Proposed Bill 108 (More Homes, More Choice Act, 2019) and the Proposed Housing Supply Action Plan

City of Kingston preliminary comments

Subject: **The City of Kingston's comments: Bill 108 – More Homes, More Choice Act, 2019 regarding the *Planning Act, 1990* (ERO 019-0016), *Development Charges Act, 1997* (ERO 019-0017); and *Ontario Heritage Act* (ERO 019-0021)**

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To: **Ontario Standing Committee on Justice Policy**

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Planning Act Review
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Introduction

Thank you for the opportunity to provide initial comments and recommendations from the City of Kingston on the proposed changes to Bill 108, the More Homes, More Choice Act of 2019. Unlike many of the cities in the Greater Toronto Hamilton Area (GTHA) Kingston has some unique housing challenges with the lowest vacancy rate in Ontario. To help accelerate the building of a variety of new housing in Kingston, the Mayor has also created a Task Force on Housing. This Task Force composed of a variety of community members, will provide evidence-informed and action-oriented observations and recommendations to City Council by the end of the year to increase a diverse range of housing for all residents. So it's critical that the City be engaged throughout the development of Bill 108 and the regulation and policy implementation.

The City supports the provincial objectives in trying to create more housing and a greater mix of housing. However given the size and amending acts this legislation covers the initial 30 day review period on the Environmental Registry is insufficient for City staff to thoroughly review the implications on development within the City.

Our main recommendation is an extension to the June 1st date for comments on the Bill to allow us additional time to provide our observations and recommendations. In absence of this, below we have compiled an overview of initial comments grouped into four central areas – Future Consultations, Development Charges Act recommendations, Planning Act recommendations and Ontario Heritage Act recommendations. These recommendations also align with some of the recommendations and suggestions from other municipalities across the province.

Future consultations - development and implementation of regulations

- Consult with municipalities prior to the development of any draft regulations associated with Bill 108 so the City can fully understand and be able to analyze the impact of the proposed changes comprehensively, including the cumulative financial and local policy related impacts.

- Provide a transparent and thorough stakeholder consultation process in the implementation of all the regulations associated with Bill 108.

- A 'one-sized' fits all approach doesn't apply to all municipalities in land use planning policy. Kingston has very unique housing needs different to those in Toronto and the Greater Toronto Hamilton area and any proposed amendments and regulations should reflect regional conditions.

Development Charges Act recommendations

- The City recommends delaying any proposed changes to the Development Charges Act to allow municipalities to properly plan for the transition, to obtain clarity regarding the potentially significant financial impacts of the removal of soft services from the DCA as well as the mechanics and financial implications of a community benefit charge and to minimize confusion and disruption when a significant number of development charge by-laws across the Province are currently in the process of being updated.

- The holistic changes proposed to the DC Act are broader than a focus on addressing housing supply and affordability issues. Changes to non-residential DC mechanisms appear to go well beyond the housing supply scope.

- Bill 108 proposes to remove a number of eligible services from the DC Act. Charges for these soft services will be considered as part of a new community benefits charge under the Planning Act (see comments below) however the City has concerns that the scope of eligible services that would fall under a Community Benefit By-law could be limited by regulation. It is also unknown how this transition to a new revenue generating by-law and strategy will affect projects currently in process. The City recommends maintaining the community infrastructure component of the Development Charges Act until a Community Benefit Charge Strategy and By-law can be properly developed and financial implications as it relates to loss of revenue and additional taxpayer burden can be determined; in the interim, we recommend amending Subsection 2(4) of the Development Charges Act to add parks and recreation, library, affordable housing and paramedic services as growth related capital infrastructure.

- Bill 108 provides for payment of development charges in installments for rental housing, non-profit housing and commercial, industrial and institutional development. This will significantly impact the City's cash flow planning and potentially increase the requirement for issuing debt as capital costs will

be incurred well before revenues are collected. It is also expected that administrative costs will rise with the need to track, collect and manage installment payments. Further information is required to more specifically define the types of development listed. More details are also required as to the security requirements that will be available including consideration for potential changes in ownership over the installment period. Collection risk is a concern in connection with any installment payment regime and the ability to register charges on title to the property or to require other forms of security will be important. At a minimum, the City recommends maintaining the current timing of DC payment for commercial, industrial and institutional development (as this is not relevant in any way to the supply of housing).

