RESOLUTION OF COUNCIL MEETING NO. 11 DATED MAY 28, 2019

8.4 REPORT NO. 26 - DEVELOPMENT SERVICES COMMITTEE (MAY 27, 2019)

8.3.1 CITY OF MARKHAM COMMENTS ON PROPOSED BILL 108, MORE HOMES, MORE CHOICE ACT 2019 (10.0)

1. That the report entitled, "City of Markham Comments on Proposed Bill 108, *More Homes, More Choice Act 2019*" dated May 27, 2019, be received; and,

2. That this report, including the 39 recommendations from the City of Markham on Proposed Bill 108, More Homes, More Choice Act 2019, as summarized in the Revised Appendix 'A' as amended at the May 27, 2019 Development Services Committee meeting, be forwarded to the Assistant Deputy Minister of Municipal Affairs and Housing and to York Region as the City of Markham's comments on Bill 108; and,

3. That the City of Markham supports the Province of Ontario's proposed measures to streamline the planning process while retaining appropriate public consultation during the planning process as long as these measures can be reasonably implemented and avoid negative impacts such as potential delays; and,

4. That, in the event that the Province proceeds with the community benefits charge as proposed, the cap on the community benefits charge should be set to include the full recovery for soft infrastructure costs and parkland dedication as now collected under the current statutes, and that the cap be tied to land values only for the parkland dedication and current section 37 portions of the community benefits charge. To ensure that growth pays for growth, a municipality should be allowed to levy both the community benefits charge and receive parkland in a development; and,

5. That the City of Markham does not support any proposed legislative changes that would in effect reduce a municipality's ability to collect funds to ensure that growth pays for growth; and,

6. That the City of Markham supports the Province of Ontario's proposed changes to increase resourcing for the Local Planning Appeal Tribunal but does not support the re-introduction of "de novo" hearings as part of the Local Planning Appeal Tribunal process; and,

7. That the City of Markham supports the Province of Ontario's efforts to clarify the role and accountability of Conservation Authorities and urges the Province to support the Ministry of Natural Resources and Forestry, Ministry of Environment, Conservation and Parks, and municipalities with enhanced natural heritage protection and watershed planning tools to fill the potential gap in natural resource, climate change and watershed planning services resulting from the proposed modified mandate of the TRCA; and further,

8. That Staff be authorized and directed to do all things necessary to give effect to this resolution

Kimberley Kitteringham
City Clerk

Presentation
Revised Appendix A
Appendix B
Appendix C

Copy to: Arvin Prasad
Trinela Cane
Catherine Conrad
Biju Karumanchery
Brian Lee
Joel Lustig/ Mark Visser
John Yeh

REVISED Appendix 'A'
(As amended at the May 27, 2019 Development Services Committee meeting)

Consolidated Recommendations from Staff Report "City of Markham Comments on Proposed Bill 108, More Homes, More Choice Act 2019", dated May 27, 2019 (in response to ERO 019-0016, ERO 019-0017, 019-0021, 013-5018, 013-5033)

Recommendation 1: That the deadline for comments on Bill 108 be extended to a minimum of 90 days after the draft Regulations are released to allow for sufficient time to assess financial impacts, planning and development approval impacts, impacts on affordable housing, and impacts to provision of community services resulting from growth.

Planning Community Services and Amenities and Collecting Development Charges (Proposed Changes to the *Development Charges Act* and *Planning Act* from Schedules 3 and 12 of Bill 108)

Recommendation 2: That the Province of Ontario leave development charges as the tool to recover the costs of hard and soft services as currently obtained, and that if a community benefits charge is being considered, that it be restricted to section 37 and parkland dedication as it relates to providing affordable housing in municipalities across Ontario.

Recommendation 3: That in the event that the Province proceeds with the community benefits charge as proposed, the cap on the community benefits charge should be set to include the full recovery for soft infrastructure costs and parkland dedication as now collected under the current statutes, and that the cap be tied to land values only for the parkland dedication and current section 37 portions of the community benefits charge. To ensure that growth pays for growth, a municipality should be allowed to levy both the community benefits charge and receive parkland in a development.

Recommendation 4: That a transition provision be adopted to allow for a 3-year term from the date of enactment of Bill 108, or until a community benefit by-law is enacted, as the implementation timeline is a concern given the number of municipalities that will have to study, develop and enact a community benefits charge by-law.

Recommendation 5: That for development applications deemed complete and secondary plans that have been adopted by Council prior to the enactment of Bill 108, the existing provisions for section 37, parkland dedication, and development charges continue to apply, and that any such application withdrawn after the enactment of Bill 108 may be subject to the existing section 37, development charges, and parkland provisions.

Recommendation 6: That if a community benefits charge is enacted by the Province, that municipalities be allowed to use their existing reserve balances for Section 37, Parks Cash-in-lieu, and Development Charges (for those services proposed to move to the community benefits charge) for any service prescribed under the community benefits charge.

Recommendation 7: That the proposal to not permit parkland dedication and a community benefits charge at the same time is not supported as municipalities may be forced into a position to choose either obtaining parkland or collecting contributions towards facilities and services (e.g. soft services) as it is not clear if Regulations prescribing services would include parkland**,** except in instances of affordable housing development.

Recommendation 8: That where a parkland dedication by-law is applied to a development, the City retain the authority under *Planning Act* section 42 (3) and 51.1 (2), and to apply an alternative parkland dedication rate.

Recommendation 9: That for development charge rates set earlier in the development process, there should be a sunset clause on the length of time permitted between a site plan and/or zoning application and building permit issuance – this could be in the range of 2 years to act as a disincentive for landowners who may want to apply but not proactively proceed with their development. Municipalities should also be allowed to index or charge interest from the date an application is deemed complete until a building permit is issued for all applications held for over a year.

Recommendation 10: That for developments subject to the six annual installment payment regime, except for affordable housing, the sale of the property should result in the immediate requirement to pay the remaining development charges due, by the original owner. Municipalities should be allowed to register the obligation on title to prevent transfer without the City being notified.

Recommendation 11: That the interest rate to be prescribed in the Regulations should be one that provides reasonable compensation to the City for the timing delay in receiving cash, as this may result in borrowing to fund growth-related requirements.

Permitting Up to Three Residential Units on a Lot (Proposed Changes to the Development Charges Act and Planning Act from Schedules 3 and 12 of Bill 108)

Recommendation 12: That the City of Markham does not support the proposed amendment to the *Planning Act* that would permit a third residential unit on a lot as of right, and that municipalities retain their current authority to review and determine appropriate locations for dwelling units in ancillary buildings on a lot and within the municipality.

Recommendation 13: That municipalities retain their current authority to refuse additional dwelling units where there are insufficient services to support the increased density, or apply appropriate development charges to facilitate construction of the required services.

Recommendation 14: That municipalities retain their current authority to apply minimum parking requirements, to primary and accessory dwelling units.

Recommendation 15: That municipalities retain their current authority to apply zoning provisions to construction accommodating additional dwelling units, to ensure the proposed development is compatible with the built form of the neighbourhoods in which they are located.

Recommendation 16: That second units should be subordinate to, or accessory to, a main residential building in order to be identifiably differentiated from other residential development such as stacked townhouses.

Inclusionary Zoning Permitted in Only Major Transit Station Areas and Areas Subject to a Development Permit System and Removing Provision for Upper-Tier Municipalities to Require a Local Municipality to Establish a Development Permit System (Proposed Changes to the *Planning Act* from Schedule 12 of Bill 108)

Recommendation 17: That municipalities should continue to have ability to apply inclusionary zoning to development in areas other than protected major transit station areas or areas subject to a development permit system.

Application Review Timelines and Local Planning Appeal Tribunal Practices and Procedures (Proposed Changes to the *Local Planning Tribunal Act* and *Planning Act* from Schedules 9 and 12 of Bill 108)

Recommendation 18: That the proposed reduction in timelines for decisions on development applications is not supported as appeals for non-decisions to the LPAT removes decision making authority on development applications from Council, and may result in potentially longer decision timelines.

Recommendation 19: That rather than reducing timelines for Council decisions on applications, the Province provide sufficient resources to provincial ministries and agencies to allow them to provide their comments on development applications to assist municipalities in meeting prescribed timelines.

Recommendation 20*:* That the proposed Local Planning Appeal Tribunal process that reverts back to a "de novo" hearing process is not supported, as it will increase development approval timelines and increase the cost of development. The Province should carry forward the current test for the appeal of a Planning Act application requiring the Local Planning Appeal Tribunal to evaluate a municipal decision on a planning application based on its consistency with the Provincial Policy Statement, and conformity with Provincial Plans, as well as Regional and local Official Plans, or if the Province is unwilling to restore the appeal test, the Province should revise Bill 108 to provide for more deference to Council's decisions.

Recommendation 21: That there be a provision in the Local Planning Appeal Tribunal Act permitting oral testimony for participants (non-parties), and that written submissions by

participants should be given the same consideration as in-person testimony by the Local Planning Appeal Tribunal in the hearing of an appeal.

Proposed Changes to the *Ontario Heritage Act* (Schedule 11 of Bill 108)

Recommendation 22: That the Province provide direction through enhanced educational materials to better guide heritage conservation objectives, including updating the Ontario Heritage Toolkit, as opposed to introducing principles by Regulation.

Recommendation 23: That the Province consider the option of requiring notice to property owners prior to the matter being considered by Council with the condition that once notification of listing is given, the property owner would be prevented from submitting a demolition permit application until after Council has considered the recommendation for listing the property on the Register.

Recommendation 24: That the provision of enhanced guidance to municipalities on best practices for listing properties through education materials is supported.

Recommendation 25: That if the Province proceeds with the option of requiring notification to the property owner after Council has listed a property on the Register, the legislation should be amended to provide a time limit on the period when an objection to the listing can be submitted (as opposed to in perpetuity).

Recommendation 26: That the Province defer consideration of the amendment concerning prescribed requirements by Regulation for designation by-laws until such time as the Regulation has been drafted and available for consultation.

Recommendation 27: That the Province consider providing clarity in the *Ontario Heritage Act* by further defining what constitutes "heritage attributes".

Recommendation 28: That the protection and incorporation of a cultural heritage resource should be considered as part of the final report on a planning application that is presented to a council so it can be considered in a holistic manner and not in a piecemeal approach (within the first 90 days).

Recommendation 29: That at a minimum, the Province maintain the Conservation Review Board as the non-binding appeal body for individual designation and amendments to the content of designation by-laws with the municipal council having the final decision on what is considered to be of heritage value in the local community. The Local Planning Appeal Tribunal could address objections related to requested alterations and demolition requests (as it does currently for properties within heritage conservation districts).

Recommendation 30: That if the Conservation Review Board is replaced by the Local Planning Appeal Tribunal, the Province should ensure that Tribunal members assigned to *Ontario Heritage Act* appeals possess cultural heritage expertise and an understanding of the *Ontario Heritage Act*.

Recommendation 31: That the amendments regarding the introduction of complete application provisions and specified timelines for alteration and demolition applications are supported.

Recommendation 32: That the identified clarification in the legislation indicating that "demolition and removal" will also include demolition and removal of heritage attributes is supported, but that Section 69(5) which deals with offences and restoration costs should be amended to remove the reference to "altered" to ensure that a municipality can recover restoration costs associated with the removal or loss of heritage attributes if a property has been impacted by a contravention of the Act.

Recommendation 33: That the changes to the *Ontario Heritage Act* be removed from Bill 108 or deferred to allow the Ministry to undertake meaningful consultation with all stakeholders on both improvements to the legislation and allow feedback on the future content of the identified Regulations.

Proposed Changes to the *Environmental Assessment Act* (Schedule 6 of Bill 108)

Recommendation 34: That the proposed exempted categories are supported as long as environmental protection measures are maintained.

