City of PICKERING

Report to Council

Report Number: PLN 49-22
Date: December 5, 2022

From: Kyle Bentley
Director, City Development & CBO

Subject: Planning Reform
- Bill 23, *More Homes Built Faster Act*, 2022
- Proposed Amendments to the Greenbelt Plan
- Proposed Integration of A Place to Grow and the Provincial Policy Statement
- Various Other Legislative and Regulatory Proposals
- Comments to the Ontario Ministry of Municipal Affairs and Housing
- File: L-1100-058

Recommendation:

1. That the comments in Report PLN 49-22, regarding Bill 23, the *More Homes Built Faster Act,* 2022, and various other Environmental Registry, Regulatory Registry, and Provincial Plans and Policy reforms, be endorsed;

2. That staff be authorized to submit (and resubmit where required) the comments in Report PLN 49-22 to the Province via the respective consultation portals; and

3. That a copy of Report PLN 49-22 and Council's resolution thereon, be forwarded to the Premier Douglas Ford, the Minister of Municipal Affairs and Housing, MPP Peter Bethlenfalvy, the Regional Municipality of Durham, and the other Durham area municipalities.

Executive Summary: On October 25, 2022, the Ontario Ministry of Municipal Affairs and Housing (MMAH) introduced Bill 23, *More Homes Built Faster Act*, 2022 for first reading. On November 28, 2022, Bill 23 was passed by the Ontario Legislature. Over the past month, MMAH introduced a series of other proposed Acts and legislative changes for consultation. The proposals were released through a series of postings on the Environmental Registry of Ontario (ERO) and the Ontario Regulatory Registry, with commenting periods varying from 30 days (November 24, 2022) to 60 days (December 30, 2022).

Bill 23 will have significant implications on the role, function, capacity and fiscal health of municipalities, conservation authorities, and on the planning and development process in Ontario. Significant changes (reductions, exemptions and caps) are proposed to key revenue generating tools, including development charges, community benefits charges, and cash-in lieu for parkland acquisition. This undermines the philosophy that 'development pays for development'. The City does not support the changes.

A key change is proposed to the definition of 'affordable' housing, and new definition 'attainable' housing is introduced. In both cases, the Province is proposing to relate the classification of a home as either affordable or attainable, relative to a percentage of average resale price, or a percentage of average market rent. This approach to classification has no relation to an individual's or household's income to afford such units. The City does not support the changes.

Four proposed legislative changes are aimed at releasing lands, known as the Duffins-Rouge Agricultural Preserve, for future urban development (see Location Map of Duffins-Rouge Agricultural Preserve Lands, Attachment #1). These include the proposed revocation of the Central Pickering Development Plan, the proposed removal of the Duffin-Rouge Agricultural Preserve lands from the Greenbelt, the proposed revocation of Minister's Zoning Order – Ontario Regulation 154/03 and the proposed *Duffins-Rouge Agricultural Preserve Repeal Act,* 2022. These measures are in keeping with the City's 2004 Growth Management Study, that concluded urban development on the lands was appropriate and desirable. As such, these legislative changes aimed at releasing lands are largely supported by the City.

This report provides a high-level summary of the major changes proposed through Bill 23 and the various other legislative, regulatory, plan and policy reforms to planning and development. Staff, through the Chief Administrative Officer, submitted comments on behalf of the City, to the postings that had a deadline of November 24. However, on November 23, all but one of those postings (the revocation of the Central Pickering Development Plan) were extended to December 9, 2022. Staff have also submitted comments on the proposed changes to the Greenbelt Plan as it has a comment deadline of December 4, 2022.

The City's comments have been prepared by City Development staff with assistance from Economic Development & Strategic Projects, Engineering Services, Finance, and Legal Services. Staff are seeking Council's endorsement of those comments submitted by the provincial deadlines (prior to Council's consideration of this Report); authorization to submit any revised or additional comments on those matters; and, Council's endorsed comments on those matters having later comment deadlines.

Financial Implications: The outcome of the proposed Bill 23 changes, if approved, will have significant adverse financial implications for the City, the full extent of which is not yet known. However, preliminary review shows a loss of approximately $12.3 million for the four-year phase-in of the maximum development charge rates; a reduction in eligible DC funding for growth-related studies and prescribed land costs; a reduction in the amount community benefits revenue; and, a reduction in the amount of cash-in-lieu of parkland that can be collected. These losses of revenues will either be funded directly or indirectly by the Pickering taxpayers.

