Report: PDL-CPL-19-24/PDL-LEG-19-37

Region of Waterloo

Planning, Development and Legislative Services

Community Planning

To: Chair Tom Galloway and Members of the Planning and Works Committee

Date: May 28, 2018 **File Code:** D06-04

Subject: Regional Response to Proposed Bill 108 - "More Homes, More Choice Act, 2019" (ERO Posting Nos. 019-0016 and 019-021)

Recommendation:

That the Regional Municipality of Waterloo forward Report PDL-CPL-19-24/PDL-LEG-19-37, dated May 28, 2019 to the Ministry of Municipal Affairs and Housing as the Region's response to Bill 108, the proposed "More Homes, More Choice Act, 2019".

Summary:

On May 2, 2019, the Provincial government released Bill 108, the proposed "More Homes, More Choice Act, 2019". If passed, Bill 108 would make major changes to 13 different Provincial statutes, including the Planning Act, the Development Charges Act, the Ontario Heritage Act and the Local Planning Tribunal Act. Highlights of the proposed changes include: significantly reducing timelines for making planning decisions; substantially changing how growth-related costs are funded through the Development Charges Act; establishing a new approach to the Endangered Species Act; and creating a new process for addressing Ontario Heritage Act designations.

Bill 108 would also repeal many of the reforms to Ontario's planning system enacted through Bill 139 (the Building Better Communities and Conserving Watersheds Act, 2017) and other amendments over the past decade. These changes would bring back a land use planning appeal system similar to the former Ontario Municipal Board. Attachment A contains a summary of the key legislative changes proposed by Bill 108.

The proposed amendments are a cornerstone of the government's new "More Homes, More Choice Housing Supply Action Plan", which was released simultaneously with Bill 108 on May 2, 2019. The stated intent of this initiative is to address housing supply and

affordability in Ontario by: streamlining development approvals; reducing and providing more certainty about municipal development charges; and creating conditions that would make it easier to build new ownership and rental housing.

This report provides staff's comments and recommendations from multiple Regional departments on the following Schedules to Bill 108:

- Schedule 1 (Cannabis Control Act);
- Schedule 2 (Conservation Authorities Act)
- Schedule 5 (Endangered Species Act);
- Schedule 6 (Environmental Assessment Act);
- Schedule 7 (Environmental Protection Act);
- Schedule 8 (Labour Relations Act);
- Schedule 9 (Local Planning Appeal Tribunal Act);
- Schedule 10 (Occupational Health and Safety Act);
- Schedule 11 (Ontario Heritage Act);
- Schedule 12 (Planning Act); and
- Schedule 13 (Workplace Safety and Insurance Act).

Considering the size and complexity of Bill 108, staff's comments with respect to Schedule 3 (Development Charges Act), Schedule 4 (Education Act) and the community benefits charge portion of Schedule 12 (Planning Act) are outlined separately in Report No. COR-FSD-19-25 dated May 28, 2019.

The government has posted Schedules 3, 11 and 12 on the Environmental Registry of Ontario (ERO) for a 30-day review period ending June 1, 2019. If adopted, this report will be submitted to the ERO as Regional Council's formal comments on the proposed legislative changes. Comments for Schedules 2 and 5 were due on May 21, 2019 and May 18, 2019, respectively and staff comments were submitted as a placeholder pending consideration of this report.

As part of this housing supply initiative, the government has also released the final version of "A Place to Grow: Growth Plan for the Greater Golden Horseshoe", which implemented amendments to the previous Growth Plan that came into effect in 2017. Staff's comments regarding the amended Growth Plan are outlined in Report No. PW-CPL- 19-21 dated May 28, 2019.

The area municipalities were circulated a preliminary draft of this report for review.

Report:

Background

In November 2018, the Provincial government released a Consultation Document titled "Increasing Housing Supply in Ontario". The document sought input on how the Province could address the barriers to creating new ownership and rental housing in Ontario. This initiative was outlined in the government's "2018 Ontario Economic Outlook and Fiscal Review – a Plan for the People." It is intended to help address the recent housing affordability challenges in Ontario, caused in part by rising development costs, delays in planning approvals and other barriers restricting the supply of new housing. In recent years, house prices and rents in Ontario, especially in high-growth areas such as the Greater Toronto Area and surrounding urban centres have increased rapidly because of low interest rates, population growth, and other positive economic factors.

On January 29, 2019, Regional Council submitted its comments on the Province's Housing Supply Consultation Document through Report No. PDL-CPL-19-03/COR-FSD-19- 06/CSD-HOU-19-04. That submission provided input on five broad themes:

- Speed – streamlining the development approval process;
- Housing Mix – increasing the mix of housing, including the "Missing Middle";
- Development Charges – ensuring growth continues to pay for growth;
- Rents – improving the rental housing system for landlords and tenants; and
- Innovation – encouraging new and creative ways to increase housing supply.

More Homes, More Choice: Housing Supply Action Plan

On May 2, 2019 the Provincial government released "More Homes, More Choice: Housing Supply Action Plan, 2019." The new Action Plan sets out several legislative, regulatory and policy changes related to Ontario's land use planning and appeal system. To expedite implementation of the legislative changes outlined in the Action Plan, the government gave first reading to Bill 108 (the More Homes, More Choice Act, 2019) on the same day it released the Action Plan.

Bill 108 proposes significant changes to 13 different Provincial statutes across multiple ministries, including the Planning Act, the Development Charges Act, the Ontario Heritage Act and the Local Planning Tribunal Act. A summary of the proposed amendments are contained in Attachment "A". Some of the government's stated objectives of Bill 108 include:

- Streamlining development approval processes to facilitate faster decisions;
- Supporting a range and mix of housing options, and boost housing supply;
- Addressing concerns about the land use planning appeal system;

- Making housing more attainable by reducing costs to build certain types of homes;
- Increasing the certainty of costs of development; and
- Providing clearer rules and tools, and creating more consistent appeals processes to help conserve cultural heritage resources while allowing housing supply to increase.

General Comments

Although the focus of Bill 108 is on bringing more housing to market quickly, supply is not the primary factor or the only factor affecting the Province's and Waterloo Region's housing market. It is also influenced by a variety of other key economic factors, including lower interest rates, higher after-tax incomes, house price "spill-overs" from the Greater Toronto Area and other economic factors. Consequently, increasing housing supply alone will not solve such a complex and wide-ranging issue as affordable housing. Ongoing Provincial support for community housing will be critical to accommodating people with low and moderate incomes.

Bill 108 would repeal many, but not all, of the reforms to Ontario's planning appeal system enacted by Bill 139 (the Building Better Communities and Conserving Watersheds Act, 2017) and earlier amendments. All of these planning reforms were endorsed by Regional Council to support the development of a more compact, transit-supportive urban form, and to give municipal elected officials greater control over local planning decisions.

Although Bill 108 would revert to many of the old planning rules that Regional Council sought to change, the proposed Bill would retain key elements of the earlier planning reforms, including:

- prohibiting "global appeals" of official plans (i.e., no appeals of entire official plans);
- removing the right to appeal Provincial approvals of official plans and official plan updates, including for conformity exercises to the Growth Plan;
- allowing 10-year review cycle for official plans and zoning by-laws; and
- removing the right to appeal municipal policies that support appropriate development within major transit station areas.

In addition to amending the Planning Act and the Local Planning Appeals Tribunal Act, Bill 108 would also amend several other Provincial statutes. Staff's detailed comments and recommendations regarding those legislative changes are outlined below.

