Memorandum

Date: Tuesday, May 21, 2019

To: Members of Council

From: Sylvia Kirkwood, Manager of Policy & Sustainability, Community Services

Subject: Current Provincial Initiatives & Proposed Amendments

The purpose of tis memorandum is to provide Council with an update regarding various provincial materials released to stakeholders for feedback and comment.

Bill 108 More Homes, More Choice Act, 2019

As part of the provinces aim to tackle the housing crisis they have developed an action plan which will streamline and remove complexities and barriers in order to bring more affordable housing to the market. On May 2, 2019, the Province introduced Bill 108, More Homes, More Choice Act, in the Ontario legislature. Some of the key initiatives and amendments include:

The amendments in the *Planning Act* that pertain to housing:

- The secondary unit's policy has been amended to allow two residential units in a house and one residential unit in an ancillary building or structure to the house.
- The Inclusionary Zoning policies now include the provision to allow inclusionary zoning policies regarding an area that is a protected major transit station.
- Section 26.2 is new to the Act and will freeze development charge rates at the point of filing an application, rather than at the issuance of the first building permit (timing of payment will remain unchanged). Overall the amendments aim to encourage new housing developments.

The amendments in the Planning Act that pertain to section 37:

Section 37 is now known as the Community Benefit Charge. Currently a municipality may allow for increases in height and density beyond the existing permissions allowed in the zoning by-law in return for provision of facilities, services or matters considered as a community benefit.

The *Planning Act* amendment replaces the current section 37 and replaces the power to impose a development charge under the *Development Charges Act.* The amendment enables a municipality to, by by-law; impose the Community Benefit Charge to pay for capital costs of facilities, services and matters, required because of development or redevelopment in the area.

A Community Benefits Charge may be now imposed in respect of development or redevelopment that meets specified requirements, as set out in subsections 37 (3) and (4).

Further, the amount of the charge cannot exceed an amount equal to the prescribed percentage of the value of the land (a dispute resolution process is provided in cases where the land owner is not in agreement with the charge amount).

The amendment also states that all money received under a Community Benefits Charge by-law must be paid into a special account and 60 per cent of the monies in that account must be allocated or spent each year.

***Ontario Heritage Act* (ERO #019-0021)**

The proposed *Ontario Heritage Act* amendments will establish new, mandatory standards for designation by-laws and impose new time limits for confirming completed alteration and demolition applications, as well as time limits imposed on Council's decisions on designation. Municipal decisions on designations and alterations will be subject to appeals to the LPAT, whose decision will be binding (this replaces the current, non-binding decisions of the Conservation Review Board). The intent of these changes is to provide clarity to municipalities, so they can better protect heritage resources in their communities, as well as facilitate timely and transparent decision making.

Specifically, the Act currently requires the Town Clerk to keep a register that lists all designated properties and all non-designated properties (Built Heritage Resource Inventory) that Council believes to be of cultural heritage value or interest. The proposed amendment will require Council to notify an owner of a non-designated property that their property is included on the register and the owner will be entitled to object. With respect to time limits regarding designation, Council will have 90 days after receiving a notice of objection to the designation. Should they decide to pass a by-law to designate, it will have 120 days after the notice of intention to designate to do so. If the by-law is not passed within this time frame, then the notice of intention is deemed to be withdrawn. Appeals regarding the designation by-law are made to LPAT.

Time limits are being proposed for applications regarding alterations and demolition of designated property. The Town must acknowledge receipt of all information and notify the applicant that the application is complete. A decision on the application must be given within 90 days after notification of a complete application.

Comments and formal submissions regarding the proposed changes can be provided by **May 31, 2019**.

