



Report to: Development Services Committee

Meeting Date: May 13, 2025

SUBJECT: Comments on the Protect Ontario by Unleashing Our Economy Act (Bill 5)

PREPARED BY: Mark Head, Manager, Natural Heritage, Ext. 2005

REVIEWED BY: John Yeh, Acting Senior Manager, Policy and Research, Ext. 7922

RECOMMENDATION:

- 1) That the report dated May 13, 2025, entitled “Comments on the Protect Ontario by Unleashing Our Economy Act (Bill 5)”, be received;
- 2) That this report be forwarded to the Ministers of Economic Development, Job Creation and Trades; Citizenship and Multiculturalism; and Environment, Conservation and Parks as the City of Markham’s comments on Bill 5;

Special Economic Zones Act

- 3) That Council support the recommendation that the concept of special economic zones for critical mineral projects and major infrastructure of provincial significance be tentatively supported in principle and that broader application of the concept to facilitate the general approval of development applications where the province already has significant tools available not be supported;
- 4) That Council support the recommendation that the province consult and/or collaborate with municipalities when developing criteria for designating zones and projects to ensure that implementation of the Act does not conflict with local municipal authority and decision-making;

Ontario Heritage Act

- 5) That Council support the recommendation that the proposed new authority in Section 66.1(1) enabling the province to provide exemptions from archaeological requirements not be supported due to the potential risk and impact this could have on unknown buried archaeological resources, especially those that are identified as possessing ‘archaeological potential’;
- 6) That Council support the recommendation that Sections 69.1 and 69.2, which provide positive improvements to prosecutions for all offences pursuant to the Ontario Heritage Act, be supported;

Species Conservation Act

- 7) That Council support the recommendation that the definition of habitat and enabling provisions to define critical habitat areas for listed species by regulation currently provided in the Endangered Species Act be maintained in the Species Conservation Act that includes areas needed for reproduction, rearing, hibernation, migration or feeding;
- 8) That Council support the recommendation that new regulations and rules specifying conditions for project registrations impacting endangered and

- threatened species habitat include rigorous standards with requirements to demonstrate how impacts have been avoided, minimized and mitigated to the greatest extent possible;
- 9) That Council support the recommendation that the province undertake further consultation with municipalities and other conservation organizations when developing supporting regulations to enable more municipal infrastructure projects to proceed with conditional exemptions through project registration;
 - 10) That Council support the recommendation that the Species Conservation Act provide the option to issue conditional permits or specify registration rules requiring an overall benefit mitigation standard in specific circumstances when impacts to species at risk or their habitat are unavoidable and offsetting impacts either on or off-site is needed to support species survival;
 - 11) That Council support the recommendation that the province update internal guidance using best available science to ensure overall benefit permits and/or registration rules result in successful outcomes for species at risk and their habitats;
 - 12) That Council support the recommendation that provisions in the Species Conservation Act continue to require mandatory preparation of recovery strategies when new species are listed;
 - 13) That Council support the recommendation that the Species Conservation Act require the Species Conservation Program to track habitat removals authorized under the Act and ensure that implementing actions under the Program are tailored to provide habitat restoration and enhancement that provides offsetting for species impacted by authorizations; and
 - 14) That Staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:

The purpose of this report is to provide comments on the Protect Ontario by Unleashing Our Economy Act (Bill 5).

BACKGROUND:

On April 17, 2025, the province introduced Bill 5, [Protect Ontario by Unleashing Our Economy Act](#) as a next step in the government's plan to protect Ontario in response to economic and trade uncertainties. This follows the recent introduction of the *Protect Ontario Through Free Trade Within Canada Act* (Bill 2) that proposes legislative changes to facilitate labour mobility and free trade with reciprocating provinces and territories within Canada.

According to the province, the proposed changes in Bill 5 are intended to support the province's plan to protect and improve the competitiveness of Ontario's economy. If passed, the changes would streamline permitting and approval processes for major infrastructure, mining and development projects, including in the Ring of Fire in northern Ontario with potential mineral development opportunities.