Detailed Comments

Schedule 1 – Proposed Amendments to the Cannabis Control Act

The purpose of the Cannabis Control Act is to regulate and establish prohibitions for the sale, distribution, purchase, possession, cultivation propagation and harvesting of

cannabis. The proposed amendments provide greater clarity to enforcement officers on the closure of premises, obstruction of officers and fines. If passed, Bill 108 would make the following changes to the Act:

- Allow residential properties to be closed and all persons present to be removed if a contravention of the Act has occurred and a charge laid;
- Allow police and emergency personnel to enter, or re-enter a closed premise in important or urgent circumstances until the final disposition of the charge;
- Prohibit any person from hindering, obstructing or interfering, or attempting to hinder, obstruct or interfere with police officers and other person designated by the Minister in enforcing the Act; and
- Establish a new minimum penalty of $10,000 for a first conviction in respect of Section 6 (i.e., unlawful sale, distribution of cannabis) and Section 13 (i.e., landlord allowing a premise to be use for prohibited activities), and a new minimum penalty of $5,000 for any subsequent convictions. Maximum penalties for these convictions already exist in the legislation.

These proposed amendments will have little impact to the Region of Waterloo but will impact Waterloo Region Police Service (WRPS). Currently, there are no persons from the Region other than WRPS who are designated by the Minister for enforcing the Cannabis Control Act.

Schedule 2 – Proposed Amendments to the Conservation Authorities Act

If passed, Bill 108 would amend the Conservation Authorities Act to help Conservation Authorities better focus and deliver on their core mandate, and to improve governance. The Province has defined the Conservation Authorities' core mandatory programs and services provided to be: 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). These core services are particularly important as the Province adapts to increasing extreme weather and climate change impacts.

Other key changes proposed under Bill 108 include: improving transparency in how Conservation Authorities levy municipalities for services; establishing a process for Conservation Authorities and municipalities to enter into service delivery agreements; enabling the Minister to investigate conservation authorities; and clarifying the duty of Conservation Authority boards.

Staff's comments regarding the above changes are detailed in Attachment B. These comments, which were due on May 21, were submitted as a placeholder pending Regional Council's consideration of this report. The comments in Attachment B are

consistent with and supportive of the GRCA's comments (Report GM-04-19-41 – Environmental Registry Posting 013-5018: Modernizing Conservation Authority Operations, dated April 26, 2019). Staff's key recommendations to Province are:

Recommendations

a) The Province should add "the broad conservation of natural heritage features related to surface and/or groundwater" as one of the Conservation Authorities' core mandates and services, so that the direct and positive impacts of conservation programs and services can be supported consistently across municipalities;

b) The Province should provide a strong and supportive framework to clarify the duty of Conservation Authority boards, and to continue enabling watershed based collaboration and leadership on natural hazard protection, source water protection, and natural heritage conservation;

c) The Province should ensure that any changes to the Conservation Authorities Act regarding service delivery agreement processes be made in consultation with Conservation Authorities and municipalities, with the intent of developing a practical, non-prescriptive approach that covers core programs and services, and gives local decision makers the flexibility to determine the scale and scope of any additional programs and services;

d) The Province should ensure that the Conservation Authorities Act continues to acknowledge and support the critically important role that Conservation Authorities fill in long-term community planning, wise use and management of resources, and community health and safety;

e) The Province should ensure that the responsibility for funding and oversight for source water protection remain with the Ministry of Environment, Conservation and Parks; and

f) The Province should consult with municipalities and Conservation Authorities during the development of any future regulations associated with the amended Conservation Authorities Act.

Schedule 5 – Proposed Amendments to the Endangered Species Act

Staff has reviewed the Province's proposed changes to Ontario's Endangered Species Act with respect to:

- Enhancing the Province's oversight and enforcement powers to ensure compliance with the Act;
- Improving transparent notification of new species' listings;
- Ensuring appropriate consultation with academics, communities, organizations and

Indigenous peoples across Ontario on species at risk recovery planning; and,

- Creating new tools to streamline approval processes, reduce duplication and ensure costs incurred by clients are directed towards actions that will improve outcomes for the species or its habitat.

While the proposed changes to the Endangered Special Act are meant to improve the efficiency and effectiveness of the Act, there are publically stated concerns that:

- Species listed as threatened or endangered may no longer be automatically protected;
- There will be increased opportunity for political interference in the listing process;
- Developers and other activity proponents will be able to pay into a fund to compensate for harming species at risk and their habitats, rather than providing an on-the-ground overall benefit to species; and
- Southern Ontario species at the northern limit of their range may receive less or no protection, depending on their status outside Ontario.

Staff's comments concerning the above changes are detailed in Attachment C. These comments were due on May 18, and submitted to the Province as a placeholder pending Regional Council's consideration of this report. Staff's key recommendations are:

a) The Province should prioritize in-situ conservation, with very strict criteria for opting out. In addition, the Province should continue to support proactive species at risk research with funding that is not directly related to development;

b) The Province should include Aboriginal traditional knowledge, and better define "community knowledge" so that is as apparent what value the additional member(s) would be binging to the Committee. In addition, the Province should continue to rely on scientific expertise as a sound foundation for decision making;

c) The Provincial assessment process for endangered species should continue to be science-based, and taken from a long-term, risk-averse and apolitical perspective. This process should ensure that geographic or circumstantial protections do not arbitrarily allow for the exclusion of important habitats and species from protection. Any decisions regarding endangered species should prioritize environmental benefits over other potential social and economic benefits;

d) The Province should not proceed with its proposed nine month gap between the Committee on the Status of Species at Risk in Ontario assessments and listing, nor the decoupling of listing with automatic protection, as these proposed changes would increase the risk of vulnerable plants, animals and their habitats being eliminated before protections are in place. Environmental Bill of Rights consultation requirements

should be maintained;

e) The Province should revise its proposed approach to landscape agreements to prioritize conservation over economic and social factors, and ensure that such agreements address the full scope of site-specific and species-specific concerns; and

f) In considering the use of instruments under other Acts to protect species at risk, the Province should adopt an approach that best manages long-term impacts to species and habitats, and any potential risks that may be associated with allowing permanent Endangered Special Act exemptions under other laws (i.e., forestry industry).

Schedule 6 – Proposed Amendments to the Environmental Assessment Act

If passed, Bill 108 would amend the Environmental Assessment Act to include new exemptions for certain undertakings, and to establish new limitations and deadlines for when the Minister could issue orders. The proposed exemptions relate to: Provincial transportation facilities; the Ministry of Natural Resource's Stewardship and Facility Development Projects; the Management Board Secretariat and Ontario Realty Corporation services; Provincial Parks and Conservation Reserves; and the Ministry of Northern Development and Mine's activities under the Mining Act.

For undertakings where the Region or the area municipalities are the proponent, the proposed amendments would exempt Schedules A and A+ of the Municipal Class Environmental Assessment. These undertakings are currently preapproved under the Municipal Class Environmental Assessment, but Schedule A+ undertakings currently require public notification. If these undertakings are exempted through Bill 108, then public notification may no longer be required under the Municipal Class Environmental Assessment. In practice, however, it is expected that the Region would continue to provide public notice of upcoming projects.

It is expected that the Province, the Region and the area municipalities would continue to coordinate projects to address matters such as traffic management for road projects, even if the undertakings are exempt from the Environmental Assessment Act. Staff support reducing the amount of time required to resolve requests for orders.

Orders

Bill 108 would also amend the Environmental Assessment Act to establish new limits on the Minister's authority to issue orders. Under the proposed amendments, the Minister could only issue orders to prevent, mitigate or remedy adverse impacts on constitutionally protected aboriginal or treaty rights, or a prescribed matter of Provincial importance.