Discussion: On October 25, 2022, the Ontario Ministry of Municipal Affairs and Housing (MMAH) introduced Bill 23, *More Homes Built Faster Act*, 2022, and it was passed on November 28,2022. Bill 23 proposes sweeping changes to various provincial statutes that govern development, including the *Planning Act*, the *Development Charges Act* and the *Conservation Authorities Act*, with the stated goal of removing barriers to get more homes built in Ontario. The MMAH released the proposal through a series of postings on the Environmental Registry of Ontario (ERO) and the Ontario Regulatory Registry, with commenting periods varying from 30 days (November 24, 2022) to 60 days (December 30, 2022). MMAH also released a posting to revoke the Central Pickering Development Plan.

On November 4, 2022, the MMAH released another ERO posting seeking comments on a proposal to revoke the Minister's Zoning Order on the lands known as the Duffins-Rouge

Agricultural Preserve (see Location Map Attachment #1), and a posting to remove the lands from the Greenbelt Plan, with the intent to make it available for urban development. Coupled with this, the MMAH also introduced the *Better Municipal Governance Act*, 2022, in November 17, 2022 which, if passed, would repeal the *Duffins-Rouge Agricultural Preserve Act*, 2005, to allow development of those lands.

A summary of the major changes proposed through Bill 23 and the various ERO postings and other consultations, including staff's comments and concerns, are discussed below.

1. ERO Posting # 019-6174 – Central Pickering Development Plan (commenting deadline: November 24, 2022; comments submitted on November 24, 2022)

1.1 Proposed Revocation of the Central Pickering Development Plan

The MMAH is proposing to revoke the Central Pickering Development Plan (CPDP), to support the Province's commitment to streamline and potentially increase housing supply. The CPDP comprises the lands known today as the Seaton Community, as well as the Duffins-Rouge Agricultural Preserve, located between Seaton and the York-Durham Town Line in the West. This is one of a set of four regulatory mechanisms put in place to restrict lands uses in the Preserve primarily to agriculture, conservation, and detached dwelling residential uses. It also established land use designations for the development of the Seaton Community.

The MMAH's intention to revoke the CPDP is based, amongst other things, on the fact that the development and construction of many areas of the urban community component of the CPDP (Seaton) is underway and, as set out in the CPDP, and the intention is that the more detailed planning approvals (e.g., subdivision approvals, etc.) would be implemented by the City.

Staff Comments: In principle, revocation of the CPDP is supported. However, it is recommended that the proposed revocation of the Central Pickering Development Plan, as it affects the Seaton Urban Area, not be given 3rd reading or proclaimed at this time until the stakeholders have an opportunity to review all agreements respecting fiscal and legal matters.

In principle, revocation of the CPDP is supported. The City of Pickering commissioned a land use review study for the employment lands in Seaton in 2022 (through Council Report CAO 09-22; Resolution #938/22), and the conclusions of the report identified the need for the Minister of Municipal Affairs and Housing to amend the CPDP (at the very least) to permit a broader range of employment uses. As such, Pickering's Mayor issued a letter to Minister Clark dated September 2, 2022 asking the Minister to review and endorse our request to cut red tape in Pickering by repealing the CPDP in its entirety.

However, the revocation of the CPDP will create some significant transitional issues respecting legal and financial matters. This will result in the need to amend the Pickering Official Plan – Seaton Policies, the Pickering Financial Impacts Agreement, the Seaton Community Master Parks Agreement, the Seaton Landowners' Amended

and Restated Cost Sharing Agreement and the Seaton Regional Infrastructure Front Ending Agreement.

While these issues are likely to be of a housekeeping nature, there must be sufficient time to ensure that the integrity of these policies and agreements is sound, given that they are based on the CPDP. It is important that required agreement amendments are collaboratively formulated by all stakeholders (Pickering, Seaton Landowners' Group, Regional Municipality of Durham, and Infrastructure Ontario). Any required official plan amendments will involve a public meeting, per the *Planning Act*.

