That the Town does not support the creation of the Community Benefit Charge that combines Section 37 (height and density bonusing), Sections 42 and 51.1, and the collection of development charges related to "soft services" into a single

payment, as the actual cost of growth will be transferred onto the existing property tax base.

Parkland is a vital component required to develop livable, healthy and complete communities in accordance with the Growth Plan, 2019 and the Provincial Policy Statement. Bill 108 will not only eliminate the alternative calculation for higher density development used to calculate parkland, as discussed later, it also groups parkland dedication into the CBC By-law, or in some situations requires municipalities to choose between parkland or community benefits (e.g. construction of the park). This will exponentially reduce the amount of parkland secured by municipalities, and/or transfer the cost to construct parks onto the existing property tax base.

Comment: That proposed subsections 42(2) and 51.1 (6) of the *Planning Act* be deleted to enable municipalities to continue to secure land for park purposes as a condition of development separately and in addition to the development charges**.**

Although the Town does not agree with the approach to implement a Community Benefit Charge, staff believe there is an opportunity to improve the existing Section 37 (increased height and density bonusing) to enhance predictability for the development community. The existing Section 37 is a tool that if used appropriately can speed up the delivery of housing by avoiding the need to amend an Official Plan, thereby saving time and providing a more predictable path to approval. The elimination of this tool removes a municipality's ability to consider increased height and density without processing an Official Plan Amendment, which is contrary to the objective of Bill 108.

The existing Section 37 can be amended to provide guidance and parameters on the maximum amounts of community benefits to be exchanged for various levels of increased height and density. This can be achieved by requiring municipalities to pass by-laws that outline what community benefits are to be provided in exchange for additional height and/or density on a per unit and/or storey basis.

Comment: That the Province recognize the existing Section 37 (increased height and density bonusing) of the *Planning Act* as a tool with the power to speed up the delivery of housing and enhance the existing Section 37 by establishing clear parameters for its use to provide more predictability.

5. <u>Parkland Dedication</u>

There is a direct relationship between the density of development and the need for parkland. The proposed amendment removes alternative criteria identified in sections 42 (3) & (6.0.1), and 51.1 (2) & (3.1) which allow alternative parkland dedication calculations based on density. Sections 42(3) and 51.1 (2) allows for the collection of parkland dedication of 1.0 hectare per 300 dwelling units; or Sections 42 (6.0.1) and 51.1 (3.1) allows for the collection of cash-in-lieu at a rate of 1.0 hectare per 500 dwelling units. Only acquiring the base rate of 5% of the land or cash-in-lieu based on the value of the land through a CBC fund is not representative of the needs of residents living in medium and high density areas which generally have little to no outdoor amenity space.

Comment: That Schedule 12 be amended to replace the alternative calculations for parkland dedication as previously outlined in subsections 42 (3) and (6.0.1.), and 51.1 (2) and (3.1) to recognize the relationship between density and parkland.

Where parkland is acquired through a plan of subdivision, a municipality would not be entitled to collect funds through the CBC fund. As capital costs associated with parks would no longer be eligible to be collected through DC's, costs to construct the park would need to be offset by other means. Funds would either need to be diverted from the CBC fund collected in other

areas of a municipality, potentially creating disparities, or capital costs of a park within a new subdivision would need to be funded by the existing property tax base.

The impacts can be illustrated using an example of a plan of subdivision in Ajax with approximately 660 dwelling units. This development would currently be required to convey to the Town a 2.2 hectare (5.43 acres) park using a standard of 1 hectare per 300 units. The Town would also receive approximately $4 million in DC revenue to pay for the construction of "soft services" to support growth associated with that subdivision. Under the proposed legislation, not only would the park block be reduced to approximately 0.7 hectare (1.7 acres), the Town may not be permitted to collect CBC, losing roughly $4 million in DC's. This demonstrates the impact the changes could have on a single subdivision and which would significantly impact the municipality's ability to pay for growth.

Comment: That Schedule 12 be amended to maintain a municipality's ability to secure land and money for park purposes through development, in addition to the collection of funds through Development Charges to support all growth related infrastructure.

Schedule 3 – Amendments to the Development Charges Act (ERO 019-0017)

1. Removal of "Soft Services" from the Development Charges By-Law

Subsection 2(4) of the *Development Charges Act, 1997* (DCA) is being amended to set out the services in respect of which a development charges by-law may impose development charges. The proposed legislation is removing a municipality's ability to fund community infrastructure using Development Charges (DC), and requiring it to be included in the Community Benefit Strategy.

The Town of Ajax currently utilizes DC funding for new community parks, indoor and outdoor recreation centres and library facilities, as well as library collection materials. With the proposed changes to Bill 108, a development charge by-law would no longer be used to fund infrastructure costs related to these services, which enhance the quality of life and provide benefits for all new residents and local businesses.

Comment: That the Province amend Subsection 2(4) of the *Development Charges Act, 1997* to add "Parks and Recreation" and "Libraries" as growth related capital infrastructure.

At a yet unknown date prescribed by the Province, by-laws governing the collections of DC's for growth-related community infrastructure will no longer be valid, even if a Community Benefit Charge strategy and by-law have not yet been approved.

Comment: That the Province allow the parkland development and community infrastructure component of the Development Charges Act, 1997 to remain in force.