The proposed amendments would also impose new limitations on any persons making requests for orders by requiring that the person be a resident of Ontario, and that the request be submitted within a prescribed deadline. The amendments would also require

the Director to refuse any requests for an order that do not comply with the applicable criteria.

The Minister shall decide whether to make an order before any deadline as may be prescribed. If the Minister has not made a decision in respect of a request by a deadline prescribed for the purpose, the Minister shall provide written reasons indicating why a decision was not made and when a decision is expected to be made.

Limiting the Minister's ability to issue orders and imposing deadlines for decisions may reduce the amount of time required to resolve requests for orders.

Schedule 7 – Proposed Amendments to the Environmental Protection Act

If passed, Bill 108 would amend the Environmental Protection Act to allow a provincial officer to seize the number plates for a vehicle, if the officer believes that the vehicle was used or is being used in connection with an offence under the *Environmental Protection Act*, the *Nutrient Management Act*, the *Ontario Water Resources Act*, the *Pesticides Act*, the *Safe Drinking Water Act*, or the *Toxics Reduction Act*. In addition, Schedule 7 would broaden the scope of administrative penalties to ensure compliance with any requirements or orders made under the *Environmental Protection Act* or the regulations.

Regional staff have no concerns with the proposed changes.

Schedule 8 – Proposed Amendments to the Labour Relations Act

The amendments to the Labour Relations Act address several provisions. First, a special rule in the Act that focuses upon concrete formwork in relation to The Carpenters' District Council of Ontario (under section 150.7) is repealed. Second, the provisions of section 153 (which addresses Province-wide bargaining) that allow exclusions under that section to be limited to specified geographic areas are also repealed. Additional proposed amendments will also provide the Lieutenant Governor in Council the authority to address any transitional matter arising from the More Homes, More Choices Act, 2019. In the event that this legislation has an impact upon bargaining agent certificates and agreements, regulations can be made to resolve any such issues.

As a partial consequence of the recent passage of Bill 66 (which deemed municipalities, among others, as non-construction employers), we believe that these changes to the Labour Relations Act will not have any significant municipal implications. No action should be required in response to these changes, if passed.

Schedule 9 – Proposed Amendments to the Local Planning Appeal Tribunal Act

The government is proposing significant changes to the Province's land use planning appeal system, which was overhauled in 2017 following a major review by the former Provincial government. Regional Council participated in that review since 2016 and has been very supportive of the reforms to the former Ontario Municipal Board, to support

timelier decisions making and give more weight to elected municipal councils.

If passed, Bill 108 would amend both the Planning Act and the Local Planning Tribunal Act (formerly called the Ontario Municipal Board Act) to reverse some of the key reforms to Ontario's planning appeal system. Staff's comments with respect to the Planning Act are outlined below starting on page 17. The key proposed changes to the Local Planning Tribunal Act (LPAT) include:

- Providing for mandatory case management conferences for appeals of official plans/official plan amendments, zoning by-law amendments and plans of subdivision;
- Providing for mandatory mediation or other dispute resolution processes in specified circumstances;
- Repealing provisions relating to the Tribunal's ability to state a case in writing for the opinion of the Divisional Court on a question of law;
- Restoring the rights to examine or cross-examine witnesses, and allowing the Tribunal to limit any examination or cross-examination of a witness in specific circumstances;
- Limiting the submissions by non-parties to a proceeding before the Tribunal to written submissions only, but providing the Tribunal with the authority to examine such parties; and
- Providing the Tribunal with the power to determine fees for classes of persons, or classes of matters.

The government has not released details on how these changes will be implemented. There remain matters to be dealt with through regulation, including the transition of matters currently before the LPAT to the new rules once in force. Transition regulations may deal with different classes of matters differently, and may make modifications to the application of the LPAT Act as it read before the effective date of the amendments for some matters. There is presently a regulation that sets the time lines for the disposition of matters by the LPAT. There has been no indication that regulation would be repealed or replaced.

Overall, the changes proposed by Bill 108 essentially return the practice and procedures for appeals of planning matters to those under the former Ontario Municipal Board. There is potential to achieve efficiencies and reduce the time to resolve appeals through the case management process and the power of the Tribunal to require mediation or other dispute resolution to resolve one or more issues in an appeal. While the explicit power to limit examination and cross-examination accorded to the Tribunal may permit efficiencies in the hearings, it is anticipated that the exercise of that power may result in challenges.

Recommendation

The government should consult with municipalities and affected stakeholders prior to amending the implementing regulations to the LPAT Act, or approving any proposed changes to the LPAT's Rules of Practice and Procedure.

Schedule 10 – Proposed Amendments to the Occupational Health and Safety Act

The Occupational Health and Safety Act contains provisions that empower the Province's Chief Prevention Officer at the Ministry of Labour to advance their goal of prevention of health and safety issues in workplaces. The proposed changes address the ability of the Chief Prevention Officer to make changes relating to the certification of joint health and safety committee members. If adopted, the Chief Prevention Officer will have greater flexibility in amending the training requirements required for certification, the conditions required to maintain certification (including specifying time-limited certifications), and the clear ability to revoke or amend certifications for joint health and safety committee members.

These changes will not have a direct impact upon Region operations, if passed. Health and Safety will continue to ensure appropriate certifications are held by joint health and safety committee members, and where changes are made through the Ministry of Labour's Chief Prevention Officer, compliance will continue to be monitored in the event that there are any changes required to certifications of committee members.

Schedule 11 – Proposed Amendments to the Ontario Heritage Act

Bill 108 proposes several key changes to the Ontario Heritage Act (OHA), including:

- Establishing principles that municipalities must consider when making decisions under Parts IV (Conservation of Property of Cultural Heritage Value or Interest) and V (Heritage Conservation Districts) of the Act;
- Creating regulatory authority to establish mandatory requirements for the content of designation heritage conservation by-laws;
- Revising the process for adding properties not yet designated (known as "listed") to the municipal heritage register, by notifying property owners if their property is "listed" and enabling them to object to the municipal council; and
- Requiring that municipal decisions regarding heritage designations and alterations be appealable to the LPAT.

The above changes would not directly affect the Region's mandate and responsibilities with respect to heritage conservation. As a result, staff have no objection in principle to any legislative changes that seek to provide greater clarity to area municipalities on how to interpret the requirements of the OHA. Staff also generally support any changes that

would facilitate a timelier and more transparent heritage conservation process for property owners and the public.

Despite our broad support, staff are concerned that some of the proposed changes may have a detrimental effect on the heritage conservation efforts of the Region's seven area municipalities. Currently, area municipal councils have the authority to make final decisions with respect to the conservation, alteration or demolition of designated heritage structures. Bill 108 would enable property owners to appeal such council decisions to the LPAT, rather than the Conservation Review Board.

Staff do not support transferring this important responsibility to an adjudicating body that is not elected or accountable to the local community. Decisions regarding heritage conservation should be in the hands of members of the community who understand its unique traditions, its local history and valuable cultural heritage resources. Currently, the Conservation Review Board hears disputes on matters relating to the protection of cultural heritage, and provides expert recommendations on the matters to local councils. The proposed changes will mean that the LPAT will adjudicate disputes and render binding decisions to area municipalities on local cultural heritage matters.

In addition, staff also question whether transferring heritage-related appeals to the LPAT will have any meaningful impact on the supply of new housing in Ontario. Although heritage-related issues often generate much publicity and debate, they only affect a small percentage of housing applications in a municipality. In fact, transferring such appeals to the LPAT may potentially increase delays further by diverting the Tribunal's resources from larger housing proposals that require more immediate attention.