Revocation of the CPDP for the Seaton Urban Area should not come into effect until the amended policies and agreements are in place, failing which those policies and agreements may become ambiguous and/or unenforceable.

2. ERO Posting 019-6216 (Proposed Amendments to the Greenbelt Plan), ERO Posting 019-6238 (Proposed Revocation of the Minister's Zoning Order – Ontario Regulation 154/03) and ERO 019-6304 (Repeal of the *Duffins-Rouge Agricultural Preserve Act*, 2005 (commenting deadline: December 4, 2022; comments submitted on November 28, 2022)

2.1 Proposed Amendment to Remove the Duffins-Rouge Agricultural Preserve Lands from the Greenbelt

The Province proposes to remove 15 areas of land totalling approximately 7,400 acres from the Greenbelt area, including the approximately 4,950 acres of land in the Duffins-Rouge Agricultural Preserve. The lands are bounded by the Canadian Pacific Railway to the south, the Pickering-Toronto/York Townline on the west, the lands west of the West Duffins Creek valley, in Pickering. Including the Preserve lands in the Greenbelt was one of a set of four regulatory mechanisms that the Province put in place to restrict the land uses in the Preserve primarily to agriculture, conservation, and detached dwelling residential uses.

Should these lands be removed from the Greenbelt, the Province's expectation is that new home construction will begin on these lands by no later than 2025, and that significant progress on approvals and implementation must be achieved by the end of 2023.

Staff comments: The removal of the Duffins-Rouge Agricultural Preserve lands from the Greenbelt is supported. This will allow the implementation of an urban area boundary expansion on these lands. This is consistent with Pickering Council's adoption of Amendment 13 to the Pickering Official Plan in 2004, which implemented the results of the City's Growth Management Study. It is also consistent with subsequent requests from Pickering Council in 2016, the former Mayor in 2019 and 2022, and the current Mayor on November 16, 2022 (see Background section below).

However, should the lands be removed from the Greenbelt, the City's objective is not just to see houses built, but a 'community' built. Accordingly, it is recommended that an appropriate land use and policy framework be put in place that (a) establishes a robust open space and natural heritage system that protects significant and sensitive natural features and functions, including required corridors, linkages, and buffers; (b) establishes generous active recreational areas; (c) requires the implementation of the results of appropriate subwatershed/master environmental servicing studies; (d) requires front funding agreements for municipal soft and hard services, for other community infrastructure such as school, and for regional infrastructure; and (e) commits to building an agreed to percentage of housing that is affordable housing to low and moderate income households.

Background

Between 2002 and 2004, the City of Pickering undertook a Growth Management Study to determine if, and where, urban settlement boundaries should be expanded. On December 13, 2004, Pickering Council adopted Amendment 13 to the Pickering Official Plan. This amendment incorporated the results of the City's Growth Management Study. The Study concluded the urban area boundary for Pickering should be expanded to include the southern half of the Duffins-Rouge Agricultural Preserve. Additionally, the Study concluded that development in the Seaton Urban Area should generally be restricted to the central and north part of the lands.

On February 28, 2005, the Provincial Greenbelt Plan (2005) was approved. This plan permitted municipalities who had initiated settlement area expansions studies prior to the effective date of the Greenbelt Plan, (December 16, 2004), to complete and implement their studies (policy 3.4.4.1), but expressly prohibited Pickering from implementing the results of its municipally initiated settlement area expansion study (policy 3.4.4.2a).

Despite Pickering Council having completed its Growth Management Study prior to the Greenbelt Plan coming into effect, the City was prohibited from implementing its results, and the Province used four other legislative tools to prevent any uses other than agriculture, conservation and detached residential on the lands.

In 2015, the Province undertook a review of its Plans in the Greater Golden Horseshoe. On September 19, 2016, Pickering Council endorsed Planning Report PLN 15-16, which as part of the first recommendation, requested the removal of clause 3.4.4.2a in the former Greenbelt Plan (renumbered as 3.4.5.2a in the Greenbelt Plan 2016). There was no response from the Province.

During a further review of the Provincial Growth Plan, former Mayor Ryan wrote to the Minister of Municipal Affairs and Housing in correspondence dated February 7, 2019. The letter reiterated the request from Report to Council PLN 15-16 to eliminate the policy in the Greenbelt Plan preventing Pickering from implementing the results of its settlement area expansion study.