Proposed Changes to the *Conservation Authorities Act* (Schedule 2 of Bill 108)

Recommendation 35: That Provincial efforts are supported to clarify the role and accountability of conservation authorities and that the Province is urged to support the Ministry of Natural Resources and Forestry, Ministry of Environment, Conservation and Parks and municipalities with enhanced natural heritage protection and watershed planning tools to fill the potential gap in natural resource, climate change and watershed planning services resulting from the proposed modified mandate of the TRCA.

Proposed Changes to the *Endangered Species Act* (Schedule 5 of Bill 108)

Recommendation 36: That refinements be made to section 16.1(2) of the proposed *Endangered Species at Risk Act* to ensure that landscape agreements are required to result in an overall net benefit to each impacted species at risk.

Recommendation 37: That the Species at Risk Conservation Trust be required to publish a regular report to provide an open and transparent accounting of the collection and spending of species conservation charges.

Recommendation 38: That the changes proposed for the *Endangered Species Act* (proposed sections 5(4)(b), 8.1, 9(1.1)) be carefully reviewed in consultation with experts to ensure the purpose and intent of the *Endangered Species Act* is not compromised.

Proposed Changes to the *Education Act (Schedule 4 of Bill 108)*

Recommendation 39: That if a landowner and a school board enter into an agreement for an alternative project, the municipality should be consulted on the alternative project.

MARKHAM

Report to: Development Services Committee Meeting Date: May 27, 2019

SUBJECT: City of Markham Comments on Proposed Bill 108, More Homes, More Choice Act 2019

PREPARED BY: Policy and Research Group
Planning and Urban Design Department
Infrastructure and Capital Projects
Financial Strategy and Investment
Legal Services
Contact: John Yeh, MCIP, RPP, Manager, Policy (ext.7922)

RECOMMENDATION:

1. That the report entitled, "City of Markham Comments on Proposed Bill 108, *More Homes, More Choice Act 2019*", dated May 27, 2019, be received; and,

2. That this report, including the 39 recommendations from the City of Markham on Proposed Bill 108, *More Homes, More Choice Act 2019,* as summarized in Appendix 'A', be forwarded to the Assistant Deputy Minister of Municipal Affairs and Housing and to York Region as the City of Markham's comments on Bill 108; and,

3. That the City of Markham supports the Province of Ontario's proposed measures to streamline the planning process while retaining appropriate public consultation during the planning process as long as these measures can be reasonably implemented and avoid negative impacts such as potential delays; and,

4. That the cap on the community benefits charge should be set to include the full recovery for soft infrastructure costs and parkland dedication as now obtained under the current statutes. To ensure that growth pays for growth, a municipality should be allowed to levy both the community benefits charge and receive parkland in a residential development.; and,

5. That the City if Markham does not support any proposed legislative changes that would in effect reduce a municipality's ability to collect funds to ensure that growth pays for growth;

6. That the City of Markham supports the Province of Ontario's proposed changes to increase resourcing for the Local Planning Appeal Tribunal but does not support the re-introduction of "de novo" hearings as part of the Local Planning Appeal Tribunal process; and,

7. That the City of Markham supports the Province of Ontario's efforts to clarify the role and accountability of conservation authorities and urges the Province to support the Ministry of Natural Resources and Forestry, Ministry of Environment, Conservation and Parks, and municipalities with enhanced natural heritage

protection and watershed planning tools to fill the potential gap in natural resource, climate change and watershed planning services resulting from the proposed modified mandate of the TRCA; and further,

8. That Staff be authorized and directed to do all things necessary to give effect to this resolution

EXECUTIVE SUMMARY:

The Province is proposing changes to several statutes that support the Province's new More Homes, More Choice: Ontario Housing Supply Action Plan. The Action Plan aims to make it faster and easier for municipalities, non-profits and private firms to build housing. The proposed changes to the statutes are consolidated in Bill 108, *More Homes, More Choice Act, 2019*.

The following Schedules to Bill 108 contain proposed changes that impact the municipal land use planning and development approval process, and funding mechanism for provision of community services resulting from new development: *Planning Act, Development Charges Act, Local Planning Appeal Tribunal Act, Conservation Authorities Act, Endangered Species Act, Ontario Heritage Act, Education, Act,* and *Environmental Assessment Act.* Implementation details in the form of proposed Regulations accompanying Bill 108 have not been provided for any of the statutes proposed to be amended.

Staff generally supports changes to the *Planning Act* and other legislation that would streamline the planning process and bring more housing to the market more quickly, but safeguards have to remain in place to ensure continued protection of the natural environment and cultural heritage, appropriate public consultation during the planning process, and the adherence to the principle that growth pays for growth.

One of the main components of Bill 108 are changes to the *Planning Act* and *Development Charges Act* which will allow municipalities to charge directly for community facilities, likely to be services such as libraries, recreation, and park development. This charge would replace section 37 of the *Planning Act*, perhaps some parkland dedication, and development charges for discounted soft services (e.g. library, recreation, parks). Given that a number of community services are proposed to be grouped together and capped, it would be reasonable to expect that the amounts collected for these services will be lower than what municipalities can currently charge independently for soft development charges, section 37 and parkland. It is recommended the Province defer consideration of the community benefits charges by-law until such time as the associated Regulations are released so that the financial impacts, planning and development approval impacts, and impacts to provision of community services resulting from growth can be determined and analyzed with a view to ensure that growth pays for growth.

Proposed changes to the *Planning Act* also shorten the timeframe for councils to make a decision on a development application before an appeal can be filed to the Local Planning Appeal Tribunal. For example, for official plan amendments the timeline is proposed to be reduced from 210 days to 120 days. Given the complexity of the development applications that the City receives, and given the fact that the City is responsible for coordinating comments from a number of external agencies, it will be a challenge to meet the proposed reduced timeframes. Staff does not support the proposed reduction in timelines for decisions on development applications as appeals for non-decisions to the LPAT removes decision making authority on development applications from Council, and may result in potentially longer decision timelines.

The *Planning Act* is also proposed to be amended to require official plan policies to authorize an additional residential unit in a detached house, semi-detached house, or row house as well as an additional unit in a building or structure ancillary. This change would permit a third residential unit on a lot. Examples of units in ancillary buildings are coach houses or garden suites. Staff recommend municipalities retain their current authority to review and determine appropriate locations for dwelling units in ancillary buildings on a lot and within the municipality, and retain their current authority to refuse additional dwelling units where there are insufficient services to support the increased density, or apply appropriate development charges to facilitate construction of the required services.

Proposed amendments to the *Planning Act* also direct the application of inclusionary zoning to protected major transit station areas and to areas that are the subject of a development permit system. Inclusionary zoning provides for the inclusion of affordable housing units within residential buildings. The proposed amendment would eliminate the City's ability to identify and apply inclusionary zoning provisions outside of protected major transit station areas, or areas subject to a development permit system. While staff support the application of inclusionary zoning in major transit station areas, as these are likely to represent the majority of a municipality's intensification areas, there may also be intensification areas outside of major transit station areas where inclusionary zoning would also be appropriate. Staff recommend municipalities should continue to have ability to apply inclusionary zoning to development in areas other than protected major transit station areas or areas subject to a development permit system.

The proposed changes to the *Local Planning Appeal Tribunal Act* largely bring back the procedures that were in place under the previous Ontario Municipal Board which include "de novo" hearings in which the Local Planning Appeal Tribunal can consider a development proposal as if no decision had been made by a council. Staff do not support the return of "de novo" hearings. Instead, the Province should carry forward the current test for the appeal of a *Planning Act* application requiring the Local Planning Appeal Tribunal to evaluate a municipal decision on a planning application based on its consistency with the Provincial Policy Statement, and conformity with Provincial Plans, as well as Regional and local Official Plans. If the Province is unwilling to restore the current appeal test, the Province should revise Bill 108 to provide for more deference to Council's decisions.

The proposed changes to the *Ontario Heritage Act* will impact the manner in which property listing, designation, alteration and demolition applications are processed and tracked through Markham's heritage conservation program.

Provincial direction is to be provided to municipalities in the form of principles prescribed by a Regulation for future decision-making. Staff are suggesting that this be accomplished through enhanced educational materials rather than through a Regulation. Notice is to be provided after a property is listed on the municipal Heritage Register with appeal opportunities for the owner. Staff are recommending that a time limit be introduced as to when an objection can be submitted.

Appeals to designating an individual property, amendments to the by-law and alterations to these properties will no longer be reviewed by the Conservation Review Board with Council as the ultimate decision-maker. These are to be considered by the Local Planning Appeal Tribunal which is removing Council's ability to protect what is considered to be of value from a heritage perspective and reflective of the local community. Staff is recommending that at a minimum, the Province maintain the Conservation Review Board as the non-binding appeal body for individual designation by-laws and amendments to their content, with the municipality having the final decision. The Local Planning Appeal Tribunal can address objections to alterations and demolition but need to be resourced accordingly with expertise in heritage matters.

Given the extent of the proposed changes to the *Ontario Heritage Act* and the absence of the Regulations, it is suggested that the amendments be deferred, and the Ministry of Culture undertaking a full, meaningful consultation, including a review of the proposed Regulations, with all stakeholders similar to that undertaken when the *Act* was last amended.

Bill 108 also proposes changes to the role of conservation authorities in natural heritage and watershed planning. Core mandatory functions for conservation authorities will be limited to hazard land protection and management (valleyland and floodplains); conservation and management of conservation authority lands; drinking water source protection; and protection of Lake Simcoe watershed (the latter not applicable to Markham).

Activities outside of a conservation authorities' core mandate would no longer receive funding from the Province and would require dedicated funding agreements between the conservation authority and the benefitting party (i.e. municipality and/or other stakeholder). For non-core functions, the City will need to determine how to address the gap in services, which could include revised agreements with the Toronto and Region Conservation Authority (TRCA), additional City staffing resources, or consulting services given that the City does not employ the appropriate technical expertise to address all natural heritage and watershed planning matters.

Provincial efforts are supported to clarify the role and accountability of conservation authorities and the Province is urged to support the Ministry of Natural Resources and Forestry, Ministry of Environment, Conservation and Parks and municipalities with

enhanced natural heritage protection and watershed planning tools to fill the potential gap in natural resource, climate change and watershed planning services resulting from the proposed modified mandate of the TRCA.

Staff recommend the Province provide a minimum 30 day commenting period once proposed Regulations are released to allow an opportunity to more fully assess the financial impacts, planning and development approval impacts, and impacts to provision of community services arising from Bill 108.

It is recommended that this report be forwarded to the Ministry of Municipal Affairs and Housing as the City of Markham's comments on Bill 108, *More Homes, More Choice Act 2019*, prior to the June 1, 2018 commenting deadline.

PURPOSE:

This report provides staff comments in response to the Province's proposed Bill 108, *More Homes, More Choice Act, 2019*.

BACKGROUND:

On May 2, 2019 the Province released the More Homes, More Choice: Ontario Housing Supply Action Plan that aims to make it faster and easier for municipalities, non-profits and private firms to build housing.

The release of the Housing Supply Action Plan follows the release of a broad consultation document in November 2018, which staff reported on at the January 21, 2019 and February 4, 2019 General Committee meetings, and the February 12, 2019 Council meeting. The consultation document sought comments on how to increase the supply of housing under the themes of speed, cost, mix, rent and innovation.

Recent changes to the Provincial Growth Plan, which Council also commented on in February 2019, and which are documented in a separate memorandum to Committee dated May 27, 2019, are also intended to support increasing the supply of housing.

In support of the Housing Supply Action Plan, the Province introduced Bill 108, *More Homes, More Choice Act, 2019* which proposes to amend thirteen different statutes. Eight of the thirteen statutes (those underlined below) impact the municipal land use planning and development approval process, and funding mechanism for provision of community services resulting from new development.