Recommendations

a) The Province should not transfer the authority to make final decisions with respect to heritage-related matters to the LPAT; and

b) In drafting the prescribed principles noted above, the Province should consider incorporating those principles that form the basis of existing international heritage conventions and charters, and Parks Canada's Standards and Guidelines for the Conservation of Historic Places in Canada.

Schedule 12 – Proposed Amendments to the Planning Act

1. Additional residential unit policies

The Planning Act currently requires local official plans to authorize a second dwelling unit on a residential property. The second unit could be located either in an existing detached, semi-detached or row house, or in an ancillary building or structure on the property (e.g., above laneway garages). Bill 108 would amend the Act to permit two units in the primary dwelling, and one unit in an ancillary building or structure. This would allow up to three

units on a property instead of two.

Staff generally support this change to make it easier for homeowners to create residential units above garages, in basements and in laneways. Most second units are created in established neighbourhoods that are near schools, shopping centres, recreational facilities and other important amenities. They also help provide affordable housing options for those looking to live in lower density areas and, in many cases can be more affordable than apartment rentals. The Region's Ontario Renovates program provides up to $25,000 as a forgivable loan to create or legalize an affordable second unit.

Despite our support for this proposal, there are some ongoing challenges to creating additional units on existing properties, such as:

- municipalities with large post-secondary student populations (e.g., City of Waterloo) have circumstances where additional units may not be appropriate based on good land use planning principles;
- the high cost of retrofitting a home or ancillary building to add additional units, including the need to ensure fire and building code compliance; and
- the ability to meet municipal parking requirements.

One way to address these challenges is to encourage more home builders and residential land developers to accommodate additional units in new construction. Designing new houses to accommodate a second unit at the outset can be more efficient than retrofitting an existing home to have a second unit. While a home with a second unit may be more expensive to purchase initially, the ability to combine a new home purchase with the purchase of an income property may be attractive to some home buyers.

Recommendations

a) The Province should review the Ontario Building Code to address barriers specific to make the creation of second units easier, including making it less onerous for developers to rough in secondary units during the construction of a new home, while maintaining safety of future residents. The Province should also help municipalities by creating guidelines for homeowners and other tools to help create more second units; and

b) The Province should examine ways to encourage more home builders and residential land developers to accommodate additional units in new construction. This could include financial incentives through the Development Charges Act or modifications to the Ontario Building Code.

2. Inclusionary zoning policies

Inclusionary zoning is a planning tool that a lower-tier municipality may use to require

affordable housing units to be included in residential developments of 10 units or more. The use of this tool is discretionary, and it is typically applied to create affordable housing for low and moderate-income households.

If a municipality chooses to use inclusionary zoning, the Planning Act currently enables a municipality to apply it within all or parts of their community. There are no restrictions on where it can be applied. This gives municipalities the flexibility to adapt inclusionary zoning to reflect local context, and to apply it where it is needed most. To date, none of the Region's seven area municipalities have established inclusionary zoning policies in their official plans.

If approved, Bill 108 would amend the Planning Act to restrict the parts of a community that a municipality could apply inclusionary zoning if it chose to use it. Under the proposed amendment, a municipality could only use inclusionary zoning in Major Transit Station Areas (MTSAs), or areas where a development permit system has been adopted or established in response to an order made by the Minister.

Staff recognize and agree with the need to build more affordable housing close to higher order transit. However, the capacity to accommodate new housing within MTSAs can vary and staff does not support creating restrictions on which parts of a community a municipality can apply inclusionary zoning. Fundamentally, this works against the goal of building complete communities that provide a diverse range and mix of housing options, including affordable housing. The Province's goal, and indeed every municipality's goal, should be to build more affordable housing wherever it is needed most in a community, not just within major transit station areas.

The Region of Waterloo continues to face challenges in meeting the demand for affordable housing as our community continues to grow. During the consultation on Bill 204 (Promoting Affordable Housing Act), the Region expressed its support for the Province's inclusionary zoning initiative under the Planning Act. We continue to view inclusionary zoning as an important and necessary tool for area municipalities that can help increase the supply of affordable housing, to meet the needs of housing across the entire region.

Recommendation

The Province should not amend subsection 16(5) of the Planning Act to restrict the areas where non-prescribed municipalities can apply inclusionary zoning. Municipalities should continue to have the ability to tailor inclusionary zoning to address local needs.

3. Reduction of decision timelines

The proposed amendment would significantly reduce the timelines for municipalities and the Province to make a decision on a development application before an appeal can be filed, as follows:

- Official Plans and amendments from 210 to 120 days
- Zoning by-laws from 150 to 90 days (except where there is a concurrent official plan amendment
- Plans of subdivision from 180 to 120 days

Undue delays and uncertainty in the approval process can increase a developer's or home builder's costs and financial risks, resulting in less new housing supply, higher housing prices and a less efficient housing market. However, reducing the current timelines under the Planning Act will not necessarily bring needed housing to market quicker and could actually have a detrimental effect.

Process delays can occur for many reasons, including the need to extend public consultation on contentious development projects. They can also occur when developers propose changes to their applications midway through the process. Other delays can arise when major gaps or omissions are identified in an applicant's submission materials.

With respect to plans of subdivisions, once a municipality has granted draft approval of a plan, the developer controls how quickly a plan is registered and when new housing is brought to market. The timing for registration depends on a range of factors, including market conditions, financial considerations and the staging of development of surrounding lands. As a result, reducing decision timelines by 60 days as proposed for plans of subdivision would not yield significant time savings and could inadvertently increase delays by:

- Increasing the number of appeals for non-decisions, thereby diverting municipal resources away from applications already in the queue or from municipal official plan and zoning by-law updates; and
- Prompting more appeals to the LPAT from the public on development applications approved with insufficient consultation with affected residents (see comments below on page 19 with respect to Bill 108's restrictions on third party appeals).

Staff believe the current timelines are appropriate and provide a good balance between a municipality's responsibility for making informed decisions, and a developer's expectation for a timely and efficient approval process.

One of the challenges with the timelines for planning decisions is that after a development application has been deemed complete by the municipality, it has no ability to pause the timelines (i.e., "stop the clock") if the applicant requests a major revision to the application, or issues arise during the municipality's review and processing of the application (e.g., the applicant's submission contains errors or omissions). Depending on the application, such revisions or issues can add several weeks to the approval process.

Recommendations

a) The Province should maintain the current timelines under the Planning Act to ensure municipalities have sufficient time to review applications and make a decision. If the Province decides to change the current timelines, it should consider adopting a sliding scale approach that would set timelines based on the level of complexity of the application. This approach could, for example, set shorter timelines for smaller development proposals and longer timelines for more complex ones; and

b) The Province should establish a mechanism for a municipality to pause the decision timelines, if it identifies significant errors or omissions in the applicant's submission materials after the application has been deemed complete by the municipality.

4. Repeals to portions of Bill 139 (the Building Better Communities and Conserving Wetlands Act, 2017)

In 2017, the Province introduced a number of positive changes to the Planning Act through Bill 139. Bill 108 would repeal recent amendments to the Planning Act that:

- restricted the grounds of appeal in many instances to inconsistency with a provincial policy statement and/or non-conformity with a provincial or official plan;
- limited the introduction of new evidence or information at hearings; and
- imposed a two-step appeal process, limiting the Local Planning Appeal Tribunal's ability to make a final decision on a first appeal and requiring it to provide municipalities with an opportunity to make a new decision before it could issue a final decision on a second appeal. Bill 108 reverts back to the single appeal process providing the Tribunal with the authority to render a final decision at the first instance.