2. Timing of Development Charge Calculation

Another proposed amendment to the DCA would set the amount of development charges that would be payable to the date that either an application for Site Plan approval is submitted, or in the absence of a site plan, the date of an application to amend the Zoning By-law is submitted. If a development was subject to more than one Site Plan approval or Zoning By-law, the later one is deemed to be the applicable application date.

Setting the rate of development charges to an earlier date in the planning process creates many issues for municipalities. Locking in the DC rates well in advance of the building permit issuance would produce a shortfall in DC revenue, as the chargeable rates will not reflect the current rate

as of the time the development proceeds to be built. The disconnect between revenues and cost would make it more difficult for municipalities to provide infrastructure to support growth, and may actually delay the delivery of some services. The proposed change undermines the foundational principles of the DCA that growth should pay for growth.

Although locking-in DC rates provides cost predictability from a developer's standpoint, it eliminates the financial incentive for applicants to follow through on *Planning Act* applications and building permits in a timely manner. The administrative burden to manage and monitor the status of applications will increase costs and be transferred to higher planning fees, building permit fees, and the existing property tax base.

Comment: That the timing for determining the amount of Development Charges be maintained as the date of building permit issuance as currently outlined in the *Development Charges Act, 1997*.

3. Development Charge Installments

Section 26.1 as proposed would allow rental housing, non-profit housing, institutional, industrial, and commercial developments to pay development charges over a period of six years beginning on the earlier of the date of issuance of an occupancy permit or the date the building is first occupied. The delay in DC collections will impact cash flows making it more difficult to advance capital projects associated with "hard services" (i.e. transportation and fire) required to support growth. Slowing the construction of "hard services" that need to be in place prior to development occurring (i.e. generally sanitary and water services provided by the upper tier municipality) will have the opposite effect intended through the proposed legislative changes.

The requirement to manage multiple-year collections for each building permit issued for each rental housing, non-profit housing and commercial/industrial/institutional development will put a tremendous burden on the resources of all municipalities. This will result in increased staffing requirements and will ultimately result in higher planning fees, building permit fees, and property tax increases.

Other issues anticipated from this change include risks of non-payment and complications with changes in ownership and/or changes in use (eg. rental to condo conversions, or commercial/industrial condos). The ability to secure for these payments or register them against the land to which it applies is also unknown at this point. The uncertainty surrounding collections also makes it very difficult for municipalities to prepare financial plans and capital budgets.

In addition to the above, Section 27 of the current Development Charges Act allows municipal Councils to arrange for early or late payment of development charges through agreements. With this provision already in place, municipalities and the development community have the ability to devise mutually beneficial agreements taking into consideration unique factors within each proposed developments.

Comment: That the timing for determining the collection of Development Charges be maintained at the date of building permit issuance as currently outlined in Section 26 of the *Development Charges Act, 1997*.

As stated by the Minister of Municipal Affairs and Housing, "More Homes, More Choice outlines [the] government's plan to tackle Ontario's housing crisis and encourages our partners to do their part by starting now, to build more housing that meets the needs of the people in every part of Ontario." If the purpose of the legislation is to provide more housing, it is unclear why commercial, institutional and industrial development would also be permitted to pay DC's in installments over a six year period. The legislation should focus on providing incentives for rental and non-profit housing.

Comment: That , if the installment option remains in force, permissions to allow commercial, industrial and institutional development to pay development charges in installments over a six year period be removed from section 26.1 (2) as outlined in Schedule 3 as this does not meet the stated goal of providing more housing quickly.

4. Exemption for Second Dwelling Units

Second dwelling units in structures ancillary to existing residential buildings and in newly constructed homes are exempt from development charges. This would permit "additional" accessory apartments (commonly basement apartments) to be constructed in new houses or in existing detached garages without incurring development charges. The DCA currently exempts the creation of up to two secondary units in an existing single detached dwelling unit and one secondary unit in all other residential buildings already containing one dwelling unit.

The proposed changes have removed references to the maximum number of secondary units that are exempt and has yet to prescribe a new limit, which will be detailed in the regulations following this bill. Growth related costs are driven by increases in population and employment. Although the Town currently exempts secondary suites in ancillary buildings to existing residential dwellings in the DC By-law, if this type of intensification becomes significant, it will mean that there will be a shortfall in DC revenues and the property tax based will bear the cost of intensification. The full impact of this proposed change will remain unknown until regulations have been provided.

Comment: That the Province acknowledge that the cost impacts of growth related pressures, driven by exempting additional secondary suites, will be funded from future property tax increases affecting all Ontario residents.

5. Other Transitional and Financial Matters

There are many transitional and financial matters for which information is currently not available to make a fulsome analysis. The proposed changes are significant and will have large impacts on municipal budgets. The Province needs to conduct a transparent and thorough stakeholder consultation process on Bill 108 and the associated regulations, prior to the Bill coming into force, so that both the Province and municipalities can comprehensively analyze the cumulative impacts, financial and otherwise, that the proposed legislation will have on municipalities.

Comment: That the Province conduct a transparent and thorough stakeholder consultation process on Bill 108 and the associated regulations, prior to the Bill coming into force, so that municipalities can comprehensively analyze the cumulative impacts, financial and otherwise, that the proposed legislation will have on municipalities.