- *Planning Act*
- *Development Charges Act*
- *Local Planning Appeal Tribunal Act*
- *Conservation Authorities Act*
- *Endangered Species Act*
- *Ontario Heritage Act*
- *Education Act*
- *Environmental Assessment Act*
- *Cannabis Control Act*
- *Labour Relations Act*
- *Occupational Health & Safety Act*
- *Workplace Safety & Insurance Act*
- *Environmental Protection Act*

The Province has provided a 30 day commenting period for the proposed changes to the *Planning Act*, *Development Charges Act* and *Ontario Heritage Act*, which closes on June 1, 2019. Separate opportunities for consultation on the *Conservation Authorities Act*, *Endangered Species Act* and *Environmental Assessment Act* were provided through the Provincial Environmental Registry and have already closed.

Implementation details in the form of proposed Regulations accompanying Bill 108 have not been provided for any of the statutes proposed to be amended.

OPTIONS/ DISCUSSION:

The proposed changes in Bill 108 affecting municipal land use planning and development approval processes and the funding mechanism for provision of community services are grouped into the following statutes. According to the Province, the intended outcomes are:

- *Planning Act* – streamline development approvals process and facilitate faster decisions, make charges for community benefits more predictable, support a range and mix of housing, and increase housing supply
- *Development Charges Act* – support a range and mix of housing options, increase housing supply, increase cost certainty of development, and reduce costs to build certain types of homes
- *Local Planning Appeal Tribunal* (LPAT) *Act* and *Planning Act*, LPAT Practices and Procedures – allow LPAT to make decisions based on the best planning outcome by giving the Tribunal the authority to make final determination on appeals of major land use planning matters
- *Ontario Heritage Act* – support streamlining development approvals and increase the housing supply while continuing to empower municipalities and communities to identify and conserve their cultural heritage resources
- *Environmental Assessment Act* – modernize the environmental assessment program to eliminate duplication, streamlining processes, provide clarity to applicants, and improve service standards to reduce delays
- *Conservation Authorities Act* – clearly define core mandatory programs and services provided by conservation authorities and increase transparency in how conservation authorities levy municipalities for mandatory and non-mandatory programs and services
- *Endangered Species Act* - create new tools to streamline processes, reduce duplication and ensure costs incurred by clients are directed towards actions that will improve outcomes for the species or its habitat
- *Education Act* – allow localized education development agreements between a landowner and school board where a landowner can provide pupil accommodation as an alternative to development charges

The proposed changes to certain statutes need to be read together in order to understand the impacts on land use planning and the provision of community services. For example, the types of facilities and services that can be imposed under the *Planning Act* for the community benefits charge by-law (outlined in more detail below) cannot include services set out in the *Development Charges Act*.

The proposed changes in Bill 108, staff comments on the implications, and recommendations are provided for each statute and subject area involving multiple statues are outlined below.

1. **Implementation details in the form of proposed Regulations accompanying Bill 108 have not been provided for any of the statutes proposed to be amended**
As mentioned, Regulations containing critical implementation details regarding the proposed changes to the statutes have not yet been released. As indicated in more detail below, staff have not been able to assess the full impact of the proposed changes in Bill 108 in the absence of the Regulations, and request the opportunity to comment on draft Regulations before they are finalized.

Recommendation 1: That the deadline for comments on Bill 108 be extended to a minimum of 30 days after the Regulations are released to allow for sufficient time to assess financial impacts, planning and development approval impacts, and impacts to provision of community services resulting from growth.

2. **Planning Community Services and Amenities and Collecting Development Charges (Proposed Changes to the *Development Charges Act* and *Planning Act* from Schedules 3 and 12 of Bill 108)**
The Province has indicated that it will maintain the general principle that growth pays for growth but has the aim of improving the predictability and transparency of the development charge process. The proposed changes would move discounted services (i.e. soft services) from the development charges framework to be recovered instead through a new community benefits charge, which would also include density bonusing provisions in the *Planning Act* (i.e. section 37) and perhaps some parkland dedication. Changes are also proposed in the *Development Charges Act* to have the amount of development charges established earlier in the development process and, for certain types of applications, to be paid in six annual installments.

Hard services including water, wastewater, stormwater, and roads will remain, and still be recovered through the *Development Charges Act*. Some soft services such as fire services, public works, and waste diversion will also remain in the *Development Charges Act*. Waste diversion is now proposed to be a 100% development charge recoverable service – the 10% discount is being removed as per paragraph 10 of subsection 2(4) of the *Development Charges Act*.

Staff had previously reported to Council that the Province was potentially examining eliminating water infrastructure from the development charge rates. This would have been a major impact to every resident's water bill. Fortunately, it appears as if the Province has decided not to make this change, nor impact any other development charge hard service. While waste management is only a small portion of Markham's development charge rates (i.e. less than 1%), it is worth noting that the elimination of the 10% discount is a positive change for municipalities.

A new community benefits charge is being proposed under the *Planning Act* to recoup capital costs for soft services (e.g. library, parks, recreation)

A proposed new community benefits charge will be created under the *Planning Act*, which will allow municipalities to charge directly for community facilities, likely to be services such as libraries, recreation, and park development. This charge would replace section 37 of the *Planning Act*, perhaps some parkland dedication, and development charges for discounted soft services (e.g. library, recreation, parks). The proposed community benefits charge is proposed to be a per unit levy (similar to a Development Charge) which is to be capped based on a percentage of the appraised value of the land that is subject to an application. There is currently no information regarding what percentage of the total land value will form the basis of this cap. Given that a number of community services are proposed to be grouped together and capped, it would be reasonable to expect that the amounts collected for these services will be lower than what municipalities can currently charge independently for soft development charges, section 37 and parkland.

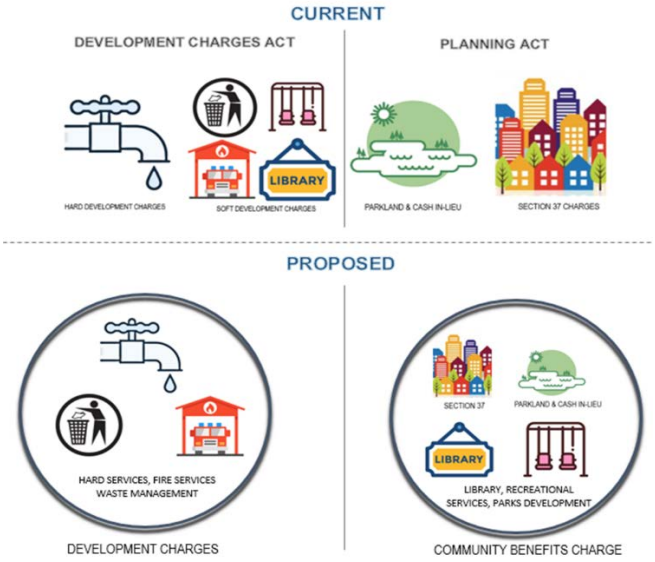
The City will be required to pass a community benefits charge by-law to facilitate collection of the charges, which are intended to recoup the capital cost of facilities, services and matters required as a result of development and redevelopment in the City. A list of services to be excluded from the community benefits charge may be included in the Regulations.

A community benefits charge by-law will be required to be approved by Council before a date to be prescribed in the Regulations. Before the passage of the community benefits charge by-law, the City will be required to prepare a community benefits charge strategy that identifies the facilities, services and matters that will be funded from the community benefits charge. A municipality will be required to spend or allocate at least 60% of the monies in the community benefits charge special account at the beginning of the year. Under the proposed legislation, there is no right to appeal a community benefits charge by-law.

A landowner may be allowed to provide municipal facilities, services or matters (in-kind contributions) the value of which will be deducted from the community benefits charge assessed on the site.

On the day a municipality passes a community benefits charge by-law, all monies in the development charge reserve fund related to services to be subject to the community benefit charge, are to be allocated to a special fund account.

The following image summarizes what is believed to be the major Bill 108 funding changes:



Bill 108 has the potential to significantly alter, and likely reduce, the financial tools available to the City to ensure that growth pays for growth. By removing the soft services from development charges and including it with a larger "community benefits" framework which includes parkland acquisition/dedication, which will then be subjected to a cap, there will more than likely be less funding available to fund required growth facilities and services at the current level of service. The services being removed from development charges comprise approximately 40% of the City's residential development charge recoveries. For example, the City's development charge rate for a single detached home will be reduced by approximately $14,280/unit (from $36,260 to $21,980). The community benefit charge provision would have to equate to this reduction, plus providing for parkland, for the City to be able to cover the cost of growth. A reduction in growth-related cost recovery will negatively impact the City's ability to provide these services without harnessing other funding sources (e.g. property taxes).

Of note is the 10-year capital program (as per the 2017 Development Charges Background Study) for the anticipated impacted services of growth studies, library, indoor recreation, park development and, parking which totals $380.5 million, consisting mainly of indoor recreation and park development services which make up approximately $306.7 million (or 80%) of the capital cost. Under the community benefits charge by-law, the funding for these capital programs could be at risk.

Of particular concern, is the cap on collections to be imposed under the community benefits charge by-law (percentage of appraised land value), which may reduce the overall combined revenue for development charges soft services, density bonusing and parks dedication. If this occurs, the City may find itself in a position where it has to choose to:

1) Fund shortfalls from property taxes or other revenue sources
2) Reduce the current level of service for certain services

There is currently no information on whether the cap on total community benefits charge collected relate to the City only, or also includes the Region and School Boards.

At this time, there are no details on which soft services from development charges will be captured by the community benefits charge by-law – this information will be prescribed in the Regulations however it is anticipated that library services, parks and indoor recreation will be included. The Regulations can preclude services from the community benefits charge and this will be reported to Council when that information is made available.

A proposed change to the *Planning Act* (conveyance of land for parks and parkland for subdivision of land) indicates that the City will not be able to levy the community benefits charge if it also receives parkland as part of a subdivision. The City would be in a position where a choice has to be made between obtaining parkland or collecting contributions towards facilities and services (e.g. soft services). The City would collect parkland from a developer, but not be eligible to collect the community benefits charge for other community based services, including improvements on that parkland.

Recommendation 2: That the Province defer consideration of the community benefits charges by-law until such time as the proposed Regulations are released so that the financial impacts, planning and development approval impacts, and impacts to provision of community services resulting from growth can be determined and analyzed with a view to ensure that growth pays for growth.

Recommendation 3: That the cap on the community benefits charge should be set to include the full recovery for soft infrastructure costs and parkland dedication as now obtained under the current statutes. To ensure that growth pays for growth, a municipality should be allowed to levy both the community benefits charge and receive parkland in a residential development.

Recommendation 4: That a transition provision be adopted to allow for a 3-year term from the date of enactment of Bill 108, or until a community benefit by-law is enacted, as the implementation timeline is a concern given the number of municipalities that will have to study, develop and enact a community benefits charge by-law.

Recommendation 5: That for developments and secondary plans that were approved by Council prior to the enactment of Bill 108, the existing *Planning Act* provisions for height/density bonusing and parkland dedication continue to apply.

Recommendation 6: That if the development charges reserves are currently negative due to the pre-emplacement of facilities, municipalities should be allowed to use existing Reserve balances for *Planning Act* density bonusing provision (section 37) and Cash-in-Lieu to offset current development charge debt.

Removing permission to apply an alternative parkland dedication rate

The Province is proposing significant changes to the acquisition of parkland through development. As discussed earlier, there are changes to the *Development Charges Act* preventing the City from using any development charges to fund parks or other recreational facilities. Once a community benefits charge by-law has been enacted by the City, the parkland dedication by-law under section 42 of the *Planning Act* is no longer in-force and effect. The community benefits charge will have to include both land acquisition cost and any growth related costs that were previously a part of the "soft" services for development charges. Where a parkland dedication by-law is applied, the Province has removed permission for the City to apply an alternative parkland dedication rate, maintaining only the base rate of 2% for commercial and industrial, and 5% for all other uses, including residential.