***Local Planning Appeal Tribunal Act* and *Planning Act* Changes**

Bill 108 keeps the LPAT name but proposes going back to the rules of the Ontario Municipal Board, returning to a "de novo" hearing process. Key changes include:

- It will no longer be the Attorney General administering the Act – that authority may be assigned according to the *Executive Council Act.*
- Fee setting according to different "classes of persons" is now allowed.
- Added right to call witness (who may otherwise not be involved in a given appeal) . The Tribunal also provided rights to limit and/or end examination .
- Added provisions to allow Tribunal to require parties to undertake mediation. Mandatory case management conference for appeals added, specifically aimed at facilitating mediation .
- Transition timelines and which cases will be affected/brought forward under the new process appear to be at the discretion of the Minister. Decisions on cases will need to be identified in an accompanying additional regulation.

- Appeals no longer have to be based on a lack of conformity with provincial or regional policies/plans (section 17 (approvals) & 22 (amendment requests)). Appeals made on the basis of provincial or regional plan/policy non-conformity will, nevertheless, require an explanation of why/how the plan is non-conforming.
- Appeals cannot be made regarding required aspects of a given plan (section 17 (approvals) & 22 (amendment requests))
- When no decision is reached by the approval authority in 120 days, appeals may now only be made by the municipality, minister/upper tier approval authority, or the amendment applicant ((section 17 (approvals) only)

More detailed information on the proposed changes will be reviewed and comments provided by **June 1, 2019.**

Development Charges

The proposed changes to the *Development Charges Act* (DCA) under Bill 108 is still subject to further changes, refinement, and related regulations.

- The creation of one second dwelling unit in prescribed classes of new residential development will be exempt from development charges
- Proposed "freezing of the rate" and six-year payment plan for certain types of developments.
- Will further challenge the Town's ability to have sufficient developer funding (collected through DC and allocated to DC reserves) to pay for the construction or acquisition of growth-related capital infrastructure, e.g. infrastructure to support the additional population and employment growth, in a timely manner.
- If the growth-related infrastructure is still to be built to the size and scope identified in the Town's DC study, more of the burden of funding the construction will likely be shifted to the Town (i.e. from the developer (DC's) to tax payers (property taxes)).

More detailed information on the proposed changes to Development Charges is included in a separate Memorandum. Comments are due by **June 1, 2019.**

Modernizing conservation authority operations - *Conservation Authorities Act* (ERO #013-5018)

The province is proposing to amend the *Conservation Authorities Act, 1990* with the goal of helping conservation authorities re-focus and deliver on their core mandate. The change is focused on increasing transparency and improving governance. On April 5, 2019 the Province released Modernizing conservation authority operations - Conservation Authorities Act. The period for commenting is 45 days and comments are due **May 20, 2019**.

The proposed amendments include:

- Declaration of un-proclaimed sections of the Conservation Authorities Act, related to: fees for programs and services, transparency and accountability, approval of projects with provincial grants, recovery of capital costs and operating expenses from municipalities (municipal levies), regulation of areas over which conservation authorities have jurisdiction (e.g., development permitting), enforcement and offences, and additional regulations.

- Updates to core mandatory programs and services provided by conservation authorities which, if approved, include natural hazard protection and management, conservation and management of conservation authority lands, drinking water source protection (as prescribed under the Clean Water Act), and protection of the Lake Simcoe watershed (as prescribed under the Lake Simcoe Protection Act)
- Increase transparency in how conservation authorities levy municipalities for mandatory and non-mandatory programs and services subject to a Memorandum of Understanding. Also, require municipalities and conservation authorities to review levies for non-core programs after a certain period of time (e.g. every 4-8 years).
- Require a transition period of 18 – 24 months in which conservation authorities and municipalities must enter into agreements for the delivery of non-mandatory programs and services
- Allow the Minister to appoint an investigator to investigate or undertake an audit and report on a conservation authority
- Clarification that conservation authority board members are to act in the best interest of the conservation authority, similar to not-for profit organizations.

The Town of Caledon has standing Memoranda of Understanding (MOUs) with Credit Valley Conservation (CVC), Toronto and Region Conservation Authority (TRCA) and Nottawasaga Valley Conservation Authority (NVCA). The Region of Peel also has an MOU with CVC, TRCA and Halton Region Conservation Authority. These MOUs outline the conservation authority roles and responsibilities for plan reviews, technical comments and clearance.