Former Mayor Ryan also wrote the Minister of Municipal Affairs and Housing on November 14, 2022, identifying support for the repeal of the *Duffins-Rouge Agricultural Preserve Act*, 2005, which had re-established, by statute, agricultural easements on the Preserve lands. On November 16, 2022, Mayor Ashe wrote the Minister of Municipal Affairs and Housing indicating support for the removal of the Duffins-Rouge Agricultural Preserve from the Greenbelt Lands and the repeal of the *Duffins-Rouge Agricultural Preserve Act*, 2005.

2.2 Proposed revocation of Minister's Zoning Order – O. Reg. 154/03 for the Duffins-Rouge Agricultural Preserve

This Zoning Order was put in place as one of a set of four regulatory mechanisms to control the land uses in the Preserve to conservation, agriculture, and detached dwelling residential uses.

For the reasons set out in sections 1.1 of this Report, responding to ERO Posting # 019-6174, and section 2.1 of this Report, responding to ERO Posting 019-6216, the revocation of O. Reg.154/03 is supported.

2.3 Proposed Repeal of *the Duffins-Rouge Agricultural Preserve Act*, 2005

This Act was put in place as one of a set of four regulatory mechanisms to re-establish agricultural easements on the lands in Preserve, conservation easements on natural heritage lands, and permit detached dwelling residential uses.

For the reasons set out in sections 1.1 of this Report, responding to ERO Posting # 019-6174, and section 2.1 of this Report, responding to ERO Posting 019-6216, the proposed repeal of the *Duffins-Rouge Agricultural Preserve Act*, 2005, is supported.

3. ERO Posting 019-6163 – Proposed *Planning Act* and *City of Toronto Act* changes

(original commenting deadline: November 24, 2022, since changed to December 9, 2022; comments submitted on November 24, 2022)

3.1 Permitting Additional Dwelling Units as of right

This Proposed legislation, read together with ERO Posting 019-6197 (Proposed Changes to Ontario Regulation 299/19: Additional Residential Units (ADUs) for which the commenting deadline is December 9, 2022) would override existing zoning by laws to allow up to 3 units per lot (2 in primary building and 1 in ancillary) "as of right" (rezoning not needed, but building permits and all other regulatory approvals required to construct or make renovations would be). The proposed changes would also prohibit municipalities from imposing development charges (DCs) (regardless of unit size), parkland dedication or cash in lieu requirements, applying minimum unit sizes or requiring more than one parking space per unit in respect of any second unit in a primary building and any unit in an ancillary structure.

Staff comments: The *Planning Act* currently authorizes the use of two residential units in a detached house, semi-detached house or row house, as well as the use of a residential unit in a building or structure ancillary to a detached house, semi-detached

house or row house, but the Pickering Zoning By-laws have not yet been updated to reflect these permissions. If this proposal comes into effect, the Pickering Zoning By-laws will only require a minor amendment to bring them into conformity with the new provisions of the *Planning Act*.

The City of Pickering is already experiencing parking challenges for low rise residential development, particularly within newer neighbourhoods. These subdivisions have smaller lot sizes in order to achieve required densities, and yet have none, to limited public transit service**. It is recommended that the Minister reconsider the ADU provision and, as a minimum, include criteria that limit the size of ADUs or the number of bedrooms in an ADU to be no more than two bedrooms.**

There is a concern that the proposed limitation of only one additional parking space per additional dwelling unit will exacerbate the existing on-site parking problems and problems with parking spilling on to adjacent roads. This would occur particularly where a number of ADUs of larger size, e.g., 3-bedroom units, are proposed on a single site.

As for the proposed prohibition on charging DC's and parkland dedication or cash-in-lieu, the City does not currently charge DC's or cash-in-lieu of parkland for ADUs. It is not expected that these new permissions would result in any unprecedented surge of ADUs, since many residential properties do not lend themselves to infill or gentle intensification, and many residents do not have the financial means or appetite to entertain such a venture. Some neighbourhoods in the City do lend themselves to be intensified by the construction of ADUs, but not to the scale where it warrants the upgrading of infrastructure services.