Staff do not support repealing the restriction on the grounds of appeal to conformity or consistency matters as it will establish a lower threshold for appeals. The current test for appeals is appropriate and affords municipalities more flexibility in determining the best options for their community. Maintaining the current legal test for appeals would also help to ensure that municipal council decisions stand, and that the Tribunal is tasked only with valid planning disputes.

Further, staff do not support returning to "de novo" hearings as proposed because it undermines local municipal decision-making processes. The Tribunal should not be given the power to review and make final decisions on substantially revised development applications. Reverting back to "de novo" hearings provide the opportunity for an applicant to submit inadequate information as part of their initial submission knowing that they can introduce new information as part of an appeal. Further, it would scale back the public's participation in the hearing by limiting persons who are not parties to written submission only.

If passed, Bill 108 would return to a single hearing similar to the former OMB process. This process would provide the Tribunal with the authority to change a municipal council's decision, without sending it back to council for reassessment, based on what the Tribunal believes to be the "best" planning outcome.

Staff do not support this proposed change as it works against the policy-making authority of democratically elected councils, particularly as it relates to "de novo" hearings and the introduction of new information during the appeals process. Municipal planning decisions typical undergo extensive public consultation, professional analysis and debate at council. Such decisions should not be easily dismantled or overturned on appeal.

Recommendations

a) The Province should maintain the current grounds of appeal for major land use planning decisions to issues of consistency with the Provincial Policy Statement, and/or conformity with the Growth Plan for the Greater Golden Horseshoe and, or in the case of a local official plan amendment, conformity with the upper-tier municipality's official plan;

b) If the government decides to revert to the previous standard for appeals, the government should seek way to require the Tribunal to exercise its dismissal powers more frequently, provided a dismissal is properly justified and will meet any challenge for judicial review;

c) The Province should introduce a more robust pre-screening tool to identify appeals without merit. One pre-screening criterion could be to require that appeals relate to identifiable pieces of land. Appeals should also relate to site-specific policies to assist with scoping an appeal and /or determining its validity;

d) The Province should not return to "de novo" hearings to ensure that planning appeals are considered in the context of the application and supporting information submitted to a municipality before municipal council made its decision;

e) If the Province decides to return to "de novo" hearing, the Province should explore additional ways to require the Tribunal to exercise its powers to remit matters back to municipal council for input prior to making a final determination on a planning appeal. The Province should also not limit to submissions by non-parties to proceeding before the LPAT to written submissions only;

f) The Province should maintain the current "two-step" appeal process in the Planning Act to give municipalities 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; and

g) If the Province decides to delete the current "two-step" appeal process, the Province should seeks ways to require the LPAT to enforce the current "have regard to"

language for municipal planning in the Planning Act, to give greater weight to democratically elected council decisions.

5. Restricting third party appeals for non-decisions on official plans

Currently, section 17 (40) of the Planning Act enables any person or public body to file an appeal the LPAT with respect to official plans, if no decision was given within the specified timeline (i.e., appeals for non-decisions). Bill 108 proposes to limit the right to file such appeals to: the municipality that adopted the official plan; the Minister or; in the case of official plan amendments, the person or public body that requested the amendment. Third party individuals or community interest groups would no longer have the right to file such appeals to the LPAT.

Staff have no objection in principal to this change to help reduce the potential for appeals for non-decisions. Restricting third party appeals for non-decisions would give municipalities more time to resolve any community issues outside the more rigid and expensive LPAT process. Once a decision is made by council, any individuals or community interest groups who do not agree with the decision would still have the right to file an appeal.

6. Restricting third party appeals of plans of subdivision

Currently, under section 51(39) of the Planning Act, any person or public body who participated in the public process leading up to a municipal council's decision to approve a draft plan of subdivision has the right to appeal council's decision to the LPAT. Bill 108 proposes to amend this section so that only the applicant, the municipality, the Minister, or a public body have right to appeal a council decision on draft plan of subdivision. Individuals, adjoining developers, and community groups would no longer be able to file an appeal, regardless of the potential impacts the plan of subdivision may have on them.

Staff do not support this change because it weakens citizen involvement in local land use planning process. An important principle of land use planning is to foster public participation and engagement in the decision-making processes. This is especially crucial for individuals that may be directly impacted by a municipality's decision to approve a plan of subdivision. As a result, the Planning Act should not remove the right for individuals or community groups to appeal a plan of subdivision to the LPAT.

Recommendation

The Province should not amend the Planning Act to remove the rights of individuals, adjoining land owners, or community groups to appeal a municipal council's decision to approve a plan of subdivision.

7. Mandatory development permit system

Under the Planning Act, a local municipality may by by-law establish a development

permit system within the municipality for any area set out in the by-law. A development permit system (i.e., formerly known as the community planning permit system) is a planning tool that provides an alternative to the current development approval processes. It effectively combines zoning, site plan and minor variance applications into a single approval process. By combining these applications into one step, a development permit system can result in faster approvals and give applicant's more certainty about the requirements for development. To date, none of the Region's seven area municipalities have established a development permit system.

Currently, under section 70.2.2 of the Planning Act, the Minister and an upper-tier municipality may require a local municipality to establish a development permit system. If required to do so, the local municipality has discretion to determine what parts of the community would be governed by the development permit system. Anyone who participated in the public process leading up to the municipality's decision to adopt the development permit system can appeal the municipality's decision to the LPAT.

If passed, Bill 108 would amend section 70.2.2 of the Planning Act to:

- remove an upper-tier municipality's ability to require a local municipality to establish a development permit system;
- enable the Minister to not only require a local municipality to establish a development permit system, but also specify what parts of the community would be governed by the system (e.g., major transit station areas and provincially significant employment zones); and
- except for the Minister, remove the right to appeal a municipality's official plan amendment to implement a development permit system.

The government has not said how quickly it intends to use its new authority, or which municipalities it would require to implement the new permit system. However, staff anticipate that the system will be likely aimed primarily at high-growth communities with higher-order transit systems and major transit stations, including potentially the Cities of Cambridge, Kitchener and Waterloo.

Overall, although staff have no objections in principle to the above proposed changes, we would request the Province to consult with municipalities on any future changes to O. Reg.173/16: Community Planning Permits.

Recommendation

The Province should consult with municipalities and other stakeholders on any future changes to O. Reg.173/16: Community Planning Permits.

Schedule 13 – Proposed Amendments to the Workplace Safety and Insurance Act

The proposed changes are narrow in scope, and address the establishment of premiums for a narrow class of parties. These changes will allow the Workplace Safety and Insurance Board to establish premium rates for partners and executive officers who perform no construction work in the course of their duties that are different than the premium rates established for the organization that employs them. In other words, a construction organization may now receive differential premium rates between the organization as a whole (i.e. including those employees that actually perform construction work), and partners and executive officers, who presumably would not perform direct construction work.

This amendment should not have any significant Region implications. No action should be required in response to these changes, if passed.

Proposed Next Steps

The final content of Bill 108 has not yet been determined and proposed regulations are not yet available. Transition and other matters that were addressed in regulations to the LPAT Act are expected to be dealt with in the regulations. In addition, as part of the initial consultation last fall, the Province indicated that is also considering amendments to the Provincial Policy Statement. However, the Province has not announced any changes to this document to date.

Staff will continue to monitor Bill 108 and any proposed changes to the Provincial Policy Statement, and report back to Council as necessary.