The conservation authorities also have an agreement with the Province through Conservation Ontario that defines the roles and responsibilities of the conservation authorities to represent "provincial interest" on natural hazard matters encompassed by 3.1 of the Provincial Policy Statement (PPS, 2014).

Through our MOUs, the conservation authorities provide technical support to the Town's Planning and Development division for the implementation of Official Plan policies, the PPS and Provincial Plans within our jurisdiction. Refocusing the conservation authority mandatory core programs and possibly requiring changes to our existing MOUs may create gaps in our level of service delivery. As a result, there may be financial and staffing implications to close those service delivery gaps.

It is unclear at this time if the proposed amendments would affect other environmental partnership programs we have with the conservation authorities that may be defined as non-mandatory programs. Furthermore, changes to municipal levies and cuts to Provincial funding programs may affect the delivery of conservation authority partnership programs. Policy and Sustainability staff will collaborate with the Conservation Authorities and the Region to determine the impacts to the Town of Caledon. More detailed information will follow in a subsequent report.

Focusing conservation authority development permits on the protection of people and property (ERO # 013-4992)

On April 5, 2019 the Province released a proposed regulation on the Environmental Registry of Ontario, "Focusing conservation authority development permits on the protection of people and property" (ERO #013-4992). The period for commenting is 46 days and comments are due **May 21, 2019**.

Written comments and feedback will only be accepted by Ministry of Natural Resources and Forestry via email to mnrwaterpolicy@ontario.ca. The Provincial Government, through the Ministry of Natural Resources and Forestry, is proposing a regulation that would streamline and focus conservation authorities' development permitting decisions and outline their role in municipal plan review. The proposed regulation is associated with the *Conservation Authorities Act*, 1990 and is also linked to ERO #013-5018.

The proposed regulation aims to make rules for development in hazardous areas more consistent to support faster, more predictable and less costly approvals.

The proposed regulation includes:

- Updated definitions for key regulatory terms, including: "wetland", "watercourse" and "pollution";
- Defining undefined terms including: "interference" and "conservation of land" as consistent with the natural hazard management intent of the regulation;
- Reduce regulatory restrictions between 30m and 120m of a wetland and where a hydrological connection has been severed;
- Exempt low-risk development activities from requiring a permit including certain alterations and repairs to existing municipal drains subject to the Drainage Act provided they are undertaken in accordance with the Drainage Act and Conservation Authorities Act Protocol;
- Allow conservation authorities to further exempt low-risk development activities from requiring a permit provided in accordance with conservation authority policies;
- Require conservation authorities to develop, consult on, make publicly available and periodically review internal policies that guide permitting decisions;
- Require conservation authorities to notify the public of changes to mapped regulated areas such as floodplains or wetland boundaries; and
- Require conservation authorities to establish, monitor and report on service delivery standards including requirements and timelines for determination of complete applications and timelines for permit decisions;
- Consolidation of the existing 36 individual conservation authority-approved regulations into 1 regulation that will be governed by the Minister of Natural Resources and Forestry. This single regulation would ensure consistency in requirements across all conservation authorities.

The proposed amendments present opportunities to work with the conservation authorities and the Region of Peel to improve service delivery and engage the public on conservation authority policies. While Town of Caledon staff is supportive of efforts to improve efficiencies and consistency for conservation authority permit approvals and plan review, such efforts should continue to support the Town's ecosystem-based planning and management approach that guides land-use decision making.

10th Year Review of Ontario's Endangered Species Act: Proposed Changes (ERO # 013-5033)

The Ontario Government is proposing changes to the *Endangered Species Act, 2007.* The Endangered Species Act protects endangered species such as red-side dace, bobolink, barn swallow, eastern meadowlark, etc. and their habitats.

The proposed changes to the *Endangered Species Act, 2007* are a result of a phased consultation process. The first phase of the review involved a 45-day consultation period on how to best update the 12-year old legislation (ERO # 013-4143).