3.2 Removing the planning policy and approval responsibilities from certain upper-tier municipalities, including the Region of Durham

This proposal means that the Durham Regional Official Plan will be the official plan for the lower-tier municipalities; lower tier municipalities will assume approval authority for all *Planning Act* decisions, except official plans, which will need Ministerial approval (with exceptions to be defined through future regulations); commenting responsibilities would be retained by the Region; and lower tier municipalities will have approval authority over Official Plan Amendments, subdivisions, land division, part lot control exemptions. Upper Tier municipalities would continue to be responsible for servicing and regional roads.

Staff comments: Removing the Regional planning function, implies that matters of regional planning interest or impact, becomes a local municipal responsibility. **If the Province does not provide the required funding to local municipalities to fulfil these added responsibilities, municipalities may not have a choice but to fund the additional costs for additional staff and resources from property taxes, and/or pass on the cost to developers through planning application processing and approvals, both of which would be counter-intuitive to the Province's goal to cut costs and make housing more affordable.**

Regional Planning also represents the Provincial interest in planning matters. These include conformity with Provincial plans and policy, archaeological site assessments, soil and groundwater assessments, noise impacts, land use compatibility, environmental impact assessments, etc. Removing the Regional Planning authority from the planning hierarchy implies that this function will have to be either downloaded to lower tier municipalities, or uploaded to the Province, which would add further delays to planning approvals, including approvals for new housing. Planning staff at either the local or Provincial level would need to be trained to fulfill this function. **The Province needs to clarify who, in the absence of Regional Planning, would represent the Provincial interest in planning matters.**

3.3 Higher Density Around Transit

Changes are proposed to require municipalities to implement "as-of-right" zoning for transit supportive densities in specified areas around transit stations, known as "major transit station areas" (MTSAs), and "protected major transit station areas" (PMTSAs) that have been approved by the Minister, within 1 year of MTSA or PMTSA approval. If zoning updates are not undertaken within the 1-year period, the usual protection from appeals to the OLT for PMTSAs would not apply.

Staff comments: The PMTSA in Pickering, situated around the GO train station, has been delineated in the Durham Regional Official Plan (DROP) through the approval of Amendment #186 to the DROP, but not yet in the Pickering Official Plan. Amendment #186 to the DROP establishes a density target of 150 residents and jobs per hectare for PMTSA's. The PMTSA in Pickering is situated in part (85%) in the City Centre, a designated Urban Growth Centre, which is already zoned to permit high density residential and mixed use development at a density of 200 residents and jobs per hectare. There are only a limited number of properties with Pickering's PMTSA, located southwest of the corner of Liverpool Road and Bayly Road, and outside the City Centre, that will require rezoning within the prescribed one-year period to permit "transit-supportive" densities. Given the small area for which the zoning needs to be updated, staff is of the opinion that the one-year time limit to update the zoning to implement "as-of-right" zoning for transit supportive densities in Pickering's PMTSA is attainable.

3.4 Limiting Third Party Appeals

Changes were initially proposed to limit third party appeals for all planning matters (official plans, official plan amendments, zoning by-laws, zoning by-law amendments, draft plans of subdivisions, land divisions, and minor variances). Appeal rights would be maintained for key participants (e.g., applicants, the Province, public bodies including Indigenous communities, utility providers that participated in the process), except where appeals have already been restricted (e.g., the Minister's decision on new official plan). The proposed limit on third-party appeals would apply to any matter that has been appealed (other than by a party whose appeal rights are being maintained) but has not yet been scheduled for a hearing on the merits of the appeal by the Ontario Land Tribunal (OLT) on the day the bill is introduced.

The Province has since introduced a revision to the initial proposal by re-instating third party appeals for zoning by-law and official plan amendments.

Staff comments: Staff is pleased to acknowledge the Province's most recent proposal to have third party appeals re-instated for zoning by-law and official plan amendments. **It is recommended that the limitation of Third Party Appeals to the Ontario Land Tribunal, with respect to other development applications, such as minor variances and land divisions, be withdrawn in its present form, as it severely constrains the rights of citizens, landowners, and business operators to play a meaningful a role in future of their community.**

This proposal would effectively leave no legal recourse to a member of the public on certain types of planning applications, which, under the current legislation, could have presented important information, which may have changed the outcome of a council or committee decision on an application, at a subsequent Ontario Land Tribunal hearing.

