MISSISSAUGAS OF THE NEW CREDIT FIRST NATION
DEPARTMENT OF
CONSULTATION AND ACCOMMODATION

May 29, 2019

Planning Act Review
Provincial Planning Policy Branch
777 Bay St. 13th floor
Toronto ON
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To Whom it May Concern:

The Mississaugas of the Credit First Nation ("MCFN") submits the following comments in respect of the amendments to the *Planning Act*, R.S.O. 1990 that are being proposed in Bill 108, *More Homes, More Choice Act, 2019*. MCFN is aware that amendments to the *Local Planning Appeal Tribunal Act, 2017,* S.O. 2017 are also being proposed in the Bill. MCFN will provide comments on those amendments here as well.

MCFN has grave concerns regarding these amendments. In our view, these amendments will limit the opportunity for meaningful consultation with First Nations on land use planning matters. What is more, the proposed amendments to the *Local Planning Appeal Tribunal Act* will limit the ability of MCFN and the extent to which MCFN can participate before the tribunal, thereby making the regime less accessible. Given that the Local Planning Appeal Tribunal is the entity that hears appeals for land use planning decisions, amendments that effectively limit MCFN's ability to participate in these appeals is problematic.

MCFN will discuss these concerns in its comments below.

MCFN Rights and Territory

MCFN's traditional territory spans from Long Point on Lake Erie to the Niagara River, then down the River to Lake Ontario, northward along the shore of the Lake to the River Rouge east of Toronto then up that river to the dividing ridges to the head waters of the River Thames then southward to Long Point, the place of the beginning (the "Territory"). It is a vast territory over which MCFN has a stewardship responsibility.

MCFN asserts Aboriginal rights not only to continued use of the lands, waters, and watershed ecosystems within its Territory for a variety of livelihood, harvesting, ceremonial and spiritual purposes,

but also specifically asserts an Aboriginal right to protect the integrity of the environment, and the lands and resources, within its Territory, including archeological resources. Land use planning matters, like zoning by-laws, plans of subdivision, and official plans, all have the potential to impact MCFN's rights, resources (including archeological) and Territory.

The MCFN Territory is perhaps the most highly urbanized land in Canada. Unfortunately, much of this development took place at a time prior to the articulation by the Supreme Court of Canada of the Crown's Duty to Consult and Accommodate Indigenous communities ("DTCA"). MCFN was not consulted prior to the vast preponderance of the development that has taken place on its Territory. As a result, a great many archaeological resources, including human burials and cultural materials, have been destroyed and irretrievably lost.

In the exercise of its stewardship responsibility, MCFN's Department of Consultation and Accommodation seeks to work together with the Crown and with project proponents to ensure that archaeological work is done in a respectful way, and that any archaeological resources found through an investigation are dealt with appropriately. For cultural materials and human remains, this may include ceremonies required by Anishnabe law.

The Proposed Amendments

The proposed amendments to the *Planning Act* that MCFN has particular concerns with include the following:

1. *Amendments relating to the reduction of timelines to make land use planning decisions.* The proposed amendments would, if passed, considerably shorten the timelines within which municipal councils and the province have to make decisions on land use planning matters. For example, timelines for making decisions related to official plans are changed from 210 to 120 days (amendments to sections 17, 22, 34 of the Act); timelines for making decisions related to zoning by-laws are changed from 150 to 90 days (amendments to sections 34 and 36 of the Act); and timelines for making decisions related to plans of subdivision is changed from 180 to 120 days (amendments to section 51(34) of the Act).

In respect of proposed amendments to the *Local Planning Appeal Tribunal Act*, MCFN has particular concerns with the following:

1. *Amendments that limit submissions by non-parties to written submissions only.* The proposed new section 33.2 limits submissions by persons who are not parties to a proceeding to written submissions only.

2. *Amendments that allow the Tribunal to limit examination or cross examination of witnesses.* The proposed new section 33 (2.1) gives the Tribunal the power to limit

3. witness examination and cross examination if the Tribunal is satisfied that the issues have been fully or fairly addressed; or in any other circumstances the Tribunal thinks is fair and appropriate.

Impact of the Proposed Amendments

The amendments to the *Planning Act* creating compressed timelines mean that there will also be less time and opportunity to undertake meaningful consultation (generally, but also with First Nations) on land use planning decisions. For example, when a new official plan is created or amended, the municipality is required to consult with "public bodies", ensure that they are given an opportunity to review all the proposed plan and relevant material, and hold at least one public meeting. Similar processes are undertaken with plans of subdivision and zoning by-laws.

However, compressed timelines will likely compromise the extent to which the municipality's consultation efforts can be meaningful and comprehensive, including and especially with First Nations. There is less time to give First Nations opportunity to review the plan and related information; less time for First Nations to respond and provide input and feedback; and less time to have more than one public meeting.

What is more, the proposed amendments to the *Local Appeal Tribunal Act* mentioned above, taken together, could limit MCFN from directly participating in a land use planning matter that goes to the Tribunal. Article 18 of UNDRIP provides that Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves. For example, if MCFN was not a party to an appeal before the Tribunal, but MCFN wanted to make submissions through a representative or member of the of MCFN, that representative or member will only be able to provide written submissions. Similarly, the proposed amendments also potentially limit participation by giving the tribunal the ability to limit the examination and cross-examination of witnesses.

MCFN Recommendations

Given the above, MCFN's view is that the amendments that are proposed for the *Planning Act* and the *Local Appeal Tribunal Act* should not be made.

While the new timelines in the proposed amendments for making decisions regarding official plans, zoning by-laws and plans of subdivision will facilitate faster land use planning decisions, these timelines will inevitably compromise the extent to which consultation with First Nations can be meaningful. The Duty to Consult and Accommodate First Nations is a constitutional duty and must be met. Faster decisions cannot come at the expense of meaningful consultation.

In addition, although the *Planning Act* requires that there be at least one public meeting for the purposes of consultation in respect of various land use planning decisions, MCFN would like to remind

Ontario that First Nations are not merely another stakeholder. Public consultation is not the same as the consultation that is required under the constitutional Duty to Consult and Accommodate[1] - more than one public meeting is required when it comes to consultation with First Nations. When a land use planning decision has the potential to effect the rights and interests of a First Nation, the Duty to Consult and Accommodate must be fulfilled.

Regards,

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[1] *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005] 3 SCR 388, 2005 SCC 69 (CanLII), <http://canlii.ca/t/1m1zn> at para 64.

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