Schedule 11 – Amendments to the Ontario Heritage Act (ERO 019-0021)

1. Maintaining Local Control Over Heritage Conservation Decisions

The document titled *More Home, More Choice: Ontario's Housing Supply Action Plan,* released in May 2019 as a guide for proposed Bill 108 amendments, includes a high-level overview of proposed changes to the *Ontario Heritage Act (OHA)*. The intent of these changes is summarized as creating a consistent appeals process and maintaining local control over heritage conservation decisions.

The amendments to the OHA proposed via Bill 108 will not maintain local control over heritage conservation decisions. In fact, they will do the opposite. Currently, municipal councils are the final decision makers on the following application types:

- Designation by municipal bylaw (Section 29);
- Amendment of designation bylaw (Section 30.1 (1))
- Amendment of designation bylaw – Exception (Section 30.1 (2) to (10));
- Repeal of designation bylaw – Council's Initiative (Section 31);
- Repeal of designation bylaw – Owner's Initiative (Section 32); and
- Alteration of property (Section 33).

Under Bill 108, the final authority on all of the above application types will be transferred to the Local Planning Appeals Tribunal (LPAT), thereby matching the existing process for decisions on the demolition or removal of a designated structure (Section 34, 34.1 and 34.3). While the attempt to create a consistent appeals process for all applications under the OHA is well-intentioned, it fails to recognize that municipal councils are generally better-positioned than external bodies to make decisions reflecting local goals and objectives. It also fails to recognize that an application for the alteration of property (Section 33) is different than the other applications listed above, as it is the lone application that does not result in a change of the legal status of a property. Applications made under Section 33 are not sufficient enough in scope to justify appeal to the LPAT and should remain in the purview of municipal councils.

Comment: That applications under Section 33 of the OHA remain appealable to the Conservation Review Board instead of the LPAT.

2. Consultation for Matters Prescribed by Regulation

Many of the proposed amendments to the OHA via Bill 108 will be profoundly influenced by the introduction of matters prescribed by regulation. "Prescribed principles", "prescribed events", "prescribed circumstances", "prescribed information and material", and "prescribed actions" are all referenced in the proposed amendments, yet none of these materials have been provided for review. Information from the Ministry of Tourism, Culture and Sport has indicated that proposed regulations will be shared following the passing of Bill 108 amendments, however, it is difficult to provide a fulsome commentary on the proposed amendments in the absence of the related regulations.

There was little to no meaningful consultation done with municipalities and representatives of the heritage conservation sector prior to the introduction of Bill 108. Given the magnitude of proposed regulations in influencing decisions made under the OHA, it is important that municipalities and stakeholders in the heritage conservation field be adequately consulted when these materials are finally released. It is also important that amendments under Bill 108 not come into force until the completion of consultations on proposed regulations, so municipalities can fully analyze the comprehensive impacts of these tools.

Comments: That municipalities be provided with at least 90 days to review and comment upon matters prescribed by regulation, and further, that no amendments considered under Bill 108 come into force prior to the completion of consultations on proposed regulations.

3. Implications of New Timelines in Prompting Premature Designations

The amendments proposed to the OHA via Bill 108 would introduce new timelines for various processes. The most significant new timelines are those associated with the designation of

properties. Section 29 (1.2) would impose a 90-day timeframe from the occurrence of a "prescribed event" for a municipality to give notice of intention to designate. Section 29 (8) would require that a designation by-law be passed within 120 days of the notice of intention to designate. When considered together, this means that a municipality would be limited to, at most, 210 days from the occurrence of a "prescribed event" to the passing of a designation by-law.

In certain cases where little information is known about a property, these timelines could lead to premature decisions on designation. Conducting fulsome research on a property, combined with undertaking adequate consultation, can be a lengthy process. If municipalities are forced to act quickly due to restrictive timelines before all relevant information is considered, the end result may be the designation of properties that do not actually merit such protection. As a result, these restrictive timelines may actually represent a significant impediment to development projects.

Comments: That timelines referenced under Section 29 (1.2) and (8) be doubled in length to 180 and 240 days, respectively.

Schedule 9 – Amendments to the Local Planning Appeals Tribunal Act, 2017

1. Restructuring the Tribunal's Practices and Procedures, and Reintroducing "de Novo" Hearings

The Town participated in the extensive consultation process on the OMB Review that began in 2016, submitting comments in December 2016 in response to discussion questions provided by the Province. The Town commented that greater deference to municipal planning decisions should be taken by:

i) Limiting appeals on municipal plans that implement provincial legislation and policy;
ii) Requiring land use planning decisions be based on municipal policies in place at the time of the decision; and
iii) Limiting *de novo* hearings.

During the review, the Town identified that the OMB should be a true appeal body and a last resort for dealing with faulty decisions, rather than substituting themselves as the planning decision-maker. This was achieved through the creation of the LPAT, with the mandate to review Council decisions on certain applications (OPs/OPAs, ZBAs and non-decisions on Draft Plans of Subdivision) based on consistency and/or conformity with Provincial statements and plans, and Official Plan policy. It was also achieved by limited the extent to which new evidence could be introduced during a hearing; and the creation a two-stage appeal process.