- Bill 108 provides for changes to the timing of when the DC rate is determined. For development that is subject to site plan approval or zoning by-law amendment, the DC rate will be based on the charge in effect at the time of application. "Locking in" rates at this earlier point in the development process will give rise to revenue shortfalls, as the rates will not keep up with the escalation of related costs to be incurred at the time development proceeds. The Act does not provide for any time limits for the development moving through to the issuance of a building permit and DC payment obligation. It is expected that administration costs will rise with the necessity to track effective rates until they are payable. "Locking in" rates for periods that straddle background study periods will add complexity to the current background study process. We recommend preserving the current calculation and timing of DC payment requirements. Where the prescribed amount of time referred to in Subsection 26.2(5), (a) and (b) of the Development Charges Act, 1997 is required, we recommend that it be set at no longer than two years.

- Bill 108 proposes transitional requirements for a development charge by-law expiring on or after May 2, 2019. Further details are required to effectively determine the implications of this legislation on the City's DC by-law which is scheduled to expire September 29, 2019.

Planning Act recommendations

Additional Residential Units

- Bill 108 introduces amendments to Section 16 of the Planning Act to enable "additional residential units". The City of Kingston is currently in the process of introducing broader permissions for second residential units. The permissions, if approved by Council, will allow for a second residential unit within a single family dwelling, semi-detached dwelling, duplex, or townhouse, or within a detached building or structure that is ancillary to the single family dwelling, semi-detached dwelling, duplex, or townhouse. The changes would not accommodate an additional unit in both the primary dwelling unit and a unit in a detached (ancillary) building or structure.

- The basis for the City's second unit permissions, which are to be introduced through official plan and zoning by-law amendment, has been evaluated through a review of the potential land use issues that may be realised as a result of the new permissions. These issues include the potential impact of second residential units on the availability of land to support anticipated parking demand, the suitability of

existing and planned servicing infrastructure (i.e., sewer and water capacity), and the ability to maintain land use compatibility in established (built) communities. The amendments proposed to Section 16(3) of the Act will necessitate zoning provisions (i.e., that conform to now-mandatory official plan policies) which permit two residential units in a detached house, semi-detached house or rowhouse in addition to a residential unit in a structure ancillary to a detached house, semi-detached house or rowhouse. The impact of introducing two new units, in some cases within established (built) communities, is not fully understood. We recommend the legislation enable municipalities, within their official plans, to establish a policy framework which may prohibit additional residential units where, for example, the availability of servicing is constrained, parking cannot be adequately provided, compensated for, or justified as unnecessary, or where contextual factors are such that new units are not appropriate (e.g., due to the potential loss of privacy, a deficiency in the supply of public amenities in the catchment area of the additional units, etc.).

- The legislation, as proposed through Bill 108, requires in subsection 16(3) that official plan policies authorize an additional residential unit in a principal dwelling as well as an additional unit in a building or structure ancillary to the principal unit. An adjustment to the amended policy to enable municipalities to apply land use considerations in the review of proposals that seek to introduce an additional unit within both the principal dwelling and an ancillary building or structure would help to ensure issues of land use compatibility can be properly evaluated to the benefit of the public. The repealed subsection 16(3) should be revised to read:

  Additional residential unit policies
  - (3) An official plan shall contain policies that authorize the use of additional residential units, subject to such other matters as may be prescribed, by authorizing,
    - (a) the use of two residential units in a detached house, semi-detached house or rowhouse; and
    - (b) the use of a residential unit in a building or structure ancillary to a detached house, semi-detached house or rowhouse.

- The revised language would enable the Province to introduce, through regulation, reference to land use factors that would be applied in the consideration of proposals for additional residential units, particularly in situations where units are proposed within a principal dwelling and an ancillary building or structure. The factors could be, if permitted by regulation, introduced through land use planning policy in a local official plan.

Amendments to Section 37 – Community Benefits

- Amendments to Section 37 establish a framework for the acquisition of facilities, services or matters (i.e., community benefits) in the evaluation of development or redevelopment proposals that require specified Planning Act approvals. The amendments place additional onus on the municipality to identify, through a community benefits strategy, the facilities, services or matters that will be funded with community benefits charges.

While this component of the Section 37 amendments seems reasonable, a number of the requirements / parameters associated with the section are not defined and we need to better understand these before they are implemented.

- Subsection 37(9)(b), which speaks to the preparation of a community benefits strategy, requires compliance with "prescribed requirements" which have not yet been defined. Similarly, subsection 37(12), which refers to the "maximum amount of community benefits charge", provides that the amount of a community benefit shall not exceed a "prescribed percentage of the value of land". Until these details are known it is difficult to comment on the adequacy of the amendments and whether or not they will be sufficient to provide municipalities with a reasonable mechanism to ensure public interest matters are upheld and whether prescribed percentages will address challenges with respect to variations in land values across the Province.

- The amendments in Section 37 provide that municipalities will be responsible for the assessment of land values. This will result in costs (e.g., consulting fees) that will be borne by the tax payer. It seems unreasonable that the tax base should incur these costs as they are necessitated by the private sector through development and redevelopment proposals.