Staff are unable to provide a detailed analysis of what impact the changes may have on the City's ability to obtain parkland, or develop recreational facilities at this time. The proposed changes to density bonusing from section 37 of the *Planning Act* suggest that funds collected under the community benefits charge could be used to develop park and recreational facilities. However, these benefits are proposed to be capped. The Province has not yet provided Regulations outlining what the cap would be, so the impacts cannot be adequately measured.

Recommendation 7: That the proposal to not permit parkland dedication and a community benefits charge at the same time is not supported as municipalities may be forced into a position to choose either obtaining parkland or collecting contributions towards facilities and services (e.g. soft services) as it is not clear if Regulations prescribing services would include parkland.

Recommendation 8: That where a parkland dedication by-law is applied to a development, the City retain the authority under *Planning Act* section 42 (3) and 51.1 (2), and to apply an alternative parkland dedication rate.

Development charge rates to be established earlier in the development process and to be paid in six annual installments for certain types of development

It is proposed that development charge rates will be established at an earlier point in the development process (i.e. when an application is made for the later of a site plan or zoning approval), as opposed to the current process where development charge rates are determined on the date of issuance of the first building permit. Development charges will continue to be paid at the time of building permit issuance.

Payment installments are also proposed for development charges to be paid in six annual equal installments beginning on the earlier of the issuance of a building permit authorizing occupancy or the date the building is first occupied, and continuing on the five anniversaries of that date for rental housing, institutional development, industrial development, commercial development and, non-profit housing development.

A municipality may charge interest on the installments from the date the development charges would have been payable (e.g. building permit issuance) to the date the instalment is paid. The maximum interest rate will be prescribed in the Regulations. Amounts due can be added to the tax roll if unpaid.

The setting of development charge rates earlier and payment installments will likely result in the City receiving less revenue than anticipated, with rates locked in early in the development process and payments protracted over six installments. With less revenue, the City may be placed in a position to choose one service or facility over another, or necessitate increased borrowing. Continued prudent management of the City's cash resources will be important under this new framework to manage the pay down of the existing indoor recreation negative reserves resulting from the construction of recreation facilities in advance and in anticipation of future growth.

It is unclear whether the proposed changes to the *Development Charges Act* will have an impact on housing supply or price, or whether savings from these proposed changes will be passed down to home purchasers. Developers, who will now benefit from price certainty and lower costs, will likely continue to price their housing units for what the market will bear, not based on input cost.

Recommendation 9: That for development charge rates set earlier in the development process, there should be a sunset clause on the length of time permitted between a site plan and/or zoning application and building permit issuance – this could be in the range of 2 years to act as a disincentive for landowners who may want to apply but not proactively proceed with their development. Municipalities should also be allowed to index or charge interest from the date an application is deemed complete until a building permit is issued for all applications held for over a year.

Recommendation 10: That for developments subject to the six annual installment payment regime, the sale of the property should result in the immediate requirement to pay the remaining development charges due, by the original owner. Municipalities should be allowed to register the obligation on title to prevent transfer without the City being notified.

Recommendation 11: That the interest rate to be prescribed in the Regulations should be one that provides reasonable compensation to the City for the timing delay in receiving cash, as this may result in borrowing to fund growth-related requirements.

3. Permitting Up to Three Residential Units on a Lot (Proposed Changes to the *Development Charges Act* and *Planning Act* from Schedules 3 and 12 of Bill 108)

Currently, the *Planning Act* requires official plans to contain policies authorizing second residential units (referred to as secondary suites in the Markham Official Plan) and authorizes either two residential units in a detached house, semi-detached house, or row house with no residential unit in an ancillary building or structure, or one additional residential unit in a building or structure ancillary to a house containing a single residential unit. In either case, only two residential units on a lot are permitted.

The *Planning Act* is proposed to be amended to require official plan policies authorizing an additional residential unit in a detached house, semi-detached house, or row house as well as an additional unit in a building or structure ancillary to a detached house, semi-detached house, or row house. This permits a third residential unit on a lot. Examples of units in ancillary buildings are coach houses or garden suites.

To support this, the *Development Charges Act* is proposed to be amended to exempt the creation of a second dwelling unit in prescribed classes of new residential buildings, including structures ancillary to dwellings (e.g. coach houses), from development charges. The classes of residential buildings that will be eligible for this exemption will be prescribed in the Regulation.

<u>Addressing impacts from permitting additional residential units</u>
Ontario Regulation 384/94 currently outlines criteria that may or may not be applied by the City to second residential units through zoning provisions. References in this Regulation are limited to a second residential unit, and include caps on the number of parking spaces that can be required, and limits on the minimum floor area required for a dwelling unit. No draft Regulations have been provided at this time to outline any such criteria that may be applicable to a third residential unit in an ancillary building. Further, it is unclear if the permission for a residential unit in an ancillary structure would be accompanied by Regulations requiring the City to permit this type of building, where it may not be currently permitted.

In May, 2018, Staff reported to Council recommending the adoption of a zoning by-law (3A) to permit accessory dwelling (residential) units in single detached, semi-detached, and rowhouses. The City's Official Plan supports the permission of coach houses over garages on lane based dwellings where the lot has a frontage of greater than 9.75 metres. The City's Official Plan also speaks to criteria when approving zoning for a second suite. Section 8.13.8 of the City's Official Plan specifically references a second suite, however Subsection 8.13.8.1 c) directs Council to consider the number of dwelling units permitted on the same lot, in review of such an application.

The impact of the proposed amendments on servicing is unknown at this time. Through the Comprehensive Zoning By-law Phase 3A process, the City's consultant evaluated the impact of permitting second units in established neighbourhoods by using case studies of other jurisdictions, the potential uptake of an additional unit by property owners, and projecting population per unit based on census data. Staff are not aware of any Cities that have incorporated permissions for a third unit on a broad

scale to evaluate uptake or other impacts on servicing capacity. As development charges are also proposed to be waived on accessory dwelling units in new construction, it is unknown if there will be cumulative impact on the City's ability to provide services in a particular neighbourhood, whether in an established, or proposed new subdivision, based on the proposed changes.

Through review of the Official Plan, the City has contemplated coach houses on lane based dwelling units, however it has not contemplated coach houses or garden suites in the rear yard of established front loaded dwelling units. Lane based garages are incorporated into the initial design and development of a subdivision, and take into account such issues as access by the Fire Department, storm water management, and private outdoor amenity space. Where a unit is not accessed by a lane, units in an accessory building or structure may not be as readily accessible by the Fire Department, and may create a less than desirable built form in a rear yard.

The City's parking by-law currently requires two spaces for the main residential dwelling unit, and one space for each accessory dwelling unit. Should a site be permitted three dwelling units, as contemplated by the proposed amendment, four parking spaces would be required on the site. Staff recommended a reduction of the required parking space for accessory dwelling units during the 3A project. Staff have not contemplated the potential impact of three units on a lot, or the number of parking spaces required to appropriately accommodate the potential new tenancies.

As public safety is a primary responsibility of the City, it should be the priority of the City to retain the ability to review and permit or deny the establishment of units in accessory buildings or structures, and to restrict the establishment of additional dwelling units where servicing is limited.

Recommendation 12: That municipalities retain their current authority to review and determine appropriate locations for dwelling units in ancillary buildings on a lot and within the municipality.

Recommendation 13: That municipalities retain their current authority to refuse additional dwelling units where there are insufficient services to support the increased density, or apply appropriate development charges to facilitate construction of the required services.

Recommendation 14: That municipalities retain their current authority to apply minimum parking requirements, to primary and accessory dwelling units.

Recommendation 15: That municipalities retain their current authority to apply zoning provisions to construction accommodating additional dwelling units, to ensure the proposed development is compatible with the built form of the neighbourhoods in which they are located.

Recommendation 16: That second units should be subordinate to, or accessory to, a main residential building in order to be identifiably differentiated from other residential development such as stacked townhouses.

4. **Inclusionary Zoning Permitted in Only Major Transit Station Areas and Areas Subject to a Development Permit System (Proposed Changes to the *Planning Act* from Schedule 12 of Bill 108)**

Proposed amendments to the *Planning Act* direct the application of inclusionary zoning to protected major transit station areas and to areas that are the subject of a development permit system. Inclusionary zoning provides for the inclusion of a minimum number affordable housing units within residential construction.

The proposed amendment would eliminate the City's ability to identify and apply inclusionary zoning provisions outside of protected major transit station areas, or areas subject to a development permit system. While it is reasonable to assume that inclusionary zoning would be effective in major transit station areas, as these are likely to represent the majority of a municipality's intensification areas, there may also be intensification areas outside of major transit station areas, where inclusionary zoning would also be appropriate.

It should be noted that under current legislation, inclusionary zoning provisions are limited if they are also subject to a by-law under section 37 density bonusing of the *Planning Act*. The proposed amendment to remove density bonusing, establishing new requirements for a community benefits charge, eliminates this prohibition, and it is not yet clear whether inclusionary zoning and community benefits charge will be permitted in the same development application as the Regulations may address this.

Should the proposed amendments be passed as proposed, Council may wish to refine the boundaries of the proposed protected major transit station areas to ensure properties are appropriately captured within the legislative framework.

Proposed amendments to development permit system provisions continue to authorize the Minister to require a local municipality to establish a development permit system but removes the ability of an upper-tier municipality to require the same. A development permit system streamlines and expedites the planning process by providing a 'one-stop' planning service combining zoning, site plan, and minor variance processes into one application and approval.

The proposed legislation also permits the Minister to specify the delineation of the area's boundaries or the area surrounding and including a specified location in the case the Province does not delineate the area's boundaries. Also it is proposed that a development permit system would not be appealable to the Local Planning Appeal Tribunal.

Recommendation 17: That municipalities should continue to have ability to apply inclusionary zoning to development in areas other than protected major transit station areas or areas subject to a development permit system.

5. **Application Review Timelines and Local Planning Appeal Tribunal Practices and Procedures (Proposed Changes to the *Local Planning Tribunal Act* and *Planning Act* from Schedules 9 and 12 of Bill 108)**

The proposed changes aim to shorten the development application and appeal process. Combined, the changes in the *Local Planning Appeal Tribunal Act* and the *Planning Act* remove the previous "two-stage" appeal process, reduce application review timelines, and roll-back many of the changes brought forward when the new LPAT was introduced (under previous Bill 139). A "two-stage" appeal process involves Stage 1 – written hearing reviewing whether Council made a decision consistent with Provincial Policy, and conforming to Provincial Plans and Local/Regional Official Plans, and decision sent back to Council for reconsideration, then Stage 2 – formal hearing to determine the same question.

<u>Shorter timeframe for a municipality to consider a development application</u>

The proposed changes shorten the timeline for Council to make a decision on a development application. After the time has expired, the applicant may file an appeal to the Local Planning Appeal Tribunal. The proposed timelines are now shorter than the current timelines, as set out in the table below.

Application	**Current Timelines**	**Proposed Bill 108 Timeline**
Official Plan/Official Plan Amendment	210 days	120 days
Zoning Bylaw Amendment	150 days	90 days
Draft Plan of Subdivision	180 days	120 days

As development applications have become more complex and integrated, the current review timelines provide a better opportunity to comprehensively review applications. Given the complexity of the development applications that the City receives, and given the fact that the City is responsible for collecting comments from other government agencies and utilities, it will be a challenge to meet the proposed reduced timeframes. Reduced timelines may result in more applications being in a position to be appealed for non-decision, ultimately resulting in not only a loss of local control over development decisions, but also potentially longer approval times if more applications are approved through the Local Planning Appeal Tribunal.

Recommendation 18: That the proposed reduction in timelines for decisions on development applications is not supported as appeals for non-decisions to the LPAT removes decision making authority on development applications from Council, and may result in potentially longer decision timelines.