Bill 5 proposes to amend 8 different statutes, repeal the *Endangered Species Act* and replace it with a proposed new *Species Conservation Act* and create a new *Special Economic Zones Act*. The Bill would also make revisions to the *Ontario Heritage Act* to provide certain exemptions from requirements for archaeological assessments.

The province is undertaking consultation on Bill 5 and has posted 7 items on the Environmental Registry of Ontario (ERO) with a commenting deadline of May 17, 2025.

Changes Potentially Impacting Land Use Planning and Infrastructure Approvals

Items more directly of interest to the City of Markham that relate to and/or potentially impact municipal land use planning and infrastructure approvals include the following changes:

- *Special Economic Zones Act* (new proposed Act)
- *Species Conservation Act* (new proposed Act)
- *Endangered Species Act* (to be repealed)
- *Ontario Heritage Act* (to be amended)

According to the province, these changes would reduce regulatory burden by streamlining permitting and approvals for development and infrastructure projects while maintaining environmental standards and enabling the government to allow exemptions to archaeological requirements where it could advance a provincial priority subject to criteria.

Highlights from the province on Bill 5 include:

- Enacting a new *Special Economic Zones Act* to give the province the authority to designate Special Economic Zones that are of critical or strategic importance for Ontario's economy and security, with the goal of designating the first zone by September 2025. Zones could include critical mineral projects including in the Ring of Fire as well as critical infrastructure projects. The legislation would provide the province with the authority to exempt "trusted proponents" or "designated projects" within designated zones from permitting and approvals under any Act or regulation, including by-laws of a municipality or local board.
- Implementing legislative changes that would repeal the *Endangered Species Act* and replace it with a new *Species Conservation Act* that removes permitting requirements under the new Act and shifts nearly all species-related authorizations to a registration-first approach to allow projects to proceed faster subject to prescribed requirements along with stronger enforcement tools for non-compliance.
- Establishing a new Species Conservation Program to promote protection, rehabilitation and enhancement of habitat, public education and stewardship and other activities to assist in the conservation of species with an annual funding commitment of up to \$20 million.
- Implementing changes to the *Ontario Heritage Act* to allow for exemptions from archaeology requirements, separate from those enabled in the special economic zone legislation, where doing so could advance a provincial priority (e.g., transit, housing, long-term care, or other infrastructure). Amendments related to prosecution for any offences under the Act are also proposed.

- Amending the *Environmental Protection Act* to eliminate fees for registration of projects on the Environmental Activity and Sector Registry.
- Making future regulations to create a new time-limited, streamlined EA process for certain designated municipal infrastructure projects.

Implementation details in the form of proposed regulations accompanying Bill 5 have not been provided for any of the statutes proposed to be amended.

Other Changes to Legislation

Proposed changes to other statutes (listed below) not addressed in this report include: measures to protect critical infrastructure, energy and mining sectors by restricting access of foreign state-owned or based companies; specifying country of origin requirements for the procurement of goods and services relating to Ontario's electricity and energy sector; exempting the York1 Landfill Site in Chatham-Kent and Eagles Nest Mine in the Ring of Fire from requirements under the *Environmental Assessment Act*; and streamlining mine permitting and approvals under the *Mining Act*.

- *Electricity Act*
- *Environmental Assessment Act*
- *Environmental Protection Act*
- *Mining Act*
- *Ontario Energy Board Act*
- *Rebuilding Ontario Place Act*

The following discussion focuses on proposed changes more directly of interest to the City related to municipal land use planning and infrastructure approvals.

Additional highlights and background to the Bill are provided in the [Protect Ontario by Unleashing Our Economy Technical Briefing](#) and Attachment A to the report.

DISCUSSION:

Overall, the general intent of the government's plan to protect Ontario through measures in response to the trade conflict initiated by the U.S. is supported in principle given the significant disruption and potential risk to Ontario's economy. Measures to mitigate risk by streamlining approvals and permitting for major infrastructure and strategic projects can support economic competitiveness. In particular, measures in the Bill that would simplify approval requirements for municipal infrastructure while protecting the environment are supported. However, these measures can and should be implemented with careful review and conditional requirements to ensure other key priorities of the province are balanced and addressed, including measures for the continued protection and stewardship of Ontario's archaeological heritage, natural environment and biodiversity.