Corporate Strategic Plan:

The Region's participation in this consultation broadly supports the following strategic objectives;

- Objective 1.2 - Plan for and provide the infrastructure and services necessary to create the foundation for economic success;

- Objective 4.3 - Increase the supply and range of affordable and supportive housing options; and

- Objective 3.6 - Improve environmental sustainability and livability in intensifying urban and rural settlement areas.

Financial Implications:

It is difficult to predict all the financial implications of Bill 108 on the Region. Reducing the timelines for making planning decisions could potentially increase the number of appeals for "non-decisions" to the LPAT, thereby increasing the Region's legal costs participating in various hearings.

In addition, the proposed changes to the Conservation Authorities Act could potentially

lead to downloading of certain services currently performed by the Grand River Conservation Authority to the Region through future changes to service delivery agreements.

The most significant financial impacts to the Region arising from Bill 108 relate to the proposed changes to the Development Charges Act and the community benefits portion of the Planning Act. These impacts are discussed in detail in a companion report listed on the May 28, 2019 agenda of the Administration and Finance Committee (see Report No. COR-FSD-19-25).

Other Department Consultations/Concurrence:

This report was prepared with input from the following departments and divisions:

- **Community Services** – Housing Services
- **Corporate Services** - Financial Services & Development Financing
- **Human Resources & Citizen Service** – Employee Relations
- **Planning, Development & Legislative Services** - Community Planning; Legal Services; Cultural Services; and Licensing and Enforcement;
- **Transportation and Environmental Services** – Design & Construction, Water Services

Attachments

Attachment “A” - Summary of Key Legislative Changes to Bill 108

Attachment “B” – Staff’s comments regarding proposed changes to the Conservation Authorities Act (ERO Posting Nos. 013-5018 and 013-4992)

Attachment “C” – Staff’s comments regarding proposed changes to the Endangered Species Act (ERO Posting No. 013-5033)

Prepared By: **John Lubczynski**, Principal Planner
Michelle Sergi, Director, Community Planning
Fiona McCrea, Senior Solicitor, Development and Property

Approved By: **Rod Regier**, Commissioner, Planning, Development and Legislative Services

Attachment A

Summary of Key Legislative Changes
Bill 108 (the More Homes, More Choice Act, 2019)

Planning Act

- Permitting two residential units in detached, semi-detached or rowhouses, as well as one residential unit in an ancillary building structure;
- Applying inclusionary zoning policies to areas that are generally high growth, including major transit station areas and areas where a development permit system has been required by the Minister of Municipal Affairs and Housing;
- Reducing timelines for making planning decisions:
  - Official Plans from 210 to 120 days;
  - Zoning By-laws from 150 to 90 days;
  - Plans of Subdivision from 180 to 120 days;
- Repealing amendments previously introduced through Bill 139 (the Building Better Communities and Conserving Watersheds Act, 2017) that:
  - restricted the grounds of appeal in many instances to inconsistency with a provincial policy statement and non-conformity with a provincial or official plan;
  - limited the introduction of new evidence or information at hearings; and
  - imposed a two-step appeal process, limiting the Local Planning Appeal Tribunal's ability to make a final decision on a first appeal and requiring it to provide municipalities with an opportunity to make a new decision before it could issue a final decision on a second appeal. Bill 108 reverts back to the single appeal process providing the Tribunal with the authority to render a final decision at the first instance.
- Restricting third party appeal rights for plans of subdivision and non-decisions of official plans or official plan amendments;
- Repealing and replacing the existing Section 37 density and bonusing provisions with a new community benefits charge system. This new authority will allow municipalities to charge for community benefits, such as libraries and daycare facilities, but not facilities or services set out in the Development Charges Act, 1997. Contributions will be based upon the value of the land at building permit, subject to a maximum percentage to be set by regulation;

- Deeming parkland by-laws of no force and effect if a community benefits charge by-law is in force and repealing a municipality's ability to require an alternative rate. Plans of subdivision that are approved with a condition of parkland conveyance are not subject to a community benefits charge by-law if the approval is on or after the day Section 37, as re-enacted, comes into force;
- Enabling the Minister to require that municipalities establish a development permit system that applies to a specific area, such as major transit station areas and provincially significant employment zones, and remove appeals associated with its implementing planning documents; and
- Broadening regulation making authority to include transition regulations that would permit existing appeals to be replaced with a new notice of appeal under the amended Planning Act.

Local Planning Appeal Tribunal Act

- Repealing the highly controversial provisions of Bill 139 which limited a party's ability to introduce evidence and call or examine witnesses;
- Providing for mandatory mediation or other dispute resolution processes in specified circumstances;
- Repealing provisions relating to the Tribunal's ability to state a case in writing for the opinion of the Divisional Court on a question of law;
- Allowing the Tribunal to limit any examination or cross-examination of a witness in specific circumstances; and
- Limiting the submissions by non-parties to a proceeding before the Tribunal to written submissions only, but providing the Tribunal with the authority to examine such parties.

Development Charges Act, 1997

- Providing exemptions for second dwelling units in new residential buildings, and the ability to exempt other classes of dwelling units as may be prescribed;
- Providing for additional services to be included in a development charge by-law as may be prescribed;
- Eliminating the 10% reduction on capital costs and the 10 year limit on estimating an increase in the need for service;
- Providing transition periods for municipalities to coordinate development charge by-laws with the passage of community benefit by-laws under the new s. 37 of the *Planning Act*;
- Allowing for the payment of development charges in installments over 5 years for:

  - Rental housing development;
  - Institutional development;
  - Industrial development;
  - Commercial development;
  - Non-profit housing development; and

- Requiring the amount of the charge to be calculated on the date of submission of a planning application.

Education Act

- Providing for notice to the Minister of an intention to expropriation land;
- Allowing education development charge revenue to be applied to alternative projects, subject to the Minister's approval. An 'alternative project' includes a project, lease or other prescribed measure that would address the need for pupil accommodation and reduce the cost of acquiring land;
- A board may allocate education development charge revenue towards an alternative project if the Minister is provided with plans related to the project, and the Minister approves the allocation, subject to prescribed criteria; and
- To allow for a board to enter into an agreement with an owner of land to provide a lease, real property or other prescribed benefit to be used by the board for pupil accommodation in return for not imposing education development charges, subject to the approval of the Minister.

Ontario Heritage Act

- Providing for 'prescribed principles', which shall be considered by a council when exercising its authority under Part IV or V of the Act;
- Providing for notice to property owners when a property is included in a heritage register;
- Granting the ability for a property owner to object to the inclusion of a property on the register, which objection shall be considered by council;
- Imposing a 90 day limitation on the designation of a property after a prescribed event has occurred;
- Appeals of a notice of intention to designate, amendments to a designating by-law, repealing by-laws and applications to alter a heritage property, are to the Tribunal for a binding decision, whereas objections were previously made to the Conservation Review Board for a non-binding decision;
- Deeming applications for alteration or demolition to be approved should the municipality fail to make a decision within the specified time period;

- Providing additional procedures and time periods for the submission and consideration of complete applications to alter a designated property; and
- Clarification that applications to demolish include the demolition or removal of any of the property's heritage attributes.