In January 2019, the province released a discussion paper in relation to Ontario's Endangered Species Act. The goal of the first consultation was to solicit comments and suggestions about ways to achieve positive outcomes for species at risk, as well as, streamline approvals and provide clarity to the process. The Province received 1,943 comments through the registry, 13,011 comments by email and 10 comments by mail.

After considering comments, the Province is implementing recommendations that modernize and improve the efficacy of the act and improve results for species at risk.

On April 18, 2019, the Province released proposed changes to the *Endangered Species Act, 2007.* This is the second phase of the consultation process. The period for commenting is 30 days and comments are due May 18, 2019. The proposed amendments are captured in an omnibus bill – *Bill 108, More Homes, More Choice Act, 2019*.

The proposed amendments include:

- Modified review and assessment process of species at risk and longer period (up to twelve months) for decisions on protection and listing species on the Species at Risk in Ontario List. The bill also requires the committee of scientist that recommends species-at-risk listings to look beyond Ontario's boarders for the condition of the species. Data from outside Ontario can be used to recommend a classification.
- Broader definitions and implementation processes for species and habitat protections including Ministry discretion on protections. The listing process for species listed as endangered or threatened would no longer be linked with automatic protections. Bill 108 would also allow the Minister to temporarily suspended (for up to three years) the protections for newly-listed species if certain conditions are met.
- Development of species at risk recovery policies would give the Ministry discretion to extend the nine-month timeline for the preparation of policy direction and responses to the "Recovery Strategy" statements. The length of the extension is not mentioned.
- Amendments to the issuance of *Endangered Species Act* permits and agreements, and development of new regulatory exemptions. The Province is proposing a fee-in-lieu fund that would allow industry and others who impact the habitat of endangered species to continue activities in exchange for a fee. The bill makes no mention of how the fee-in-lieu funds will be administered and monitored.
- Enforcement of the *Endangered Species Act* would transfer from the Ministry of Natural Resources to the Ministry of the Environment, Conservation and Parks

It is the policy and practice of the Town of Caledon that *Planning Act* applications proposing development within and adjacent to significant habitat of threatened and endangered species, identified under the *Endangered Species Act*, require approvals from the Ministry of Natural Resources and Forestry (MNRF). Clearance from MNRF is typically a condition of approval. Generally, the changes, if approved, would result in a more lenient approach to issuing permits, agreements and exemptions for species at risk.

The protection of endangered species in the Ontario has been significantly curtailed by the proposed changes to the Endangered Species Act, 2007. While such streamlining of approvals could be effective to save time and costs, it should also continue to support the Town Official Plan "Environmental Policy Area" policies and ecosystem-based planning framework. Policy and Sustainability staff, will collaborate with the Conservation Authorities and the Region to determine the impacts to the Town of Caledon. More detailed information will follow in a subsequent report.

New Provincial Direction on Excess Soil under the Environmental Protection Act (ERO Posting #013-5000)

In January 2016, the Province of Ontario responded to issues and challenges posed by excess soil by releasing the guidelines for the management of excess soil. The *Excess Soil Management Policy Framework* addressed concerns about the way excess soil is managed and disposed. It defined excess soil as:

> …soil that is excess to requirements at a construction or development site or project ("source site"); it is not needed on the source site after it is excavated and must be moved to a new, off-site, location. In this case, soil remaining within a project site is not considered excess soil.

With the release of this policy framework, the Province recognized excess soil as a resource that must be managed with responsibilities placed on the generator of excess soil to plan for its appropriate re-use. Tracking and record-keeping, from source to re-use, are integral elements of these initial Provincial directions.

Several existing Provincial polices, including excess soil, are under review by the current Ontario government. Under the *Made-in-Ontario Environmental Plan*, the Province is proposing policies to manage excess soil for the purpose of protecting air, land and water, preventing litter and waste, and supporting efforts to reduce greenhouse gas emission while increasing communities' resiliency to climate change.

On May 1, 2019, the Province released the Excess Soil Regulatory Proposal and Amendment to the Record of Site Condition (Brownfields) Regulation, under the *Environmental Protection Act, R.S.O 1990,* for public review and input in the Environmental Registry of Ontario (ERO #013-5000). Comments on the proposed policy and regulation are accepted until **May 31, 2019**.