The implementation of new legislative powers that would potentially limit or remove municipal authority, including land use planning authority should be scoped in a way that does not conflict with municipal decision-making and planning authority.

Key changes in Bill 5 of direct interest to the City, staff comments on the implications, and recommendations for each statute are provided below. Comments are scoped to address matters of interest in the Bill relating to economic development, land use planning, natural and archaeological heritage planning and infrastructure.

Special Economic Zones Act (Bill 5, Schedule 9)

The proposed *Special Economic Zones Act* will give the province authority to designate special economic zones through regulation to help advance projects that are of strategic importance for Ontario's economy (e.g., critical mineral projects in the Ring of Fire, and infrastructure projects). Once designated zones are established, the legislation would also provide the province with the authority to exempt "trusted proponents" or "designated projects" within designated zones from permitting and approvals under any Act or regulation subject to conditions, including by-laws of a municipality or local board. The authority enables the province to identify and customize which regulations, permits, processes, approvals, and similar requirements will be exempted, altered or continue to apply for each designated zone to address specific economic interests. Designated zones can vary in size from small parcels of land to larger areas. Projects and trusted proponents that meet regulated requirements would benefit from streamlined approval requirements and accelerated permitting in designated areas.

The province has not identified proposed zones at this time but has indicated it is considering designating the first zone by September 2025. The province has also indicated that regulations prescribing criteria for the purposes of designating a zone and identifying trusted proponents and vetted projects will be developed by September 2025. The province has indicated it will be giving priority to critical mineral projects given their role in supplying minerals essential to Ontario's economic growth and security. Although it is not anticipated the Act will be applied to exempt development projects more broadly, the Act provides wide scope for the government to designate zones, projects or classes of projects in any area of the province with no formal requirement for consultation with affected communities or municipalities.

By building faster and more strategically, the province aims to facilitate economic growth, mitigate the impact of trade disruptions, and ensure long term resource sustainability and economic security.

- **Need to ensure scope and application of Act focuses on strategic projects and does not conflict with municipal decision-making authority**

The economic benefits of streamlining requirements and approvals for provincially strategic projects within designated zones subject to environmental safeguards is tentatively supported in principle for unlocking mineral development (e.g., in the Ring of Fire) and for major infrastructure projects of provincial significance. Any broader application of the Act to facilitate general approval of development applications where the province already has significant tools available to it to facilitate development is not supported (e.g., in Transit Oriented Communities, through Ministers Zoning Orders, etc.).

More information about the regulation(s) and criteria for designating zones, trusted proponents and designated projects is needed to fully understand the impact of potential exemptions from municipal plans, policies and by-laws at the local level. In particular, the City's authority to plan for the Markham Innovation Exchange ("MiX") district in north Markham, intended for high value industry and employment, innovation and related activities of strategic economic significance should, be maintained.

Recommendation: That the concept of special economic zones for critical mineral projects and major infrastructure of provincial significance be tentatively supported in principle and that broader application of the concept to facilitate the general approval of development applications where the province already has significant tools available not be supported.

Recommendation: That the province consult and/or collaborate with municipalities when developing criteria for designating zones and projects to ensure that the implementation of Act does not conflict with local municipal authority and decision-making.

Ontario Heritage Act (Bill 5, Schedule 7)

Proposed legislative amendments to the *Ontario Heritage Act* (OHA) primarily involve enforcement and compliance with respect to the protection of artifacts and archaeological sites which largely affect archaeological consultants, how they conduct their practices, and provision of authority for the province to intervene when necessary. Staff have no comment on these changes.

- **Exempting archeological requirements poses a risk on unknown buried archaeological resources**

There is a concern regarding a proposed amendment - section 66.1(1) that would allow a site to be exempted from archaeological requirements by the province where it could potentially advance specified provincial priorities such as transit, housing, health and long-term care, and infrastructure. This proposal is not supported due to the potential risk and impact this could have on unknown buried archaeological resources. Sites that have been identified as possessing 'archaeological potential' using the province's Checklist for Determining Archaeological Potential or identified in a document such as the York Region archaeological management plan should not be exempted from assessment as it could lead to serious archaeological matters having to be addressed during actual development. The province appears to have recognized the risk as it has included an immunity provision within the proposed exemption authority.