Parkland Dedication

- Enable municipalities to secure the conveyance of land for park purposes as a condition of the development or redevelopment of land as well as the ability to secure community benefits (facilities) in accordance with Section 37 of the Planning Act. Where community benefits in Section 37 are required as part of a consideration of increased density permissions, the proposed changes to the Act would not allow the City to require any parkland under Section 42. This 'one or the other' circumstance will not be effective in satisfying both the need to provide for parkland in intensification areas and at the same time provide land development projects with an adequate tool to justify increased density, and;

- Clarify that where a municipality secures the conveyance of land for park purposes or accepts Cash-In-Lieu (C-I-L), at an alternative parkland dedication rate, as a condition of development or redevelopment, and where community benefits (facilities) are also required for the project, those benefits will include other types of facilities, but not include the conveyance of additional parkland, or payment in lieu, of additional parkland for the site. If an appropriate alternate parkland dedication rate is in effect, community benefits should not be required to add additional parkland or (C-I-L) to a development, and;

- Do not remove the alternative parkland dedication rate (Planning Act, Section 42(3)) but provide a reduced and more appropriate alternate rate that is not punitive to high density developments as the current 1ha/300 units rate is. To base residential parkland requirement only on the 5 per cent rate is inequitable for new residents living in dense housing in intensification areas as it limits the City's ability to provide sufficient parkland as a condition of development.

Allow municipalities to set an alternate maximum rate for the conveyance of land for park purposes for residential development based on proposed population, up to 1.2 hectares per 1000 people and require municipalities to offer reduced rates and tailored caps for areas of strategic growth (urban intensification, transit corridors, etc.) and public housing to ensure equitable parkland in different types of residential development and to support parkland need generated by the development, as opposed to 5 per cent of the land currently proposed in Bill 108.

- Kingston's Parkland Dedication By-Law currently recognizes challenges of building on smaller infill sites and building higher density and provides various targeted reductions, credits and caps accordingly. Our parkland by-law currently incorporates exemptions and reductions to reflect the importance of making housing affordable to all, such as breaks for affordable housing, heritage, and secondary suites. Currently Kingston's alternative rates are among the lowest in the province and are tailored where intensification, growth and housing have been identified as a priority by Council.

General recommendations

- The City recommends retaining the existing Planning Act grounds for appeals of Zoning By-law and Official Plan Amendments to only include tests related to consistency with the provincial policy statement, conformity with provincial plans and (for Zoning By-laws) conformity with the Official Plan. Returning to the previous system would likely increase the number of appeals and the need for more staff time and resources being dedicated towards preparing for the appeals.

- Section 17(44.3 & 44.4) bring back hearing de novo, meaning new evidence can be presented during an appeal to the LPAT. This may compromise the efforts of a proponent to resolve local issues through a technical review process, instead deferring to the presentation of factors during a hearing and removes emphasis/strength of local decision making. If new information is to be presented in a hearing the Tribunal must solicit feedback from the Council of the municipality so that its decision can be reconsidered. This also seems to introduce unnecessary timing. The information (i.e., a complete application and complete response to technical issues) should be made available before a decision is made. These changes incentivize appeals to the Tribunal by enabling matters to go to a hearing.

- The City recommends that the current "two-step" appeal process be maintained to give the City an opportunity to make a second planning decision, prior to the LPAT overturning a municipal council's planning decision, and substituting it with its own decision.

- The City recommends maintaining the current timelines established for decisions on Planning Act applications to ensure that municipalities have sufficient time to complete a thorough review of applications and make sound decisions. The reduced decision timelines would result in more appeals as a result on non-decisions within the prescribed timeframe, which can have the effect of delaying the delivery of housing where the application is related to residential development.

- Amendments are proposed to subsection 16(5) of the Planning Act to restrict the areas where non-prescribed municipalities can apply inclusionary zoning. It is recommended that the Province permit municipalities to utilize the inclusionary zoning provisions of the Planning Act in broader situations than the proposed protected major transit station and development permit system areas. The city should continue to have the ability to tailor inclusionary zoning to address local needs.

Ontario Heritage Act recommendations

Section 1 – Definitions

- Amendments to the definition of "alter" provide that, for the purposes of sections 33, 34.5, 42 and 69, the definition does not include demolition or removal. This will have the effect of requiring any applications for partial demolition to be processed under section 34 of the Act, which would require public notice in the newspaper, which would result in additional cost for processing of these applications. Currently advertising in the newspaper, under section 34, is reserved for applications that would have the result of completely demolishing or removing entire heritage buildings/attributes without an acceptable plan for conservation.