Proposed Excess Soil Policy

The Province, under this proposal, continues to consider excess soil to be a valuable resource which can be re-used while reducing the risk of contaminants in new locations where they are disposed. The proposed policy and regulation are intended to:

a) Increase opportunities for the appropriate and beneficial re-use of excess soil by:
   - recognizing excess soil as a resource;
   - setting clear rules to increase re-use opportunities and reduce soil relocation costs;
   - reducing clean excess soil going to landfill as waste;
   - lowering greenhouse gas emissions associated with excess soil movement; and
   - protecting human health and the environment.

b) Clarify that a project leader will be responsible for managing and relocating excess soil generated by the project based on the level of contaminants in the soil using flexible risk-based reuse standards.

c) Clarify when the waste designation applies to the movement and disposal of excess soil, replacing or simplifying waste-related approvals with regulatory rules for low risk soil management activities.

d) Improve transparency and accountability for generators, haulers and receivers of excess soil to address concerns about illegal relocation of soil. The proposal would improve the ability to take enforcement action against polluters who inappropriately deposit soil.

The Province will achieve these above noted objectives through proposed new excess soil regulation and amendments to *O. Reg. 153/04* (Record of Site Condition Regulation) and Regulation 347 (General - Waste Management) under the *Environmental Protection Act* (EPA). Accordingly, changes to *O. Reg 153/04* under the EPA will clarify rules and remove unnecessary barriers to the redevelopment and revitalization of contaminated lands; thereby putting vacant, prime land to good use, while protecting human health and the environment.

Preliminary Comments

Caledon is an attractive destination for excess soil from abutting GTA urban communities for several reasons, including:

- Its rural setting or countryside landscape located in relative proximity to urban GTA centres where many developments and re-developments occur.
- Large agricultural lands that require excess soil for grading and soil reclamation, replenishment/land improvements.
- The existence of aggregate pits that require excess soil for building berms, site grading and rehabilitation. More recently, pits with depleted resources are considered as suitable places for refill with large quantity of excess soil.

The Town of Caledon supports the proposed Provincial directions on excess soil. However, Caledon is concerned about the:

- Additional cost that will be incurred by the Town due to increase in the number of heavy trucks on its roads, bridges and other infrastructure.
- Increasing role for the municipality in the regulation, monitoring, and enforcement of disposal activities related to excess soil. Extra municipal resources will be needed to ensure that soil imported into the municipality is properly disposed. Currently, there are several illegal dumping of excess soil in the municipality.
- Increase in the amount of traffic on rural roads which decreased community safety and devalues the quality of life due to increase in the levels of dust and noise pollutions. The Province estimates that excess soil travels long distances (65 kilometers or more in many cases) for re-use or disposal. Trucks are also said to emit larger quantities of greenhouse gases.

The Town recommends that the proposed policy and regulation should include the following:

- Since the Province promotes the re-use of soil, the regulation should determine and mandate the minimum percentage of excess soil that proponents must use on-site. The Province and municipality should provide incentives for proponents who exceed the prescribed minimum percentage. This will ensure that less excess soil is transported and disposed off-site.
- Provide mechanism for proponents to separate and classify excess soils based on their types and qualities to ensure that top soils are re-used for agriculture and other beneficial purposes and not disposed in landfills. Contaminated soils are to be disposed appropriately to guarantee the protection of ground water.
- Provide municipalities with the powers to levy fee(s) related to disposal activities to enable them to recover cost and generate the funds needed to hire additional staff to monitor and enforce regulations as well as repair and maintain its roads and bridges.
- Allow municipalities to determine haul routes as it is currently the practice for aggregate operations to protest rural communities.

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More detailed information on the proposed changes to Development Charges is included in a separate Memorandum. Comments are due by **June 1, 2019.**

NEXT STEPS

Staff will continue to work with the Region and Conservation Authorities to ensure that a full set of impacts and implications to the Town are outlined to the Province. Further memorandums to Council will be brought forward as needed.