Restructuring the practices and procedures of the Tribunal returns to an "OMB style" process that would largely undo the Bill 139 changes. It would reintroduce "de novo" hearings and make final decisions without using Council's decision as a starting point, and returning the matter to the municipality when it is determined that they erred in their decision. As a result, the Tribunal would have the authority to approve appeals based on what is determined to be a "good planning outcome" and not based on inconsistency/inconformity with provincial statements and plans, and municipal official plans. This approach removes the decision making authority from elected local Councils. The proposed appeal regime returns to a system that creates further uncertainty with broad appeals, reduces deference to municipal decisions, and results in lengthy and costly appeals.

Since the introduction of LPAT as a true independent appeals tribunal, together with the limited ability to introduce new evidence and the introduction of the requirement to submit an enhanced

municipal record to the LPAT, the quality of development applications submitted to the Town has significantly improved. The improvement of the submissions has enabled staff to review and process applications more quickly, spending less time following up to obtain outstanding information from applicants. Returning to the old system, together with the reduced timelines, will only increase the number of appeals. Not only will this create further delays at LPAT, planners will be required to direct their efforts towards preparing for LPAT appeals rather than processing other applications. This will create further delays and result in higher application fees as a result of hiring more staff to manage workloads.

Comments: That the Town does not support the return to an "OMB style" tribunal with the ability to conduct "*de Novo*" hearings; and that the Local Planning Appeals Tribunal maintain its role as a true appeal mechanism that evaluates decisions solely on consistency and/or conformity with Provincial Policy and Plans, and Municipal Official Plans.

2. Power of the Tribunal to Require Mediation or another Dispute Resolution Process

Currently, the Tribunal does not have the authority to require parties to participate in mediation or other dispute resolution processes. Under subsections 33(1)(9) and 39 (2), the Tribunal may direct the parties to participate in a case management conference prior to a hearing to discuss opportunities for settlement, including the "possible use*"* of mediation or other dispute resolution processes.

The facilitation of mediation or other dispute mechanism at the earliest opportunity can reduce costs and timelines by potentially settling cases or by narrowing down issues. Section 33 (1.1) – Power to Require Alternative Dispute Resolution is being proposed, which would give the Tribunal the authority to *"*direct*"* parties to participate in mediation or other dispute resolution processes to resolve one or more issues in a proceeding. It is unclear if parameters will be established in the regulations outlining when mediation would be required.

Comment: That the Province maintain the existing LPAT regime and only amend the Act to include the ability to "direct" parties to proceed to mediation. It is requested that additional information be provided outlining the detailed process and/or criteria that would be used to establish the grounds for when mediation would be required.

3. Tribunal to set and charge different fees for different classes of persons and different types of proceedings

Under the existing legislation, the Tribunal may, subject to the approval of the *Attorney General*, set and charge fees in respect of proceedings brought before the Tribunal and other services provided by the Tribunal. Additionally, the Tribunal has the authority to treat different types of proceedings differently in setting fees. Section 14 is proposed to be amended to allow the Tribunal to set and charge different fees for different classes of persons and different types of proceedings, subject to the *Minister's* approval. Amending the Tribunal's authority under subsection 14(2), it is unclear how existing LPAT fees will be adjusted.

The Local Planning Appeals Tribunal Support Centre was created to support the general public navigating the LPAT process. The elimination of the support centre already make it difficult for the general public to involve themselves in the appeals process. Staff worry that moving toward a cost recovery structure may raise the cost of an appeal to a point where it is out of reach for certain individuals. The setting of new fees should consider this impact and not act as a deterrent.

Comment: That the Province conduct a fulsome and thorough evaluation and consultation of any proposed fee changes to ensure fees are not discriminatory and remain truly affordable for everyone.

Schedule 5 – Amendments to the *Species at Risk Act, 2007*

The following is an amendment passed unanimously during a Special Council Meeting held on May 27, 2019 in response to the proposed amendments to the *Species at Risk Act, 2017* for submission to the Ministry of the Environment, Conservation and Parks.

Amendment

Moved by: S. Lee
Seconded by: J. Dies

That the Town's comments be amended to reflect that the Town recommends that no changes be made to the *Endangered Species Act* (schedule 5) as it pertains to Bill 108.

Comment: That the Town recommends that no changes be made to the *Endangered Species Act* (schedule 5) as it pertains to Bill 108.

Thank you again for providing the Town with the opportunity to provide comments and for your consideration of these comments. Should you have any questions please contact Sean McCullough, Senior Planner at Sean.mccullough@ajax.ca or (905) 619-2529 ext. 3234 and he will endeavour to coordinate a response.