Recommendation 19: That rather than reducing timelines for Council decisions on applications, the Province provide sufficient resources to provincial ministries and agencies to allow for timely comments on development applications, thereby ensuring expedient reviews.

The Local Planning Appeal Tribunal reverts back to a "de novo" hearing process

The Province's proposed changes to the *Local Planning Appeal Tribunal Act* largely bring back the procedures that were in place under the previous Ontario Municipal Board. The *Local Planning Appeal Tribunal Act* maintains the Local Planning Appeal Tribunal as the appeal body for Council's decisions regarding planning applications.

The proposed changes to the *Planning Act* have re-introduced the "de novo" hearing where the Local Planning Appeal Tribunal can consider a development proposal as if no decision were made by a council. The changes also allow an applicant a greater ability to modify the application after it has been appealed, with provisions for Council to consider the modification for approval.

Under the changes previously enacted under Bill 139, the ability to modify a development application after it has been appealed was limited, and the Local Planning Appeal Tribunal was required to make its decision on the application based on whether the application was consistent with the Provincial Policy Statement, and conformed to the Growth Plan and City's Official Plan. The intended effect of the Bill 139 changes was to give greater deference to Council's decisions regarding development applications, and to the City's Official Plan policies, when the Local Planning Appeal Tribunal considers an appeal. Also, Bill 139 sought to move more development matters quicker through the appeals process and eliminate the significant backlog of matters at the OMB at that time. The proposed Bill 108 rolls back the changes intended to give greater deference to municipal decisions regarding *Planning Act* applications in an appeal.

Other changes to the *Planning Act* include the limitation of the persons or corporations who can bring a third party appeal of an application for a Draft Plan of Subdivision. It is proposed that a third party appeal may now only be brought forward by public utilities, private oil or gas utilities, telecommunications providers, and railway companies in the vicinity of the application.

Major proposed changes to the *Local Planning Appeal Tribunal Act* include the power for the Local Planning Appeal Tribunal to require mandatory mediation of an appeal, and limitations to public participation. The *Local Planning Appeal Tribunal Act* now limits non-parties (also known as participants) to an appeal to providing written submissions in an appeal, where they were previously able to testify in person before the Local Planning Appeal Tribunal. Participants are typically local residents, ratepayer groups, and/or neighbouring landowners.

In the past, the Local Planning Appeal Tribunal has given less weight to written submissions by participants than to testimony given in-person. It is unclear whether

the Local Planning Appeal Tribunal will change this practice. If it does not, the effect will likely be a significant limitation on effective public participation in the appeal process. This change may also encourage participants to become parties, which will result in further delays of the hearing process. Should public participation continue to be limited to written submissions, staff recommend that Bill 108 include a provision in the *Local Planning Appeal Tribunal Act* requiring written submissions by participants (non-parties) be given the same consideration as in-person testimony.

Recommendation 20: That the proposed Local Planning Appeal Tribunal process that reverts back to a "de novo" hearing process is not supported. The Province should carry forward the current test for the appeal of a *Planning Act* application requiring the Local Planning Appeal Tribunal to evaluate a municipal decision on a planning application based on its consistency with the Provincial Policy Statement, and conformity with Provincial Plans, as well as Regional and local Official Plans, or if the Province is unwilling to restore the appeal test, the Province should revise Bill 108 to provide for more deference to Council's decisions.

Recommendation 21: That there be a provision in the *Local Planning Appeal Tribunal Act* permitting oral testimony for participants (non-parties); otherwise, written submissions by participants should be given the same consideration as in-person testimony by the Local Planning Appeal Tribunal in the hearing of an appeal.

6. **Proposed Changes to the *Ontario Heritage Act* (Schedule 11 of Bill 108)**

The proposed changes to the *Ontario Heritage Act* will impact the manner in which property listing, designation, alteration and demolition applications are processed and tracked through Markham's heritage conservation program.

According to the Province the changes to the *Ontario Heritage Act* seek to improve consistency, transparency and efficiency for communities, property owners and development proponents. Amendments and new guidance is being proposed that according to the Province will:

- Enhance Provincial direction to municipalities on how to use the tools provided in the *Act* and manage compatible change
- Provide clearer rules and improved tools to facilitate timely and transparent processes for decision-making
- Create consistent appeals processes

<u>Provincial direction for municipalities to consider prescribed principles when making decisions</u>

The proposed legislation will require the council of a municipality to consider any principles that may be prescribed by Regulation when exercising decision-making under prescribed provisions of both Part IV (individual property) or Part V (Heritage Conservation District). The Province's rationale is that there is a lack of clearly articulated policy objectives to guide municipalities when protecting properties.

Requiring a municipal council to consider principles prescribed by a Regulation is unprecedented in enabling legislation. Since the principles have not been released there is no opportunity to comment on what the principles would involve and/or require, and their potential effect on heritage decision-making.

Recommendation 22: That the Province provide direction through enhanced educational materials to better guide heritage conservation objectives, including updating the Ontario Heritage Toolkit, as opposed to introducing principles by Regulation.

Require notice to a property owner within 30 days after being listed on the Register

The proposed legislation will require notice to a property owner within 30 days after being listed on the Register as well as providing a right of objection by the owner to the municipality. Also, the Province aims to provide improved guidance on listing best practices. The *Ontario Heritage Act* is currently silent on how heritage value is determined and there are no notice requirements to the property owner.

Originally "listing" had no legal implications and was intended as a planning tool to help municipalities identify all the properties in a community that were of potential cultural heritage value (basically those that had not been afforded protection through designation). In 2006, an amendment to the *Ontario Heritage Act* added a requirement for owners of listed properties to provide the municipality with 60-days notice before demolition could occur.

It is reasonable that owners be given notice of listing. It should allow the municipality to resolve any disagreements or confusion at an early stage. However, for the proposed amendments, the right to object to listing is open-ended and could result in multiple objections over time by current/future owners causing an undue administrative burden on municipal resources and potentially impeding listing initiatives.

The Province is recommending that notice be provided once Council has agreed to add the property to the Register. Recently Markham Council considered the option of providing notice to the owner prior to Council's consideration of listing the property, but wanted to find a mechanism to ensure that a demolition permit could not be initiated upon notification.

Recommendation 23: That the Province consider the option of requiring notice to property owners prior to the matter being considered by Council with the condition that once notification of listing is given, the property owner would be prevented from submitting a demolition permit application until after Council has considered the recommendation for listing the property on the Register.

Recommendation 24: That the provision of enhanced guidance to municipalities on best practices for listing properties through education materials is supported.

Recommendation 25: That if the Province proceeds with the option of requiring notification to the property owner after Council has listed a property on the Register, the legislation should be amended to provide a time limit on the period when an objection to the listing can be submitted (as opposed to in perpetuity).

Designation by-laws to comply with requirements prescribed by Regulation

It is proposed that designation by-laws are required to comply with requirements prescribed by Regulation, including requirements related to describing the cultural heritage value or interest of the property and its heritage attributes. Although criteria for determining if a property has cultural heritage value is provided by existing Regulation, the Province proposes providing direction on the content of designation by-laws.

The current legislation already indicates that the municipality must provide a statement explaining the cultural heritage value of the property and a description of heritage attributes. The Ontario Heritage Toolkit also currently provides educational guidance on what is to be included in these subject areas.

The Regulation associated with this proposed change is not available at this time for review, and it may include "such other requirements as may be prescribed". Better direction that results in more consistent and clear by-laws is supportive, but it could be provided through educational materials rather than through Regulation.

Markham has only identified physical heritage attributes in its designation by-laws, but if the concern from the Province is that non-physical features have been included by some municipalities, the Province may wish to address the matter by amending the definition in the *Ontario Heritage Act* of "heritage attributes" to clarify they are physical attributes.

Recommendation 26: That the Province defer consideration of the amendment concerning prescribed requirements by Regulation for designation by-laws until such time as the Regulation has been drafted and available for consultation.

Recommendation 27: That the Province consider providing clarity in the *Ontario Heritage Act* by further defining what constitutes "heritage attributes".

Timelines for designation (individual properties) – 90 day time limit for municipality to issue notice of intention to designate and 120 days to designate after issuing notice

The legislation provides for a 90 day time limit for a municipality to issue a notice of intention (NOI) to designate where certain prescribed events have occurred on the property (these are to be identified by regulation and are anticipated to include certain applications under the *Planning Act*, subject to limited exceptions also prescribed by regulation). It also provides for a 120 day time limit for a municipality to pass a designation by-law after issuing a NOI subject to limited exceptions as prescribed by Regulation.

The current process in Markham for reviewing planning applications which affect a non-designated cultural heritage resource is to evaluate the resource and if considered worthy of protection and incorporation into the development, recommend designation as a condition of development approval (i.e. conditions of subdivision approval, a requirement in a Subdivision Agreement or condition of Site Plan Approval or provision in the Site Plan Agreement).

Under the proposed legislation, if a cultural heritage resource is to be protected, staff would have to prepare the designation by-law, prepare a staff report and recommend that Council approve a NOI to designate within 90 days of the beginning of the planning application (and more likely than not prior to Council considering the planning application).

Currently there are no limits placed on when Council may provide a NOI to designate and what constitutes a "prescribed event" has yet to be defined by Regulation.

Also from a practical perspective, if the designation by-law must be addressed and registered at an early stage and is part of a large development project, the by-law would have to be registered on title to the large development parcel as opposed to later in the development process when it could be registered against an identified lot or block. The development community does not prefer a designation by-law that is registered against all their property holdings.

The introduction of new statutory time limits in relation to the provision of various notices, decision-making and passing of designation by-laws will require the City to introduce an enhanced tracking tool to ensure that all civic departments and participants undertake their responsibilities in a timely manner. The failure to meet the new timelines could affect the protection of cultural heritage resources.

Recommendation 28: That the protection and incorporation of a cultural heritage resource should be considered as part of the final report on a planning application that is presented to a council so it can be considered in a holistic manner and not in a piecemeal approach (within the first 90 days).

<u>Ability to appeal to the Local Planning Appeal Tribunal on decisions for designation by-laws</u>

It is proposed there be a new right of appeal to the Local Planning Appeal Tribunal from final decisions related to designation by-laws passed by Council, as well as final decisions made by Council on applications for alterations on individually designated properties. Similar changes regarding appeal rights are made for amendments to designation by-laws and de-designation requests.

The Conservation Review Board currently reviews objections to such matters as designation and alterations to designated properties (Part IV) and their recommendations are not binding, but provide a review mechanism to ensure

Council's decisions are sound and appropriate from a heritage perspective. Council still has the final decision making authority, which ensures that decisions on what is of value from a heritage perspective is reflective of the local community and not of a provincial tribunal.

Replacing the Conservation Review Board's recommendations with the Local Planning Appeal Tribunal's decisions takes decision-making away from the local community on what is important from a heritage perspective and transfers the final decision to an unelected, unaccountable provincial body. The Conservation Review Board by all accounts works well, is less expensive for all parties and has adjudicators with heritage experience.

Municipal councils may be less likely to designate in response to owner opposition due to the formality, expense, delay and uncertainty of the Local Planning Appeal Tribunal process relative to the Conservation Review Board. This can also have an impact of municipal staff resources and the Local Planning Appeal Tribunal's ability to hold hearings in a timely manner.

Under the Bill's proposal, owners will have the right to appeal both alteration and demolition/removal decisions to the Local Planning Appeal Tribunal for a binding decision (this would treat alterations to individually designated properties consistently with alterations to properties in a heritage conservation district). However, the ability to appeal the initial individual designation to the Local Planning Appeal Tribunal in the first instance represents a significant and unnecessary change.

Recommendation 29: That at a minimum, the Province maintain the Conservation Review Board as the non-binding appeal body for individual designation and amendments to the content of designation by-laws with the municipal council having the final decision on what is considered to be of heritage value in the local community. The Local Planning Appeal Tribunal could address objections related to requested alterations and demolition requests (as it does currently for properties within heritage conservation districts).