Recommendation: That the proposed new authority in Section 66.1(1) enabling the province to provide exemptions from archaeological requirements not be supported due to the potential risk and impact this could have on unknown buried archaeological resources, especially those that are identified as possessing 'archaeological potential'.

- **Prosecutions for all offences pursuant to the *Ontario Heritage Act***

From a prosecution perspective related to any offences committed pursuant to the OHA, the proposed amendment to section 69.1 of the OHA, if passed, appears to add certainty and is welcomed. Section 69.1 would set a two-year limitation period to commence a legal proceeding from when the offence first comes to the attention of a provincial offences officer. As the current OHA does not contain any explicit limitation period, by default, the limitation period is six months after the date on which the offence was or is alleged to have been committed under the *Provincial Offences Act* which is often difficult to establish.

Also related to prosecutions, new section 69.2 is supported as it would authorize court orders to prevent, eliminate or ameliorate damage connected to the commission of an

offence. The court that convicts a person of an offence under this Act, in addition to any other penalty imposed by the court, may order the person to,

- (a) take such action as the court directs within the time specified in the order to prevent, eliminate or ameliorate damage that results from or is in any way connected to the commission of the offence; or
- (b) comply with any order, direction or other requirement issued under this Act to the person in relation to damage that results from or is in any way connected to the commission of the offence.

Recommendation: That Sections 69.1 and 69.2, which provide positive improvements to prosecutions for all offences pursuant to the OHA, be supported.

Species Conservation Act and Repeal of the Endangered Species Act (Bill 5, Schedules 2 and 10)

Species at risk are plants, mammals, birds, fish and other organisms that are vulnerable to becoming extinct or extirpated in their current ranges in the wild. A total of 194 species are currently listed on the Species at Risk in Ontario List as endangered or threatened of which 24 species are known to occur or have the potential to occur in Markham. Species at risk in Markham are concentrated in the City's Greenway System including the Rouge National Urban Park. Effective legislation that conserves biodiversity, including species at risk, is essential for ecosystems to stay healthy.

The proposal to ultimately repeal the *Endangered Species Act* and replace it with the *Species Conservation Act* is a significant shift that would weaken key protections currently in the Act that may not achieve the intended objectives of the province to identify, protect and promote the recovery of species at risk in Ontario. While further streamlining of permitting and project authorizations under the Act is supported in principle, key changes should be reconsidered to ensure that any new legislation maintains science-based decision-making and comprehensive habitat protection.

For context, the City is required to comply with the *Endangered Species Act* when undertaking infrastructure projects that may impact species at risk or their habitats. This includes obtaining the necessary permits before proceeding with work such as constructing off-road trail systems near or crossing a creek, bridges, and culverts in sensitive areas like the Rouge Valley River. While these requirements are essential for protecting biodiversity, they can introduce additional steps into project planning and execution. This may lead to delays, increased costs, and administrative complexity - particularly when projects are located in ecologically sensitive areas. As a result, the permitting process under the Act can be an added regulatory burden for municipalities. Further improvements to the Act to streamline project permitting and registration are welcome as they can reduce costs to municipalities while balancing requirements for species protection.

- **Retain the current definition of habitat**

The *Endangered Species Act* currently defines habitat for animals to include an area on which the species depends directly or indirectly, to carry on its life processes including for reproduction, rearing, hibernation, migration or feeding. The proposed new Act will narrow the definition to include only the dwelling, such as a nest or den, of a member of a species

and the area immediately around it. This potentially removes the protection of areas needed for foraging or feeding for some species. Under the new definition it is unclear if critical habitat beyond the immediate area of the dwelling for foraging and feeding would be protected. The new legislation should retain the current definition and the ability to define critical habitat through regulation to further scope and clarify habitat protection requirements for listed species.