ATT 1: Special Council Meeting Report – Bill 108: More Homes, More Choices Act, 2019 – Town of Ajax Comments

ATT 2: Council Resolution – May 27, 2019

Regards,

Dave Meredith
Director of Planning and Development Services
Planning and Development Services
Town of Ajax

Copies:
Rod Philips, MPP-Ajax, Minister of the Environment, Conservation and Parks
Steve Clark, MPP, Minister of Municipal Affairs and Housing
Shane Baker, Chief Administrative Officer, Town of Ajax
Sheila Strain, Director of Finance/Treasurer, Town of Ajax
Alexander Harris, Manager of Legislative Services/ Acting Clerk
Ron Hawkshaw, Solicitor, Town of Ajax
Geoff Romanowski, Manager of Planning, Town of Ajax
Stev Andis, Supervisor of Planning Policy and Research, Town of Ajax
Julie Mepham, Senior Financial Analyst, Town of Ajax
Mike Sawchuck, Senior Planner, Town of Ajax
Ralph Walton, Clerk, Region of Durham
Becky Jamieson, Clerk, Township of Brock
Anne Greentree, Clerk, Municipality of Clarington
Clerk, City of Oshawa
Debbie Shields, Clerk, City of Pickering

JP Newman, Clerk, Township of Scugog
Debbie Leroux, Clerk, Township of Uxbridge
Chris Harris, Clerk, Town of Whitby
John Mackenzie, Toronto and Region Conservation Authority
Chris Darling, Central Lake Ontario Conservation Authority
Jocelyn McCauley, Committee Clerk, Standing Committee on Justice Policy

Town of Ajax Report

Report To: Special Council Meeting

Prepared By: Sean McCullough, MCIP, RPP
Senior Planner

Subject: **Bill 108: More Homes, More Choice Act, 2019 – Town of Ajax Comments**

Ward(s): All

Date of Meeting: May 27, 2019

Recommendations:

1. **That the Report entitled "Bill 108: More Homes, More Choices Act, 2019 – Town of Ajax Comments" be received for information.**

2. **That staff's comments included as Attachment 1 to this Report be endorsed and submitted to the Ministry of Municipal Affairs and Housing, Ministry of Tourism, Culture and Sport, and the Ministry of the Attorney General as the Town's comments in response Bill 108: More Homes, More Choices Act, 2019, or more specifically:**

    - **ERO No. 019-0016: Schedule 12 - Proposed Amendments to the Planning Act;**
    - **ERO No. 019-0017: Schedule 3 - Proposed Amendments to the Development Charges Act, 1997;**
    - **ERO No. 019-0021: Schedule 11 – Proposed Amendments to the Ontario Heritage Act; and**
    - **Proposed Amendments to the Local Planning Appeals Tribunal Act, 2017.**

3. **That this Report, Attachment 1, and a copy of Council's resolution be forwarded to the Ministry of Municipal Affairs and Housing, the Ministry of Tourism, Culture and Sport; and the Ministry of the Attorney General in advance of the June 1, 2019 comment deadline.**

4. **That a copy of this report be distributed to the Region of Durham, all local Durham Region municipalities, the Toronto and Region Conservation Authority, and the Central Lake Ontario Conservation Authority.**

1.0 Background:

As part of Ontario's Housing Supply Action Plan, the Province released Bill 108, *More Homes, More Choice Act, 2019* on May 2, 2019. The stated goal of Bill 108 is to address Ontario's Housing Crisis by "cutting red tape" to make it easier to build the right type of housing in the right places. Bill 108 is an omnibus bill that proposes to make amendments to 13 different pieces of legislation, including:

- Schedule 1: *Cannabis Control Act, 2017*
- Schedule 2: *Conservation Authorities Act*

- Schedule 3: *Development Charges Act, 1997*
- Schedule 4: *Education Act*
- Schedule 5: *Endangered Species Act, 2007*
- Schedule 6: *Environmental Assessment Act*
- Schedule 7: *Environmental Protection Act*
- Schedule 8: *Labour Relations Act, 1995*
- Schedule 9: *Local Planning Appeal Tribunal Act, 2017*
- Schedule 10: *Occupational Health and Safety Act*
- Schedule 11: *Ontario Heritage Act*
- Schedule 12: *Planning Act*
- Schedule 13: *Workplace Safety and Insurance Act, 1997*

The Province posted the following three schedules on the Environmental Registry of Ontario (ERO) for a 30 day comment period requesting comments on the proposals by June 1, 2019:

ERO No. 019-0016[1]	Schedule 12: Proposed Amendments to the *Planning Act*
ERO No. 019-0017[2]	Schedule 3: Proposed Amendments to the *Development Charges Act, 1997*
ERO No. 019-0021[3]	Schedule 11: Proposed Amendments to the *Ontario Heritage Act*

This report has been prepared collaboratively by the Town's Planning & Development Services Department and Finance Department and highlights proposed changes to the *Planning Act, Development Charges Act, 1997, Ontario Heritage Act and the Local Planning Appeals Tribunal Act, 2017.*

Attachment 1 to this report provides staff's detailed comments in response to the three ERO postings outlined above. Staff are also providing comments on the proposed changes to the Local Planning Appeals Tribunal Act, 2017, for submission to the Ministry of Municipal Affairs and Housing and Ministry of the Attorney General.

2.0 Discussion:

The legislation as proposed will have significant impacts on a municipality's ability to develop healthy, livable and complete communities as outlined in *A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019* and *the Provincial Policy Statement*. More specifically, the changes would have significant impacts to a municipality's ability to acquire parkland and to collect development charges for 'soft services' such as community centres, recreation facilities, libraries, park construction, pedestrian infrastructure, and associated studies.

2.1 Proposed Amendments to the *Planning Act* (Schedule 12)

Schedule 12 of Bill 108 proposes amendments to the Planning Act. Previous amendments to the *Planning Act* that were implemented through Bill 139, *the Building Better Communities and Conserving Watersheds Act, 2017,* have largely been repealed.