Other Changes

Changes to the *Cannabis Control Act, 2017*, *Conservation Authorities Act*, *Endangered Species Act, 2007*, *Environmental Assessment Act*, *Environmental Protection Act*, *Labour Relations Act, 1995, Occupational Health and Safety Act* and the *Workplace Safety and Insurance Act, 1997.*

Attachment B

PLANNING, DEVELOPMENT
AND LEGISLATIVE SERVICES
150 Frederick Street, 8th Floor
Kitchener ON N2G 4J3 Canada
Telephone: 519-575-4400
TTY: 519-575-4608
Fax: 519-575-4449
www.regionofwaterloo.ca

May 17, 2019

Carolyn O'Neill
Great Lakes and Inland Waters Branch, Great Lakes Office,
Ministry of the Environment, Conservation and Parks
40 St. Clair Avenue West,
Toronto ON M4V 1M2

And

Alex McLeod
Natural Resources Conservation Policy Branch
Ministry of Natural Resources and Forestry
300 Water Street
Peterborough, ON K9J 8M5

RE: Modernizing Conservation Authority Operations - Conservation Authorities Act (ERO Registry Number 013-5018)
And Focusing conservation authority development permits on the protection of people and property (ERO Registry Number 013-4992)

Dear Ms. O'Neill and Mr. McLeod:

On April 5, 2019, the Province posted the documents titled "Modernizing conservation authority operations - Conservation Authorities Act" and "Focusing conservation authority development permits on the protection of people and property" to the Environmental Registry of Ontario for comment.The following are comments from Regional staff on the proposed changes to the Act and related. These comments will be included as part of a Council Report that will be submitted to the Province as comments on Bill 108, More Homes, More Choice Act, 2019.

Conservation Authority Mandate and Services

The core mandate in the current Conservation Authorities Act (2017) and as described in the Province's "Made in Ontario Environment Plan", is "to undertake watershed-based programs to protect people and property from flooding and other natural hazards, and to conserve natural resources for economic, social and environmental benefits", with two main objectives:

1. Develop and maintain programs that will protect life and property from natural hazards such as flooding and erosion; and

2. Develop and maintain programs that will conserve natural resources.

Staff have no objection to better defining Conservation Authorities' core mandates and services, but recommend that the conservation of natural heritage features related to surface and/or groundwater be included, along with 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 a core mandatory program and service.

The Region and partnering area municipalities, upstream and downstream, work closely with the Grand River Conservation Authority (GRCA) to provide programs and services related to natural hazard protection, natural heritage conservation, and source water protection. The GRCA's existing programs and services are all interconnected and are mutually beneficial.

Recommendation

The Province should add "the conservation of natural heritage features related to surface and/or groundwater" as one of the Conservation Authorities' core mandates and services, so that the direct and positive impacts of conservation programs and services can be supported consistently across municipalities.

Conservation Authority Boards

Municipal support for Conservation Authority programs and services are directly linked to the ongoing funding decisions made by the municipally representative GRCA Board of Directors, which oversees the operation of the GRCA and approves policies, programs and budgets. As a result, the Province should provide a strong and supportive framework to clarify the duty of Conservation Authority boards, and to continue enabling watershed based collaboration and leadership on natural hazard protection, source water protection, and natural heritage conservation.

Recommendation

The Province should provide a strong and supportive framework to clarify the duty of Conservation Authority boards, and to continue enabling watershed based collaboration and leadership on natural hazard protection, source water protection, and natural heritage conservation.

Service Delivery Agreement

The Province is proposing to increase transparency in how Conservation Authorities levy municipalities, and establish a transition period and process for Conservation Authorities and municipalities to enter into agreements for non-core services. The Region has an existing Memorandum of Understanding (MOU) with the GRCA that focuses on planning review services. The current MOU with the Region is working well, and could be expanded to address additional core and non-core services. Having the

Region, an upper-tier municipality, enter into the agreement on behalf of the area municipalities provides for simplicity, accountability and increased transparency.

Although staff generally support amending the Conservation Authorities Act to help improve service delivery, any such changes to the Act regarding service delivery agreement processes should be made in consultation with Conservation Authorities and municipalities, with the intent of developing a practical, non-prescriptive approach that covers core programs and services, and gives local decision makers the flexibility to determine the scale and scope of any additional programs and services.

The Region and its area municipalities rely heavily on the technical capabilities of Conservation Authority staff; as a commenting agency on behalf of the Province with regard to natural hazards; as a regulator with respect to development and interference with wetlands and alteration to shorelines and watercourses; as a reviewer of development applications; and as a supporter of watershed planning. As result, any changes to the Conservation Authorities Act should continue to acknowledge and support the critically important role that Conservation Authorities fill in long-term community planning, wise use and management of resources, and community health and safety.

Recommendations

a) The Province should ensure that any changes to the Conservation Authorities Act regarding service delivery agreement processes be made in consultation with Conservation Authorities and municipalities, with the intent of developing a practical, non-prescriptive approach that covers core programs and services, and gives local decision makers the flexibility to determine the scale and scope of any additional programs and services.

b) The Province should ensure that the Conservation Authorities Act continues to acknowledge and support the critically important role that Conservation Authorities fill in long-term community planning, wise use and management of resources, and community health and safety.

Source Water Protection

The Region, the GRCA and the area municipalities work together on source water protection, and rely on Provincial funding through the Ministry of Environment, Conservation and Parks (MECP). The Region recommends that although drinking water source protection is recognized as a core mandatory program for Conservation Authorities, responsibility for funding and oversight should remain with the MECP.

Recommendation

The Province should ensure that the responsibility for funding and oversight for source water protection remain with the Ministry of Environment, Conservation and Parks.

Regulation Consolidation for Conservation Authorities

The Province has also posted a proposal for "Focusing Conservation Authority development permits on the protection of people and property". This proposal would create one new regulation for all Conservation Authorities and will replace 36 existing individual Conservation Authority regulations under Section 28 of the Conservation Authorities Act.

Staff support this proposed change to create a more consistent set of regulations and approaches for Conservation Authority permits. These changes would support faster approvals while ensuring there are no impacts on natural hazards and public safety. The proposed changes also include exemptions for some low risk activities and other initiatives. These changes would result in less costly approvals and allow Conservation Authority staff to focus on more complex applications to provide faster approvals.

The Region has had a positive experience working with the GRCA in the planning review process. It is importance to include the Conservation Authority's expertise as part of long-range planning, as well as their input early during development review, so that there is a logical progression for applications through the permitting stage.

Recommendation

The Province should consult with municipalities and Conservation Authorities during the development of any future regulations associated with the amended Conservation Authorities Act.

Thank you for the opportunity to comment on the proposed changes to the Ontario Conservation Authorities Act and related regulations. Please contact Kate Hagerman, Manager of Environmental Planning and Sustainability at khagerman@regionofwaterloo.ca should you have any questions.

Sincerely,

Rod Regier
Commissioner, Planning, Development & Legislative Services

cc: Nancy Davy, Director of Resource Management
Grand River Conservation Authority

Joe Farwell, CAO, Grand River Conservation Authority

Document Number: 2989704 4

Attachment C

PLANNING, DEVELOPMENT
AND LEGISLATIVE SERVICES
150 Frederick Street, 8th Floor
Kitchener ON N2G 4J3 Canada
Telephone: 519-575-4400
TTY: 519-575-4608
Fax: 519-575-4449
www.regionofwaterloo.ca

May 17, 2019

Public Input Coordinator
Species Conservation Policy Branch
Ministry of Natural Resources and Forestry
300 Water Street, Floor 5N
Peterborough, ON K9J 3C7

RE: 10th Year Review of Ontario's Endangered Species Act: Proposed changes (ERO Registry Number 013-5033)

Dear Public Input Coordinator:

On April 18, 2019, the Province posted the document titled "10th Year Review of Ontario's Endangered Species Act: Proposed changes" to the Environmental Registry of Ontario for a 30-day comment period. The following are comments from Regional staff on the proposed changes to the Act. These comments will be included as part of a Council Report that will be submitted to the Province as comments on Bill 108, More Homes, More Choice Act, 2019.