Recommendation 30: That if the Conservation Review Board is replaced by the Local Planning Appeal Tribunal, the Province should ensure that Tribunal members assigned to *Ontario Heritage Act* appeals possess cultural heritage expertise and an understanding of the *Ontario Heritage Act.*

<u>60 day timeline for a municipality to notify an applicant whether an application for alteration or demolition of a designated property is complete</u>

A 60 day timeline is proposed for a municipality to notify the applicant whether an application for alteration or demolition of a designated property is complete. Minimum submission requirements can be established (either by the Province through Regulation or by the municipality). If the municipality fails to provide notice as prescribed, then the 90 day review period for Council to make a final decision begins immediately following the end of the 60 days.

At present in Markham, the "heritage permit" review process is incorporated into the review of *Planning Act* applications and Building Permit applications, a streamlined approach to heritage review that has offered efficiencies and cost/time savings for applicants (no separate applications or fees are required). The proposed changes will likely result in changes to our review/approval processes, and may require a more formal heritage application process.

Recommendation 31: That the amendments regarding the introduction of complete application provisions and specified timelines for alteration and demolition applications are supported.

<u>The loss of heritage attributes will no longer be considered alterations</u>
The legislation proposes to clarify that "demolition or removal" under sections 34 (individual properties) and 42 (properties in a district) will now include demolition or removal of heritage attributes as well as demolition or removal of a building or structure. The loss of heritage attributes will no longer be considered "alterations". This change restricts the removal or demolition of heritage attributes without municipal approval and will allow municipalities to seek maximum fines for the unapproved removal or demolition of identified heritage attributes.

However, according to section 69(5 and 5.1) of the *Act*, the municipality can only recover restoration costs from the owner of the property (in addition to any other penalty improved under the *Act*) if the property is "altered" in contravention of the *Act*. The legislation should be addressed to ensure that "altered" in this part of section 69 is removed and defined to include "removal or demolition of heritage attributes". The removal of the word "altered" in both section 69(5)(a) and (b) may address this issue.

Recommendation 32: That the identified clarification in the legislation indicating that "demolition and removal" will also include demolition and removal of heritage attributes is supported, but that Section 69(5) which deals with offences and restoration costs should be amended to remove the reference to "altered" to ensure that a municipality can recover restoration costs associated with the removal or loss of heritage attributes if a property has been impacted by a contravention of the Act.

<u>Request deferral of *Ontario Heritage Act* Amendments</u>
Given that the proposed changes to the *Act* are extensive and were introduced with minimal time allocated for consultation, it is suggested that the amendments be deferred and that the Ministry undertake meaningful consultation with all stakeholders as was done when the 2005 and 2006 changes were made to the legislation. The proposed changes need to be fully tested as to their applicability and usefulness by working with heritage planners who use the current legislation on a daily basis as well as development proponents. There are some useful changes that

could make the Act work better and a fulsome consultation could produce a set of useful amendment with broad support.

Recommendation 33: That the changes to the *Ontario Heritage Act* be removed from Bill 108 or deferred to allow the Ministry to undertake meaningful consultation with all stakeholders on both improvements to the legislation and allow feedback on the future content of the identified Regulations.

7. **Proposed Changes to the *Environmental Assessment Act* (Schedule 6 of Bill 108)**

The proposed changes to the *Environmental Assessment Act* provide exemptions to certain undertakings and specified categories of undertakings within the class from the *Act*. The proposed changes also provide a new process governing amendments to approved class environmental assessments.

A number of proposed amendments and new subsection of the *Act* would specify when the Minister could issue orders under section 16 of the *Act*. An order under section 16 could require a proponent of an undertaking subject to a class environmental assessment process to carry out further study. The amendments would also provide that the Minister must make an order within any deadlines, as may be prescribed and should the Minister fail to do so, that written reasons be provided.

The proposed amendments also imposes limitations on persons making requests for orders under section 16 by requiring that the person be a resident of Ontario and make the request within a prescribed deadline.

The proposed exempted categories are supported, as along as environmental protection measures are maintained, for the following reasons:

- Provides the ability for some infrastructure projects to be exempt from the Environmental Assessment process. This will accelerate the process (i.e. detailed design to construction) if the requirement to carry out an Environmental Assessment is removed from the overall process. With these proposed changes, projects can move straight to detailed design stage and subsequently to construction
- Provide clarity in dealing with orders by allowing the proponent of an undertaking to carry out further study
- Provides deadlines for issuing orders

Recommendation 34: That the proposed exempted categories are supported as long as environmental protection measures are maintained.

8. **Proposed Changes to the *Conservation Authorities Act* (Schedule 2 of Bill 108)**

The proposed changes to the *Conservation Authorities Act* will clearly define the core mandatory programs and services provided by the conservation authorities.

The Province proposes to amend the prohibited activities of the existing Regulation to include low risk development in areas related to natural hazards such as floodplains, shorelines, wetlands and hazardous lands and interference with or alterations to a watercourse or wetland.

The Province also proposes a new Regulation defining the ability of a conservation authority to regulate prohibited development and other activities for impacts to the control of flooding and other natural hazards. Other changes include improving financial transparency and accountability of conservation authorities.

Reduced functions and optional activities of conservation authorities

The following are proposed core mandatory functions of a conservation authority which would continue to be partially funded by the Province:

- Hazard land protection and management (valleyland and floodplains)
- Conservation and management of conservation authority lands
- Drinking water source protection
- Protection of Lake Simcoe watershed (not applicable to Markham)

This would reduce the role of conservation authorities in natural heritage and watershed planning. The City will need to determine how to address the gap in services which could include revised agreements with the TRCA, additional City staffing resources, or consulting services given that the City does not employ the appropriate technical expertise to address all natural heritage and watershed planning matters.

Activities outside of a conservation authorities' core mandate would no longer receive funding from the Province and would require dedicated funding agreements between the conservation authority and the benefitting party (i.e., municipality and/or other stakeholder), would need to determine if Provincial funding exists and if additional costs need to be borne by the City, TRCA, and/or other stakeholders.

The City currently benefits from numerous activities provided by the Toronto and Region Conservation Authority (TRCA) which would be considered non-mandatory under the proposed changes including:

- Natural heritage restoration planning and implementation
- Design and rehabilitation of certain stormwater management infrastructure/emergency repairs
- Sustainability programs (Sustainable Neighbourhoods Action Plan, Sustainable Technologies Evaluation Program, Mayor's Megawatt Challenge)
- Technical advice on City-led studies and plans (e.g., Subwatershed Study).

Existing and new service agreements between the City and the TRCA will have to be reviewed within the allocated 18 – 24 month transition period and reviewed at regular intervals as specified in the *Act*.

Recommendation 35: That Provincial efforts are supported to clarify the role and accountability of conservation authorities and that the Province is urged to support the

Ministry of Natural Resources and Forestry, Ministry of Environment, Conservation and Parks and municipalities with enhanced natural heritage protection and watershed planning tools to fill the potential gap in natural resource, climate change and watershed planning services resulting from the proposed modified mandate of the TRCA.

Exempting certain low risk activities from permitting within natural hazards ('Regulation of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses')

The changes to the Regulation exempts certain low risk activities from requiring a conservation authority permit for works within the regulated hazard lands and will also permit conservation authorities to exempt further low risk development activities. The Regulation reduces restrictions within the 30 - 120 m boundary area of wetlands. The impact of reducing development restrictions in floodplains as we continue to address changing climatic conditions and severe storm events, is not fully understood which carries to property and people and the liability associated with it. The integrated watershed planning approach adopted by the TRCA has assisted the City in bringing clear, appropriate and balanced natural heritage policies in the City's Official Plan 2014.

Given the deadline for commenting on proposed changes to the *Conservation Authorities Act* by May 21, 2019, which were not provided in full detail prior to the release of proposed Bill 108, staff level comments as attached in Appendix 'B' have been forwarded to the Ministry of the Environment, Conservation and Parks.

9. **Proposed Changes to the *Endangered Species Act* (Schedule 5 of Bill 108)**

The proposed changes to the *Endangered Species Act* include:

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

Additional permitting tools are generally supported by staff with revisions

The proposed changes to the *Endangered Species Act* will provide two additional permitting tools to allow proponents (including the City) to protect and address impacts to species at risk. The first permitting tool is a 'landscape agreement' which will allow proponents to carry out multiple compensation/restoration activities to offset negative impacts to species at risk within a specified geographic area. This approach provides opportunities for proponents to work together and address natural heritage requirements in a coordinated fashion. While staff support the notion of a landscape agreement, it is suggested that improvements can be made to this section of

the legislation. As currently proposed, impacts to species at risk may not be fully mitigated in certain scenarios and staff recommend that refinements be made to ensure that impacts to each species at risk are fully offset.

The second permitting tool are 'species conservation charges' which are payments made to the proposed Species at Risk Conservation Trust which would be tasked with implementing on-the-ground activities to protect and recover species at risk. The amount to be paid would be determined based on the cost that the proponent would have otherwise incurred to mitigate and compensate for the adverse impacts to species at risk. Staff support the option to offset impacts to species at risk through a cash-in-lieu payment, however it is recommended that certain safeguards need to be put in place to ensure proper management and administration of this agency.

There is a need to ensure that 'species conservation charges' lead to on-the-ground improvements for species at risk and that necessary administration and staffing costs be appropriately taken into account. If the Province intends to recover administration and staff expenses, then the additional costs must be factored into account and charged to the proponents. In addition, projects funded by the agency should prioritize the recovery of species that have been impacted and for which a 'species conservation charge' has been collected. It is recommended that the agency provide annual reporting to clearly document all actions undertaken by the Trust to recover species at risk.

Recommendation 36: That refinements be made to section 16.1(2) of the proposed *Endangered Species at Risk Act* to ensure that landscape agreements are required to result in an overall net benefit to each impacted species at risk.

Recommendation 37: That the Species at Risk Conservation Trust be required to publish a regular report to provide an open and transparent accounting of the collection and spending of species conservation charges.

<u>Preserving a precautionary approach to Ontario's biodiversity and species at risk</u>

Species at risk populations in Ontario are facing risks due to climate change, invasive species and habitat alterations. Staff have identified a number of proposed changes to the *Endangered Species Act* which may have an overall undesirable impact on the recovery of species at risk in Ontario. These include the consideration of the condition of the species outside of Ontario; the ability to suspend protection of newly listed species at risk for up to three years; and, the ability to, by Regulation, limit the level of protection of newly listed species. Staff suggest that these changes be carefully reviewed in consultation with industry experts to ensure the overall purpose and intent of the *Endangered Species Act* is not compromised.

Given the deadline for comments on May 18, 2019, staff level comments as attached in Appendix 'C' have been forwarded to the Ministry of Environment, Conservation, and Parks.

Recommendation 38: That the changes proposed for the *Endangered Species Act* (proposed sections 5(4)(b), 8.1, 9(1.1)) be carefully reviewed in consultation with experts to ensure the purpose and intent of the *Endangered Species Act* is not compromised.

10. Proposed Changes to the *Education Act (Schedule 4 of Bill 108)*

Proposed changes to the *Act* provide for alternative projects that, if requested by a board and approved by the Minister, would allow the allocation of revenue from education development charge by-laws for projects that would address the needs of the board for pupil accommodation and would reduce the cost of acquiring land.

Localized education development agreements would be permitted that, if entered into between a board and an owner of land, would allow the owner to provide a lease, real property or other prescribed benefit to be used by the board to provide pupil accommodation in exchange for the board agreeing not to impose education development charges against the land.

The Province is defining Alternative Projects as: a project, lease or other prescribed measure, approved by the Minister that would address the needs of the board for pupil accommodation and would reduce the cost of acquiring land. Pupil accommodation is defined as a building to accommodate pupils or an addition or alteration to a building that enables the building to accommodate an increased number of pupils.