The following is a high level overview of the proposed changes to the *Planning Act*:

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[1] Link to ERO No. 019-0016: https://ero.ontario.ca/notice/019-0016
[2] Link to ERO No. 019-0017: https://ero.ontario.ca/notice/019-0017
[3] Link to ERO No. 019-0021: https://ero.ontario.ca/notice/019-0021

- Timelines for municipalities to make decisions on Official Plans and Amendments, Zoning By-law Amendments, and Draft Plans of Subdivision have been shortened significantly. Where Council fails to make a decision on an application in the legislated timeline, an application can be appealed to the Local Planning Appeals Tribunal (LPAT). This will likely result in additional appeals to LPAT, requiring staff time to be diverted to managing appeals rather than processing other applications, and will ultimately create further delays in delivering housing. Staff are recommending that the timelines established through Bill 139 be maintained.

- The alternative calculation for parkland dedication is proposed to be removed. Currently the base rate allows municipalities to require the conveyance of land or cash-in-lieu, for park purposes at a rate of 5% of residential development and 2% for commercial/ industrial development. Recognizing the correlation between density and parkland, the current *Planning Act* allows municipalities to apply an alternative rate of 1 hectare per 300 dwelling units for the conveyance of land or 1 hectare per 500 dwelling units where cash is to be provided in lieu. The alternative rates (1:300 and 1:500) are proposed to be eliminated, having a significant impact on the amount of land and/or cash-in-lieu that municipalities would receive, especially as most growth in the Town will be through intensification. Staff are recommending that the alternative rates be maintained.

- Parkland dedication, Section 37 benefits (increased height and density bonusing), and development charges collected for "soft services" are proposed to be combined into a single "Community Benefits Charge (CBC) By-law". Money collected in accordance with a "Community Benefits Charge Strategy" would be capped at a prescribed rate, measured as a maximum percentage of the value of land. The prescribed percentage has not been provided at this time, and will be outlined in a future regulation. Further, if a municipality has a CBC By-law, the municipality would not be permitted to have a parkland dedication by-law. Staff are recommending that the existing parkland dedication requirements and development charges for "soft services" be maintained.

- The creation of the new "Community Benefits Charge By-law" would repeal the existing Section 37 (Increased Height and Density Bonusing). Section 37 allows developers to enter into agreements with municipalities to provide community benefits, such as community centres, day-care facilities, public art, affordable housing, or any other community benefit determined by the municipality, in exchange for increased height and/or density. Rather than create a CBC by-law, staff are recommending that the Province focus on amending the existing Section 37 (increased height and density bonusing) to provide more predictability when using Section 37.

- "Inclusionary Zoning" would be limited to Major Transit Station Areas (MTSA's). Currently municipalities are permitted to determine areas where inclusionary zoning would be applicable through the preparation of an assessment report that examines housing needs and financial implications. Inclusionary zoning allows municipalities to require a percentage of housing units to be "affordable", which is determined through the assessment report. In Ajax, restricting inclusionary zoning to MTSA's would move residents who require affordable housing from the support services that they need to support daily life. It is recommended that inclusionary zoning be permitted in all *Strategic Growth Areas* as outlined in the Growth Plan, 2019 and municipal Official Plans, such as Downtown Ajax.

- Third-party appeals on draft plans of subdivision and condominium would be restricted. Only the applicant, municipality, Minister, public body, or prescribed list of persons (e.g. utilities) would have the right to appeal an approval authority's decision on a draft plan of subdivision, lapsing provision, or any condition of draft approval.

- The Province would be able to make an order to require a municipality to implement a Development Permit System, also known as the Community Planning Permit System. Third party appeals would be restricted to a by-law that implements the system where an order is made.

2.2 Proposed Amendments to the *Development Charges Act, 1997 (Schedule 3)*

Schedule 3 proposes amendments to the Development Charges Act, 1997 (DCA). The following is a high level overview of the proposed changes:

- "Soft services" from the Development Charges (DC's) By-law, such as construction of new parks, indoor and outdoor recreation facilities (i.e. Audley Recreation Centre), library facilities and circulation materials, as well as associated debt and studies in connection with these services would be removed from the DC By-law. The legislation proposes that these services be included in a Community Benefit Strategy as outlined in Section 2.1, and would be capped by a yet to be determined prescribed rate. The adoption of a new "Community Benefits Charge By-law" would repeal the Town's ability to collect DC's for "soft services" prior to the expiry date or prescribed expiry date of the Development Charges By-law. Staff are recommending that "soft services" continue to be included in the Development Charges Act, 1997.

- DC's for certain development types would be paid in six installments over a six year period beginning on the date of occupancy of the building for select development types. Rental housing and non-profit housing would be eligible, as well as commercial, institutional and industrial development. The delay of DC collection will impact cash flows making it more difficult to advance capital projects associated with "hard services" (transportation and fire) required to support growth. Other issues anticipated from this change include risks of non-payment, complications with changes in ownership and/or use, and municipal resources for administration and enforcement. The Town's DC By-Law already includes a provision for delayed DC payments related to social/non-profit housing. Town staff are recommending that the timing for determining the amount of Development Charges be maintained at the date of building permit issuance. At a maximum, DC installment payments should only be permitted for rental and non-profit housing.