Section 26.01 (and 39.1.2) – Principles

- It is difficult to assess the impacts of this statement without knowing the content of the referenced "principles". Do they align with the Federal Standards and Guidelines and local objectives of the respective HCDs?

Section 27 – Register

- The amendments in this section provide that an owner of a listed property may object to the addition of their property to the register. The amendments do not, in subsection 27(7), identify a timeline (limit) for the filing of an objection to the addition to the register by the owner. It is recommended that owners be provided an opportunity to object to the inclusion of a property on the register within 30 days of the receipt of the associated notice.

- Further the amendments do not, in subsection 27(7) identify what "reasons" or grounds an owner may object to the addition of the property to the register. It is recommended that clear criteria for objections be included.

- The amendments to this section also require, in the notice to the owner, a "statement explaining why the council of the municipality believes the property to be of cultural heritage value or interest". The detail of what this "statement" is to include or reference is unclear.

Section 29 – Designation by municipal by-law

- The OHA is to be amended to introduce reference to a "prescribed event" 90 days after which a municipality may not give a notice of intention to designate the property under 29(1). A "prescribed event" is not yet defined however it is understood that one such event may be the submission of a

complete planning application. It is unclear why the ability of a municipality to advance the designation of a property under Section 29 of the OHA should be precluded by a "prescribed event" unless such "event" has resulted in the clear loss of cultural heritage value associated with the property. If a cultural heritage resource is threatened, a municipality should have the ability to conserve the resource regardless of other priorities. Early identification of heritage resources by a development proponent should be the direction of this amendment.

- Amendments in Section 29 establish a two-tiered objection / appeals process related to the passing of a heritage designation by-law. The first step introduced through the amendments would enable municipalities to reconsider a notice of intention to designate a property upon receipt of an objection by the owner (subsection 29 (6)). Should the municipality choose to advance designation through the passing of a by-law, the second step would allow the owner, or any other person to appeal the matter to the Local Planning Appeal Tribunal (LPAT). The LPAT would have the ability to:

    - Dismiss the appeal;
    - Repeal or amend the designation by-law; or
    - Direct that the Council of the municipality repeal or amend the designation by-law.

- It is noted that amendments to Sections 30.1 (Amendment of Designating By-law), Section 31 (Repeal of Designating By-law – Council's Initiative), and Section 32 (Repeal of Designating By-law – Owner's Initiative) would also introduce the two-stepped objection / appeals process noted above and ultimately refer an objection to the LPAT.

- Currently, objections to a notice of intent to designate a property made under Section 29 and objections to council's refusal to repeal a designating by-law made pursuant to Section 32 are referred to the Conservation Review Board (CRB). The CRB is comprised of those with heritage expertise and an understanding of the complexities of heritage conservation in Ontario. Objections heard by the CRB culminate in a report which is provided to the Council of a municipality subsequently tasked with rendering a decision on, for example, the designation of a property or the repeal of a by-law designating the property.

  Removing the decision-making authority from the municipality is problematic as it has the potential to result in decisions that do not fully reflect local interests and the expertise of heritage conservation within the municipal context. Further, it is unknown whether the depth of cultural heritage expertise necessary to make cultural heritage decisions, affecting municipal-level resources, is available within the Tribunal.

- Further, as noted above regarding the Section 27 objections, there is no direction or limitations on what grounds one could object to. Clear direction here is needed.

Section 33 – Alteration of Property

- The change to the referral of an objection of an application for alteration to the LPAT, as proposed in Section 33 of the Act, is problematic as it has the potential to take local knowledge and developed approaches in heritage conservation away from the municipality.

- The proposed requirement of the new 33(2) requires an application for alteration to include "prescribed information and material". Section 33(3) allows municipal council to require "any other information or material" that it feels is necessary. It is unclear at this time what information and material may be prescribed in the Act and whether or not it will deviate from established, industry-accepted, materials such as the content of Ontario Regulation 9/06.

- Subsection 33(7) is unclear where the 90 day timeframe begins; either following the 60 days to deem an application complete, or upon deeming the application complete, or both.

Section 34 – Demolition or Removal

- The amendment to this section clearly outlines the intention to require Council approval for the demolition of any building or structure on the property. This is problematic in the case of a large parcel of land with many buildings whereby most of them are not heritage attributes and their removal would not affect the cultural heritage value or heritage attributes of the designated property. This section should be worded similarly to Section 33 were demolitions that are "likely to affect the property's heritage attributes" require prior approval.

Section 42 – Erection, Demolition, etc.

- The amendment adds subsection 42(1)4 that requires Council approval for the demolition or removal of any building or structure in a HCD. See concern above regarding this unnecessary requirement.

- The City believes there is merit to having applications for alterations, as noted in Section 42(4.1) subject to consultation with the local municipal heritage committee.