Recommendation: That the current definition of habitat and enabling provisions to define critical habitat areas for listed species by regulation currently provided in the *Endangered Species Act* be maintained in the *Species Conservation Act* that includes areas needed for reproduction, rearing, hibernation, migration or feeding.

- **Shift most permitting to a registration first-approach**

In principle, measures to streamline approvals through greater use of the 'permit-by-rule' registration-first approach are supported provided the types of activities authorized for registration and the requirements that proponents must meet when registering projects provide for effective habitat protection, mitigation or offsetting when appropriate to accommodate development. Rules should ensure that critical habitat needed for species survival is protected.

Recommendation: That new regulations and rules specifying conditions for project registrations impacting endangered and threatened species habitat should include rigorous standards with requirements to demonstrate how impacts have been avoided, minimized and mitigated to the greatest extent possible.

Recommendation: That the province undertake further consultation with municipalities and other conservation organizations when developing supporting regulations to enable more municipal infrastructure projects to proceed with conditional exemptions through project registration. Rules should be based on scientific advice and provide for effective mitigation or offsetting of impacts when required.

- **Retain an "overall benefit" standard for permit approvals and registrations**

The current provisions in the Act provide the option to issue overall benefit permits which are intended to make species better off than before the activity occurred such as creating a greater amount of habitat than what is permitted to be destroyed, or other measures to improve the condition of the species and its habitat. Overall benefit permits are typically utilized to authorize activities that may have a larger unavoidable impact on species at risk or their habitat. The proposed new Act no longer references this permit standard or option.

Recommendation: The Act should continue to provide the option to issue conditional permits or specify registration rules requiring an overall benefit mitigation standard in specific circumstances when impacts to certain species at risk or their habitat are unavoidable and offsetting impacts either on or off-site is needed to support species survival.

Recommendation: The province should update internal guidance using best available science to ensure overall benefit permits and/or registration rules result in successful outcomes for species at risk and their habitats.

- **Retain the requirement for recovery strategies and management plans**

Recovery strategies are prepared by experts to provide independent scientific advice to inform actions needed to protect and recover endangered and threatened species. They are key inputs for the development of effective conditions and rules for project registration and permitting under the Act. The proposed amendments to the Act would remove requirements to develop recovery strategies and management plans from the legislation. The government indicates a commitment to providing guidance on the conservation of species but has not provided details on the guidance or whether it would have the same scientific rigor as currently provided in recovery strategies. The discontinuation of mandatory recovery strategies and management plans for species at risk will result in a diminished ability to identify the steps needed to support the recovery of species at risk.

Recommendation: That provisions in the *Species Conservation Act* continue to require mandatory preparation of recovery strategies when new species are listed.

- **Enable funding and participation of municipalities in the Species Conservation Program**

The proposed new Act will no longer allow proponents to pay species conservation charges as a condition of a permit or authorization to offset impacts of habitat removals and will wind down the current Species Contribution Fund that has collected charges for permits issued to date. The province is proposing to continue offsetting impacts through the continuation of the Species Conservation Program and to provide committed provincial funding directly of up to \$20 million annually to fund actions including the restoration and enhancement of habitat through stewardship programs and grants.

Recommendation: That the Act require the Species Conservation Program to track habitat removals authorized under the Act and ensure that implementing actions under the Program are tailored to provide habitat restoration and enhancement that provides offsetting for impacted species. Program grant funding should be made available to municipalities in the jurisdictions where impacts are located.

FINANCIAL CONSIDERATIONS

Not applicable.

HUMAN RESOURCES CONSIDERATIONS

Not applicable.

ALIGNMENT WITH STRATEGIC PRIORITIES:

Not applicable.

BUSINESS UNITS CONSULTED AND AFFECTED:

Planning, Economic Development, Engineering, Environmental Services and Legal staff were consulted in the preparation of this report.

RECOMMENDED BY:

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Arvin Prasad, RPP, MCIP
Commissioner, Development Services

ATTACHMENTS:

Attachment A – Environmental Registry of Ontario (ERO) Postings Associated with the
Protect Ontario by Unleashing our Economy Act