- DC rates would be "locked-in" on the date of submission of a site plan application or zoning by-law amendment application. Although locking-in DC rates provides cost predictability from a developer's standpoint, it eliminates the financial incentive for timely application of building permits in addition to causing undue administrative burden to manage and monitor the status of applications. The time interval between the calculation and collection dates will also result in less available funding to apply to increasing future construction costs, which will likely delay a municipality's ability to fund large growth projects in a timely manner. Staff are recommending that the current timing for determining DC's be maintained as the proposed change undermines the foundational DCA principle that growth should pay for growth.

- Secondary units (i.e. accessory apartments) in new residential buildings or in structures ancillary to existing residential buildings would be exempt from paying DC's. The DCA currently exempts the creation of up to two secondary units in an existing single detached dwelling unit and one secondary unit in all other residential buildings already containing one dwelling unit. The proposed changes have removed references to the maximum number of secondary units that are exempt and has yet to prescribe a new

limit, which will be detailed in the regulations following this bill. In addition to the current requirements under the DCA, the Town's most recent bylaw exempts DC's for the creation of a secondary unit in an existing structure ancillary to existing residential buildings. The full impact of this change is currently unknown.

2.3 Proposed Amendments to the *Ontario Heritage Act* (Schedule 11)

Schedule 12 of Bill 108 proposes amendments to the *Ontario Heritage Act* (OHA). The following is a high level overview of the most significant proposed changes to the OHA:

- The council of a municipality would be required to consider any principles prescribed by regulation when exercising decision making under Parts IV or V of the OHA. There are not currently any principles prescribed by regulation that must be considered by council prior to such decisions. Town staff are requesting that there be comprehensive consultation of at least 90 days on all matters to be prescribed by regulation and that no amendments under Bill 108 come into force prior to such consultations.

- Property owners would have to be notified by a municipality following the inclusion of their property on a Heritage Register. Such property owners would also be provided with an opportunity to object to their property being included on the Register. Neither process is currently required under the OHA; however, the proposed system is similar to one already established by the Town. Accordingly, Town staff have no comments on this amendment.

- A municipality would be subject to a 90-day time limit to issue a notice of intention (NOI) to designate following the occurrence of prescribed events on a property (e.g. certain Planning Act applications). A municipality would also be limited to a 120-day window for passing a designation by-law after issuing a NOI. Neither process is currently subject to timelines that restrict applicability. Town staff feel that these timelines are overly restrictive and are requesting that they be doubled in length.

- A new 30-day objection period would be introduced for designation by-law-related decisions and all applications currently subject to advice from the Conservation Review Board would be would appealable to the LPAT for a final decision. Town staff agree that these changes may result in increased consistency and accountability in decision making, but do not believe that applications for altering a heritage property warrant appeal to the LPAT.

- Definitions would be updated to clarify that "alter" and/or "alteration" does not include the demolition or removal of heritage attributes from a property. The OHA currently defines "alter," but this definition can be interpreted to include demolition or removal of heritage attributes. The proposed updates would help to clarify how the OHA is to be implemented, and as such, Town staff have no comments on this amendment.

2.4 Proposed Amendments to the Local Planning Appeals Tribunal Act, 2017 (Schedule 9)

Schedule 9 proposes amendments to the *Local Planning Appeals Tribunal Act, 2017* that would change the process for development applications appealed to the LPAT. Bill 139 which received royal assent in December 2017 made significant changes to the Ontario Municipal Board (OMB), renaming it the Local Planning Appeals Tribunal (LPAT). Bill 108 would largely undo many of the amendments made through Bill 139. The following is an overview of the proposed changes:

- Return to OMB style "*de novo*" hearing. Currently, LPAT acts as a true appeal body that evaluates a municipality's decision on certain applications (Official Plan/Amendments, Zoning By-law Amendments and Draft Plans of Subdivision) strictly on consistency and conformity with Provincial policy and plans, and municipal Official Plans. LPAT currently follows a two stage appeal process where LPAT can refer a matter back to a local Council to make a new decision where it is determined that the decision was not consistent or did not conform. Bill 108 would return to the OMB style system, where LPAT would conduct a new hearing and make the final decision. The Town was involved in extensive consultation prior to the creation of the LPAT, and staff do not support the return of "de novo" hearings as this will remove decision making authority from local Councils.

- Expansion of grounds for appeal. Currently, Official Plans/Amendments and Zoning By-law Amendments, and non-decisions of Plans of Subdivision can only be appealed on the grounds that it is not consistent and/or do not conform to a provincial policy statement, provincial plan, and/or municipal official plan. Bill 108 would widen what can be appealed, allowing appeals on any "apparent land-use planning ground". Staff recommended that the Bill 139 changes remain and that broadening appeals beyond consistency/conformity will result in the resurgence of costly and lengthy appeals.

- Reintroduction of a party's ability to introduce evidence and call and examine witnesses at a LPAT hearing. Under Bill 139, LPAT transitioned to a system that considered matters based on materials provided prior to a Council making a decision. Returning to the old system would allow parties to introduce new evidence during a tribunal hearing. Staff commented that municipalities should be given the opportunity to consider all evidence prior to making a decision.