Ontario's Endangered Species Act

Staff has reviewed the Province's proposed changes to Ontario's Endangered Species Act (ESA) with respect to:

- Enhancing the Province's oversight and enforcement powers to ensure compliance with the Act;
- Improving transparent notification of new species' listings;
- Ensuring appropriate consultation with academics, communities, organizations and Indigenous peoples across Ontario on species at risk recovery planning; and,
- Creating new tools to streamline approval processes, reduce duplication and ensure costs incurred by clients are directed towards actions that will improve outcomes for the species or its habitat.

While the proposed changes to the Endangered Special Act are meant to improve the efficiency and effectiveness of the Act, there are publically stated concerns that:

- Species listed as threatened or endangered may no longer be automatically protected;
- There will be increased opportunity for political interference in the listing process;
- Developers and other activity proponents will be able to pay into a fund to

compensate for harming species at risk and their habitats, rather than providing an on-the-ground overall benefit to species; and
- Southern Ontario species at the northern limit of their range may receive less or no protection, depending on their status outside Ontario.

The Region relies on the Province to effectively require the identification and protection of significant species and their habitat. Over the past 10 years a great deal of knowledge has be gained on the health and vulnerability of Ontario's species at risk, and the challenges and opportunities experienced while planning for their ongoing protection and conservation.

The system-wide changes being proposed by the Province reflect frustrations that are a result of a relatively young policy framework and practise, coupled with increasingly high development pressures. A balanced long-term approach will be necessary to ensure that the planning and development decisions made in the present do not prohibit conservation opportunities in the future. Ontario must remain committed to protecting its biodiversity, including Ontario's most vulnerable plants and animals, and their important habitats.

Option to pay

Proposed changes to the Endangered Special Act would allow developers and other proponents to pay into a fund in lieu of fulfilling requirements for on-the-ground compensation.

The conservation of habitats and species in-situ is fundamental to the long-term effectiveness of conservation efforts. Having the option to pay, instead of actively conserve, will result in the incremental loss of critical habitat and individual lifeforms, and will limit the overall research and conservation potential for the species at risk. The Region acknowledges that there are circumstances where a broader research-based approach to addressing a particular threat to a species is needed. Funding, from a development related source such as the proposed "Conservation Trust", could be construed as being able to "pay to slay". An alternative source of funds must be found to enable that important work to be undertaken.

Recommendation

The Province should prioritize in-situ conservation, with very strict criteria for opting out. In addition, the Province should continue to support proactive species at risk research with funding that is not directly related to development.

Non-science-based influence

The Committee on the Status of Species at Risk in Ontario (COSSARO) is a committee comprised of qualified scientists who perform science-based assessments of whether a

species is at risk. The Province is proposing to broaden COSSARO membership so that it includes those with "community knowledge or aboriginal traditional knowledge". The proposed changes would also enable the Minister to require COSSARO to reconsider its science-based listing decisions, and removes the current requirement that the Minister consult with an independent expert prior to creating certain regulations or issuing permits.

Aboriginal traditional knowledge is an important addition to COSSARO. Community knowledge is a vague term that could open up COSSARO to those who do not have adequate expertise in species assessment or have a differing agenda.

Recommendation

The Province should include Aboriginal traditional knowledge, and better define "community knowledge" so that is as apparent what value the additional member(s) would be binging to the Committee. In addition, the Province should continue to rely on scientific expertise as a sound foundation for decision making.

"Edge of range" species and protection limitations

The Province is proposing a change that would require COSSARO to base its assessments not on the status of a species in Ontario, but instead on its status throughout its range. For example, southern Ontario endangered species at the northern limit of their range may receive less or no protection, depending on their status outside Ontario. The Minister would also be able to limit Endangered Species Act protections so that they apply only in specific geographies or under specific circumstances.

Protecting species that inhabit geographies that do not conform to political boundaries will always be a challenge. In light of climate change, it will be increasingly important to protect healthy species populations at their northern limits to help species adapt to changing climatic conditions. As result, we believe the Provincial assessment process of a species' status must be a science-based and taken from a long-term, risk-averse and apolitical perspective.

The provincial assessment process must also ensure that geographic or circumstantial protections would not arbitrarily allow for the exclusion of important habitats and species from protection. It should also ensure that decisions regarding endangered species prioritize environmental benefits, over other potential social and economic benefits.

Recommendations

The Provincial assessment process for endangered species should continue to be science-based, and taken from a long-term, risk-averse and apolitical perspective. This process should ensure that geographic or circumstantial protections do not arbitrarily

allow for the exclusion of important habitats and species from protection. Any decisions regarding endangered species should prioritize environmental benefits over other potential social and economic benefits.

Listing and protection delay

The proposed process is to list species nine months after COSSARO makes its assessments public. Listing of species at risk would no longer result in automatic protections for threatened and endangered species and their habitats. The Minister would have greater "discretion on protections" including the ability to suspend species and habitat protections for up to three years based on social or economic considerations. Such delays would be exempted from Environmental Bill of Rights (EBR) posting and consultation requirements.

Staff do not support this proposed change. Introducing a nine month delay in protection after a species at risk is listed is counter intuitive. It also increases the risk of vulnerable plants, animals and their habitats being eliminated before protections are in place. Once it has been determined that a species is vulnerable, the consideration and timely implementation of protective measures is a logical next step.

Property-owners are investing in a Province where protecting the natural environment has been identified as a priority. Protecting threatened and endangered species is a responsibility shared by all and must become an ingrained and expected part of the planning and development process. Elimination of EBR consultation requirements, coupled with delays in protections, may result in development that does not adequately fulfil Provincial priorities.

Recommendation

The Province should not proceed with its proposed nine month gap between the COSSARO assessments and listing, nor the decoupling of listing with automatic protection, as these proposed changes would increase the risk of vulnerable plants, animals and their habitats being eliminated before protections are in place. EBR consultation requirements should be maintained.

Multi-site authorizations and other approvals

The Province is proposing to create "landscape agreements" for proponents undertaking activities in multiple locations, and wants to allow activities approved under other laws to be carried out without any additional authorizations under the Endangered Species Act.

We acknowledge and agree that landscape agreements may provide opportunities for additional positive outcomes for endangered species. However, to ensure they are

effective, such agreements must prioritize conservation over economic and social factors, and be implemented to address the full scope of site-specific and species-specific concerns.

With respect to the use of instruments under other Acts to protect species at risk, the Province should carefully consider how best to manage long-term impacts to species and habitats, and any potential risks that may be associated with allowing permanent Endangered Species Act exemptions under other laws (e.g., the forestry industry).

Recommendations

a) The Province should revise its proposed approach to landscape agreements to prioritize conservation over economic and social factors, and ensure that such agreements address the full scope of site-specific and species-specific concerns; and

b) In considering the use of instruments under other Acts to protect species at risk, the Province should adopt an approach that best manages long-term impacts to species and habitats, and any potential risks that may be associated with allowing permanent Endangered Special Act exemptions under other laws (i.e., forestry industry).

Thank you for the opportunity to comment on the proposed changes to Ontario's Endangered Species Act. Please contact Kate Hagerman, Manager of Environmental Planning and Sustainability at khagerman@regionofwaterloo.ca should you have any questions.

Sincerely,

Rod Regier
Commissioner, Planning, Development & Legislative Services

cc: Nancy Davy, Director of Resource Management,
Grand River Conservation Authority

Document Number: 3002636