<u>Alternative projects may have an impact on broader issues related neighbourhood planning and design</u>

The potential impact of the proposed legislation on the City or its ability to provide services is not known at this time, and will depend on the form an alternative project takes within the City. As the project types and impact are unknown, and may have an impact on broader issues related to neighbourhood planning and design, the City should seek to be a party to any localized education development agreement to ensure the broader interests of a neighbourhood or community are maintained.

Recommendation 39: That if a landowner and a school board enter into an agreement for an alternative project, the municipality should be consulted on the alternative project.

11. Decision on Proposed Amendment 1 to the Growth Plan 2017

A staff Memorandum with summary of the Province's decision on Proposed Amendment 1 to the Growth Plan 2017 is included with the May 27, 2019 Development Services Committee agenda. In January 2019 the Province released Proposed Amendment 1 to the Growth Plan 2017 which proposed a number of key policy changes. On May 2, 2019, the Province released its decision on Proposed Amendment 1 in the form of A Place to Grow: The Growth Plan for the Greater Golden Horseshoe 2019. Key changes from the Growth Plan 2019 are meant to address housing supply:

- Minimum intensification target for the City of Hamilton and Regions of York, Peel, Durham, Halton, Waterloo and Niagara is 50% to the year 2041
- Minimum designated greenfield area target of 50 residents and jobs per hectare for the City of Hamilton and Regions of York, Peel, Durham, Halton, Waterloo and Niagara
- Allows upper and single-tier municipalities, in consultation with lower-tier municipalities, a one-time window to undertake some employment land conversions in advance of the next Municipal Comprehensive Review (MCR) subject to criteria
- Allow municipalities to undertake expansions that are no larger than 40 hectares outside the MCR process, subject to specific criteria
- Introducing new policy that allows minor rounding out of rural settlements not in the Greenbelt Area, outside of an MCR subject to criteria

NEXT STEPS:

It is recommended that this report be forwarded to the Ministry of Municipal Affairs and Housing as the City of Markham's comments on Bill 108, *More Homes, More Choice Act 2019*, prior to the June 1, 2018 commenting deadline. The Bill will be referred to the Standing Committee on Justice Policy on June 3, 2019 for a public hearing and clause-by-clause consideration. It will be received by the House on June 4, 2019. The Bill is then expected to proceed to Third Reading and Royal Assent thereafter.

Forthcoming Regulations implementing the amendments to the various statutes in Bill 108 are expected leading up to the Provincial Legislature's decision on Bill 108. The full impacts and detailed conclusions regarding Bill 108 can be assessed once the proposed Regulations are released. As noted in the report it is requested the Province provide an additional 30 days commenting period once proposed Regulations are released to allow for more time to assess financial impacts, planning and development approval impacts, and impacts to provision of community services resulting from growth.

Staff will report back to the Development Services Committee once the proposed Regulations supporting implementation of Bill 108 are released and once the final Bill 108 is released.

FINANCIAL CONSIDERATIONS

There will be financial impacts associated with Bill 108 due to the creation of the community benefits charge, the setting of the development charge rate earlier in the development process and, the institution of six year installment payments for some developments. In order to fully assess the impact of these changes, staff requires more information and this will ostensibly be included in the Regulations.

HUMAN RESOURCES CONSIDERATIONS

Not applicable

ALIGNMENT WITH STRATEGIC PRIORITIES:

The comments in this report on proposed Bill 108, More Homes, More Choice 2019 support the City's efforts to enable a strong economy, manage growth, protect the natural environment, and ensure growth related services are fully funded, which are the key elements of the Engaged, Diverse and Thriving City; Safe and Sustainable Community; and Stewardship of Money and Resources strategic priorities.

BUSINESS UNITS CONSULTED AND AFFECTED:

Comments from the Planning & Urban Design, Engineering, Finance, and Legal Departments were included in this report.

RECOMMENDED BY:

Mark Visser
Acting Treasurer

Brian Lee, P. Eng.
Director, Engineering

Biju Karumanchery, MCIP, RPP
Director, Planning and Urban Design

Catherine Conrad
City Solicitor and Acting Director, Human Services

Trinela Cane
Commissioner Corporate Services

Arvin Prasad, MCIP, RPP
Commissioner Development Services

ATTACHMENTS:

Appendix 'A' - Consolidated Recommendations from Staff Report "City of Markham Comments on Proposed Bill 108, *More Homes, More Choice Act 2019*", dated May 27, 2019

Appendix 'B' – Staff Comments on proposed changes to the *Conservation Authorities Act*

Appendix 'C' – Staff Comments on proposed changes to the *Endangered Species Act*

Appendix 'A'

Consolidated Recommendations from Staff Report "City of Markham Comments on Proposed Bill 108, More Homes, More Choice Act 2019", dated May 27, 2019 (in response to ERO 019-0016, ERO 019-0017, 019-0021, 013-5018, 013-5033)

Recommendation 1: That the deadline for comments on Bill 108 be extended to a minimum of 30 days after the Regulations are released to allow for sufficient time to assess financial impacts, planning and development approval impacts, and impacts to provision of community services resulting from growth.

Planning Community Services and Amenities and Collecting Development Charges (Proposed Changes to the *Development Charges Act* and *Planning Act* from Schedules 3 and 12 of Bill 108)

Recommendation 2: That the Province defer consideration of the community benefits charges by-law until such time as the proposed Regulations are released so that the financial impacts, planning and development approval impacts, and impacts to provision of community services resulting from growth can be determined and analyzed with a view to ensure that growth pays for growth.

Recommendation 3: That the cap on the community benefits charge should be set to include the full recovery for soft infrastructure costs and parkland dedication as now obtained under the current statutes. To ensure that growth pays for growth, a municipality should be allowed to levy both the community benefits charge and receive parkland in a residential development.

Recommendation 4: That a transition provision be adopted to allow for a 3-year term from the date of enactment of Bill 108, or until a community benefit by-law is enacted, as the implementation timeline is a concern given the number of municipalities that will have to study, develop and enact a community benefits charge by-law.

Recommendation 5: That for developments and secondary plans that were approved by Council prior to the enactment of Bill 108, the existing *Planning Act* provisions for height/density bonusing and parkland dedication continue to apply.

Recommendation 6: That if the development charges reserves are currently negative due to the pre-emplacement of facilities, municipalities should be allowed to use existing Reserve balances for *Planning Act* density bonusing provision (section 37) and Cash-in-Lieu to offset current development charge debt.

Recommendation 7: That the proposal to not permit parkland dedication and a community benefits charge at the same time is not supported as municipalities may be forced into a position to choose either obtaining parkland or collecting contributions towards facilities and services (e.g. soft services) as it is not clear if Regulations prescribing services would include parkland.

Recommendation 8: That where a parkland dedication by-law is applied to a development, the City retain the authority under *Planning Act* section 42 (3) and 51.1 (2), and to apply an alternative parkland dedication rate.

Recommendation 9: That for development charge rates set earlier in the development process, there should be a sunset clause on the length of time permitted between a site plan and/or zoning application and building permit issuance – this could be in the range of 2 years to act as a disincentive for landowners who may want to apply but not proactively proceed with their development. Municipalities should also be allowed to index or charge interest from the date an application is deemed complete until a building permit is issued for all applications held for over a year.

Recommendation 10: That for developments subject to the six annual installment payment regime, the sale of the property should result in the immediate requirement to pay the remaining development charges due, by the original owner. Municipalities should be allowed to register the obligation on title to prevent transfer without the City being notified.

Recommendation 11: That the interest rate to be prescribed in the Regulations should be one that provides reasonable compensation to the City for the timing delay in receiving cash, as this may result in borrowing to fund growth-related requirements.

Permitting Up to Three Residential Units on a Lot (Proposed Changes to the Development Charges Act and Planning Act from Schedules 3 and 12 of Bill 108)

Recommendation 12: That municipalities retain their current authority to review and determine appropriate locations for dwelling units in ancillary buildings on a lot and within the municipality.

Recommendation 13: That municipalities retain their current authority to refuse additional dwelling units where there are insufficient services to support the increased density, or apply appropriate development charges to facilitate construction of the required services.

Recommendation 14: That municipalities retain their current authority to apply minimum parking requirements, to primary and accessory dwelling units.

Recommendation 15: That municipalities retain their current authority to apply zoning provisions to construction accommodating additional dwelling units, to ensure the proposed development is compatible with the built form of the neighbourhoods in which they are located.

Recommendation 16: That second units should be subordinate to, or accessory to, a main residential building in order to be identifiably differentiated from other residential development such as stacked townhouses.

Inclusionary Zoning Permitted in Only Major Transit Station Areas and Areas Subject to a Development Permit System and Removing Provision for Upper-Tier Municipalities to Require a Local Municipality to Establish a Development Permit System (Proposed Changes to the *Planning Act* from Schedule 12 of Bill 108)

Recommendation 17: That municipalities should continue to have ability to apply inclusionary zoning to development in areas other than protected major transit station areas or areas subject to a development permit system.

Application Review Timelines and Local Planning Appeal Tribunal Practices and Procedures (Proposed Changes to the *Local Planning Tribunal Act* and *Planning Act* from Schedules 9 and 12 of Bill 108)

Recommendation 18: That the proposed reduction in timelines for decisions on development applications is not supported as appeals for non-decisions to the LPAT removes decision making authority on development applications from Council, and may result in potentially longer decision timelines.

Recommendation 19: That rather than reducing timelines for Council decisions on applications, the Province provide sufficient resources to provincial ministries and agencies to allow for timely comments on development applications, thereby ensuring expedient reviews.

Recommendation 20: That the proposed Local Planning Appeal Tribunal process that reverts back to a "de novo" hearing process is not supported. The Province should carry forward the current test for the appeal of a Planning Act application requiring the Local Planning Appeal Tribunal to evaluate a municipal decision on a planning application based on its consistency with the Provincial Policy Statement, and conformity with Provincial Plans, as well as Regional and local Official Plans, or if the Province is unwilling to restore the appeal test, the Province should revise Bill 108 to provide for more deference to Council's decisions.

Recommendation 21: That there be a provision in the Local Planning Appeal Tribunal Act permitting oral testimony for participants (non-parties); otherwise, written submissions by participants should be given the same consideration as in-person testimony by the Local Planning Appeal Tribunal in the hearing of an appeal.

Proposed Changes to the *Ontario Heritage Act* (Schedule 11 of Bill 108)

Recommendation 22: That the Province provide direction through enhanced educational materials to better guide heritage conservation objectives, including updating the Ontario Heritage Toolkit, as opposed to introducing principles by Regulation.

Recommendation 23: That the Province consider the option of requiring notice to property owners prior to the matter being considered by Council with the condition that once notification of listing is given, the property owner would be prevented from submitting a demolition permit

application until after Council has considered the recommendation for listing the property on the Register.

Recommendation 24: That the provision of enhanced guidance to municipalities on best practices for listing properties through education materials is supported.

Recommendation 25: That if the Province proceeds with the option of requiring notification to the property owner after Council has listed a property on the Register, the legislation should be amended to provide a time limit on the period when an objection to the listing can be submitted (as opposed to in perpetuity).

Recommendation 26: That the Province defer consideration of the amendment concerning prescribed requirements by Regulation for designation by-laws until such time as the Regulation has been drafted and available for consultation.

Recommendation 27: That the Province consider providing clarity in the *Ontario Heritage Act* by further defining what constitutes "heritage attributes".

Recommendation 28: That the protection and incorporation of a cultural heritage resource should be considered as part of the final report on a planning application that is presented to a council so it can be considered in a holistic manner and not in a piecemeal approach (within the first 90 days).

Recommendation 29: That at a minimum, the Province maintain the Conservation Review Board as the non-binding appeal body for individual designation and amendments to the content of designation by-laws with the municipal council having the final decision on what is considered to be of heritage value in the local community. The Local Planning Appeal Tribunal could address objections related to requested alterations and demolition requests (as it does currently for properties within heritage conservation districts).