- Amending the Tribunals authority to require parties to participate in mediation or another dispute resolution process. Under the existing appeal system, the Tribunal may direct parties to participate in a case management conference where discussion opportunities for settlement, including the *"possible use"* of mediation or other dispute resolution processes, can occur. Under the proposed regime, the Tribunal has the authority to *"direct"* parties to participate in mediation or other dispute resolution processes to resolve one or more issues. Staff support this change, but otherwise recommend that the LPAT Act powers and procedures remain in its current form.

3.0 Financial Implications:

Bill 108 will have a direct impact on the way municipalities pay for growth related infrastructure. The financial impacts will not be able to be fully understood in the absence of the proposed regulations. The Town's ability to collect parkland contributions and DCs for soft services could be dramatically reduced. The following is an overview and examples of some of the anticipated financial impacts:

- The Town's 2020-2023 Capital Budget and Long Range Capital Forecast allocated $6.2 million in DC funding to 18 capital projects categorized as soft services that would no longer be funded from DCs, including projects at 10 new parks, four vehicles, three pieces of equipment to support parks and recreation, one study, as well as debt repayment.

- Changes to the *Planning Act* would impact parkland dedication requirements. In one subdivision example in Ajax with approximately 660 dwelling units would reduce parkland requirements from 2.2 hectares (5.4 acres) to ~0.7 hectares (1.7 hectares). It is estimated that it would cost the town approximately $1.4 million dollars to acquire

additional parkland to make up the difference. In the last 5 years, the Town has only collected approximately $1.6 million in cash-in-lieu for parkland town-wide. Additionally, under the proposed legislation, the Town would not be permitted to collect approximately $4 million in expected development charges from the proposed subdivision that would be allocated towards parks and recreation, libraries and any associated debt and/or studies.

- Planning application and building permit fees would be increased to pay for addiitonal staffing to manage increased workloads and administrative tasks, such as tracking annual development charge payments and increased time associated with managing appeals to the LPAT as a result of reduced decision timelines.

Given the unknown scope of the prescribed regulations surrounding the proposed Community Benefits Charge, the true extent of the impacts cannot be fully comprehended. Any changes resulting from Bill 108 that do not allow a revenue neutral option to collect development related costs would require capital projects to be deferred or funded from the existing property tax base or other Town reserves.

4.0 Conclusion:

The Province has introduced Bill 108: More Homes, More Choice Act, 2019, an omnibus bill that proposes amendments to 13 pieces of legislation. Most notably, amendments to the Planning Act, Development Charges Act, 1997, Ontario Heritage Act, and the Local Planning Appeals Tribunal Act, 2017, will significantly impact a local municipality's ability to provide growth related infrastructure to facilitate the development of complete and livable communities.

Bill 108 will move away from the long held stance that "growth pays for growth" and will have a direct impact on the way municipalities pay for growth related infrastructure, acquire land and construct facilities for parks, and will increase the need for additional staff to manage changes. The changes will require some capital projects to be deferred, some costs transferred onto the existing property tax base, and the need to increase planning and building permit application fees.

ATT 1: Town of Ajax Comments on Bill 108

Prepared by:

Sean McCullough – Senior Planner – ext. 3234

Submitted by:

Dave Meredith – Director of Planning and Development Services

Approved by:

Shane Baker – Chief Administrative Officer

The Corporation of the Town of Ajax
May 27, 2019
Council Resolution Excerpt

The following resolutions were adopted by Council of the Corporation of the Town of Ajax at its special meeting on May 27, 2019:

Amendment

Moved by: S. Lee
Seconded by: J. Dies

That the Town's comments be amended to reflect that the Town recommends that no changes be made to the *Endangered Species Act* (schedule 5) as it pertains to Bill 108.

CARRIED

Main Motion as Amended

Moved by: R. Tyler Morin
Seconded by: L. Bower

1. That the Report entitled "Bill 108: More Homes, More Choices Act, 2019 – Town of Ajax Comments" be received for information.

2. That staff's comments, included as Attachment 1 to this Report as amended, be endorsed and submitted to the Ministry of Municipal Affairs and Housing, Ministry of Tourism, Culture and Sport, and the Ministry of the Attorney General as the Town's comments in response Bill 108: More Homes, More Choices Act, 2019, or more specifically:

   - ERO No. 019-0016: Schedule 12 - Proposed Amendments to the Planning Act;
   - ERO No. 019-0017: Schedule 3 - Proposed Amendments to the Development Charges Act, 1997;
   - ERO No. 019-0021: Schedule 11 – Proposed Amendments to the Ontario Heritage Act; and
   - Proposed Amendments to the Local Planning Appeals Tribunal Act, 2017.

3. That this Report, Attachment 1 as amended, and a copy of Council's resolution be forwarded to the Ministry of Municipal Affairs and Housing, the Ministry of Tourism, Culture and Sport; and the Ministry of the Attorney General in advance of the June 1, 2019 comment deadline.

4. That a copy of this report be distributed to the Region of Durham, all local Durham Region municipalities, the Toronto and Region Conservation Authority, and the Central Lake Ontario Conservation Authority.

CARRIED

Alexander Harras
Acting Clerk