Recommendation 30: That if the Conservation Review Board is replaced by the Local Planning Appeal Tribunal, the Province should ensure that Tribunal members assigned to *Ontario Heritage Act* appeals possess cultural heritage expertise and an understanding of the *Ontario Heritage Act*.

Recommendation 31: That the amendments regarding the introduction of complete application provisions and specified timelines for alteration and demolition applications are supported.

Recommendation 32: That the identified clarification in the legislation indicating that "demolition and removal" will also include demolition and removal of heritage attributes is supported, but that Section 69(5) which deals with offences and restoration costs should be amended to remove the reference to "altered" to ensure that a municipality can recover restoration costs associated with the removal or loss of heritage attributes if a property has been impacted by a contravention of the Act.

Recommendation 33: That the changes to the *Ontario Heritage Act* be removed from Bill 108 or deferred to allow the Ministry to undertake meaningful consultation with all stakeholders on both improvements to the legislation and allow feedback on the future content of the identified Regulations.

Proposed Changes to the *Environmental Assessment Act* (Schedule 6 of Bill 108)

Recommendation 34: That the proposed exempted categories are supported as long as environmental protection measures are maintained.

Proposed Changes to the *Conservation Authorities Act* (Schedule 2 of Bill 108)

Recommendation 35: That Provincial efforts are supported to clarify the role and accountability of conservation authorities and that the Province is urged to support the Ministry of Natural Resources and Forestry, Ministry of Environment, Conservation and Parks and municipalities with enhanced natural heritage protection and watershed planning tools to fill the potential gap in natural resource, climate change and watershed planning services resulting from the proposed modified mandate of the TRCA.

Proposed Changes to the *Endangered Species Act* (Schedule 5 of Bill 108)

Recommendation 36: That refinements be made to section 16.1(2) of the proposed *Endangered Species at Risk Act* to ensure that landscape agreements are required to result in an overall net benefit to each impacted species at risk.

Recommendation 37: That the Species at Risk Conservation Trust be required to publish a regular report to provide an open and transparent accounting of the collection and spending of species conservation charges.

Recommendation 38: That the changes proposed for the *Endangered Species Act* (proposed sections 5(4)(b), 8.1, 9(1.1)) be carefully reviewed in consultation with experts to ensure the purpose and intent of the *Endangered Species Act* is not compromised.

Proposed Changes to the *Education Act (Schedule 4 of Bill 108)*

Recommendation 39: That if a landowner and a school board enter into an agreement for an alternative project, the municipality should be consulted on the alternative project.

May 17, 2019

Carolyn O'Neill
Ministry of the Environment, Conservation and Parks
Great Lakes and Inland Waters Branch
Great Lakes Office
40 St Clair Avenue West, Floor 10
Toronto, M4V 1M2
glo@ontario.ca

Dear Ms. O'Neil:

Re: Comments on ERO Posting # 013-5018: Modernizing Conservation Authority Operations – Conservation Authorities Act

The City of Markham is in receipt of ERO Posting 013-5018 and wish to provide comments on this significant change to the mandate and operation of the conservation authorities in Ontario. We note that proposed amendments to the Conservation Authorities Act have been included in the omnibus Bill 108 More Homes, More Choices Act . Given the timeline provided by the Province these comments are prepared by staff and will be followed by a position of Markham Council at our earliest convenience. The Toronto and Region Conservation Authority is the CA with jurisdiction in the City of Markham.

The TRCA is one of the larger CA's in the province and has been a strong leader in conservation planning by ensuring the protection of valleylands and wetlands within their regulatory framework, providing accurate flood plain mapping products, being excellent stewards of their lands, providing guidance documents to help manage natural heritage and hydrological resources, leading the complicated files of source water protection and climate change mitigation and providing vision and leadership in the conservation and management of environmental lands and watershed management. Overall, Markham has benefited from the guidance provided by the TRCA. Staff supports the opportunity to review the role and function of CA's and wish to offer some insight and practical suggestions for consideration.

Transparency and Accountability is Supported

Staff support the rationalization of fees for services and greater accountability. In our experience, we have found that in some areas the TRCA fees required for certain services appear to be overly high. This could be in part due to the same fee applied to smaller or rural municipalities who do not employ environmental engineers or who may not have up to date technical guidelines or subwatershed plans that address current standards. We suggest that future fee structures be based on the level of service needed to address a technical requirement. We also suggest that the fee and approval structure should

recognize the larger municipalities who undertake appropriate technical studies such as Subwatershed Plan and Master Environmental Serving Plans to guide development.

A Comprehensive Approach to Natural Heritage and Hazard Land Protection is Supported

The provincial proposal recommends that the TRCA's broader role in conservation and resource management be eliminated with a focus only on hazard lands (floodplain and erosion) protection. While this is certainly a significant responsibility and its importance is not understated, the City has adopted a new Official Plan 2014 (partially approved on November 24, 2017 and further updated on April 9, 2018) which adopts a systems approach to natural heritage planning and intrinsically links feature based protection (woodlands, wetlands and valleylands which include flood plain hazard lands) in order to address multiple natural heritage requirements (eg. hazard lands protection, natural heritage protection, habitat and species protection). We implement our policies in partnership with the TRCA. This provides the City with the highest level of confidence that development approval decisions will not adversely impact the City's Greenway System. Removing TRCA from its ability to provide input and comments to municipalities on natural heritage planning will create a gap that will need to be addressed. As the City does not employ biologists, hydrogeologists, ecologists and other science-based professionals, this function will need to be addressed at a cost to Markham and other municipalities either through new non-mandatory agreements with TRCA or through the private sector. Municipalities should not be expected to carry the additional financial burden of natural heritage protection alone. Additional tools and resources should be provided by the Province to ensure natural heritage protection is not diminished as a result of the removal of the commenting function of the TRCA on valleyland systems.

Watershed Management and Restoration

Watershed planning and the preparation of watershed plans provide a science-based foundation for responsible decisions on land development. Watershed boundaries cross municipal boundaries and as such conservation authorities are the obvious lead for these planning activities. Combined with their in-house expertise of science based professionals, conservation authorities have been successfully leading watershed plans for decades. Many conservation authorities offer tree planting and restoration programs which are highly valued by residents and landowners. These programs directly support watershed management and the conservation of Ontario's natural resources – a goal of the 'Made-in-Ontario Environment Plan'. We support a continued role for the conservation authorities in these activities.

Conservation and Management of TRCA Owned Lands

The TRCA own and manage a significate portion of lands in Markham (some of which will be transferred to Parks Canada). Adequate funding should be available to ensure that these lands can be managed over the long term, including lifecycle expenditures such as repair of structures in particular heritage buildings and preparation of management plans to ensure their long term function and sustainability.

Non- Mandatory Programs

The City has many project and service agreements with TRCA. These range from tree funding partnerships, invasive species management, culvert works and rehabilitation, SNAP program, STEP

program, Mayor's Megawatt Challenge, Markham Museum Rain Garden, technical advice on Berczy, Bruce, Robinson, Eckardt, Robinson Creek Subwatershed Study and other important initiatives. We are also concerned that the non-mandatory programs will force municipalities to opt-in and opt-out of programs and services based on budget priorities resulting in a potential inconsistent approach between municipalities. We believe a fair and consistent approach towards the protection and management of natural resources is not only beneficial in the implementation of local, regional and provincial policy, it also benefits the development community. Markham supports a balanced approach to growth which allows us to meet our mandated provincial growth targets, while providing us with the tools to protect what is valuable to us.

In terms of local context, and important to Markham, are the challenges associated with protecting and enhancing our already low natural heritage cover (approximately 13.7%). When compared to other Greater Toronto Area municipalities, the historical agricultural land clearing practices and the pace of urbanization has resulted in Markham having the lowest natural heritage cover. Markham and TRCA share a vision for a sustainable and healthy local natural heritage system and work in partnership to address development pressures in a balanced and responsible manner. In this way, Markham can make small strides towards meeting published natural heritage, woodland and tree canopy targets prepared by all levels of governments and natural heritage agencies. Markham supports a role for conservation authorities in the conservation, restoration and management of natural resources within a watershed context.

Sincerely,

Arvin Prasad, RPP, MCIP
Commissioner of Development Services
City of Markham

C. Member of Council
Andy Taylor, CAO, Markham

Appendix 'C'

Development Services Commission

May 17, 2019

Ministry of the Environment, Conservation and Parks
Species Conservation Policy Branch
300 Water Street, Floor 5N
Peterborough, ON K9J 3C7

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

Dear Sir/Madam:

Thank you for the opportunity to provide comments on the Province's proposed changes to the Endangered Species Act (ESA). It is understood that the Province is seeking to improve the administration of the ESA through new types of permit and agreements while ensuring positive outcomes for species at risk. While implementation challenges have been expressed in the implementation of the ESA, the Province's Made-in-Ontario Environment Plan also recognizes that species at risk in Ontario are facing increasing strain and pressure due to the effects of climate change, invasive species and habitat alteration. City of Markham staff supports the intent of this Act to reverse negative trends to species at risk populations and have concerns that some of the proposed changes may weaken the level of protection afforded to Ontario's species at risk. We provide the following comments for your consideration.

1. Integration of ESA permitting with land use planning

   City of Markham staff support the concept of a 'landscape agreement'. The City is currently planning for the 'Future Urban Area' encompassing approximately 1300 hectares to accommodate growth to 2031 and it is anticipated that numerous ESA permits will be required in support of urban development. To manage the impacts of urban development, the City is requiring that a natural heritage restoration plan be prepared for each of the four community blocks. The option to implement a 'landscape agreement' can assist in a coordinated and strategic approach to the implementation of multiple restoration projects to enhance the natural environment including the habitat for species at risk.

   Careful attention must be paid to the implementation of the landscape agreement to ensure that unforeseen impacts to species at risk are not incurred. Staff have concerns that landscape agreements are not required to fully offset impacts to each impacted species at risk as proposed under section 16.1(2) of the ESA. This could result in a difficult scenario where Provincial staff have to choose "winners and losers" amongst species at risk.

2. Species at Risk Conservation Trust

   City of Markham staff support the option to offset impacts to species at risk through a dedicated fund, however safeguards need to be put in place to ensure proper management and administration of this agency.

   Firstly, it should be ensured that 'species conservation charges' are directed towards beneficial activities for species at risk rather than administration and staffing costs. If the Province intends to recover

administration and staff expenses through the 'species conservation charge', then these additional costs should be factored into account.

Secondly, projects funded by the agency should prioritize the recovery of species that have been impacted and for which a 'species conservation charge' has been collected. As proposed, it appears that funds collected under the Species at Risk Conservation Trust may be directed towards any species at risk.

3. Adopting a Precautionary Approach to Ontario's Biodiversity and Species at Risk

While City staff support a number of the proposed changes, other proposed changes could have an undesirable result on the recovery of species at risk in Ontario. These include:

- Consideration of the condition of the species outside of Ontario (s. 5(4)(b))
- Ability to suspend protection of newly listed species at risk for up to three years (s. 8.1)
- Ability to, by regulation, limit the protection of newly listed species (s. 9(1.1))

Species at risk populations are facing increasing risks due to climate change, invasive species and habitat alteration. Staff suggest that these changes be carefully reviewed in consultation with industry experts to ensure that the overall purpose and intent of the ESA is not compromised.

Should you have any questions, please feel free to contact Patrick Wong, Natural Heritage Planner at 905-477-7000 ext. 6922 or patrickwong@markham.ca.

Sincerely,

Arvin Prasad, RPP, MCIP
Commissioner of Development Services
City of Markham

cc. Mr. Brad Allan, District Manager (A), Ministry of Natural Resources and Forestry, Aurora District, 50 Bloomington Rd, Aurora, ON L4G 0L8