3.5 Cost Awards to unsuccessful party Regulatory Registry 22-MAH-17

The Province proposes to amend the *OLT Act* to specify that the Tribunal may "order an unsuccessful party to pay a successful party's costs".

Staff comments: Awarding costs to the unsuccessful party should only be permitted when the Tribunal makes a finding that the parties' conduct meets the threshold of "unreasonable, frivolous or vexatious, or bad faith". It is recommended the language of the proposal be explicit in this regard.

3.6 Removing Public Meetings for Draft Plans of Subdivision applications

Changes are proposed to remove the public meeting requirement for draft plans of subdivision. The existing public notice requirements for plan of subdivision applications would be maintained.

Staff comments: Removing the requirement for statutory public meetings for draft plan of subdivision applications is supported. Public consultation on what would be permitted on the lands would be completed as part of a zoning by-law amendment application approved prior to the submission of an application for draft plan of subdivision.

3.7 Exemption for Development up to 10 units from Site Plan Control and removing the ability to regulate architectural details and landscape design

The Province is proposing to exempt all aspects of site plan control for residential development up to 10 units (except for the development of land lease communities), and had proposed to limit the scope of Site Plan Control by removing the ability for municipalities to regulate architectural details (external design of buildings including matters related to sustainable design) and landscape design.

Staff comments: Staff supports the amendment to Bill 23 at Standing Committee to reinstate site plan control to the appearance of elements, facilities and works on the land, or any adjoining highway under a municipality's jurisdiction as they affect matters of health, safety, accessibility, sustainable design, or the protection of adjoining lands. This will strengthen the ability of the City to implement its Integrated Sustainable Design Standards.

However, staff recommend further amendments be made to restore the original wording of section 41 (4) 2. (d) of the *Planning Act* .The proper attention to the placement of buildings and structures on a site, the architectural aesthetic design of the building, and the design of the surrounding landscaped open spaces, and how they relate to each other, results in the creation of a high-quality site design that helps to enhance both the private and public realms. Continuing to regulate the architectural design and associated landscape design will allow the City to promote a high standard of urban design, promote a sense of place, and encourage sustainable design.

The proposal to exempt developments of up to 10 units from site plan control is supported as it would help accelerate the review of small-scale housing projects. Should a development project require site-specific zoning approval, through this process there will be an opportunity to consult the public and ensure the zoning by-law requirements address scale, massing, height, minimum landscaping, etc., so that the resulting built form is well designed to fit in with the surrounding neighbourhood.

3.8 Removing Conservation Authorities' authorization to review and comment on development applications

The Province proposes to remove the Conservation Authorities' authorization to review and comment on development applications and supporting studies received under the prescribed Acts on behalf of a municipality, and to collect fees for that service.

Staff comments: Currently, municipalities have the ability to enter into agreements with CA's to review development applications for environmental impacts. **The reason for this practice is that municipalities, including the City of Pickering, do not have the in-house expertise or resources to fulfil this function. Downloading this function to municipalities means that they need to be financially-enabled to fulfil this additional role. If the Province does not provide the required funding, municipalities may not have a choice but to fund the additional costs for additional staff and resources from property taxes, and or through higher development application processing fees, which would be counter-intuitive to the Province's goal to cut costs and make housing more affordable. Furthermore, downloading the function to municipalities will not result in any significant cost savings or reduced timelines for development approvals, but merely shift the responsibility of the function from one agency to another agency.**

4. ERO Posting 019-6141 – Proposed *Conservation Authorities (CA) Act* and Regulatory Changes (commenting deadline: December 30, 2022; comments not yet submitted)

4.1 The Province is also proposing a series of other updates to the *CA Act* and language in the *Planning Act* which, amongst other things, would allow the Minister to exempt development authorized under the *Planning Act* from requiring a permit under the *CA Act* (e.g., natural hazard permits) subject to certain conditions set out in regulation.

Staff comments: Exempting development authorized under the *Planning Act* from requiring a permit under the *CA Act* will further limit the regulatory powers of the CAs by empowering the Minister to make exceptions specifically for development approvals. **Staff is concerned that this exception would undermine CAs role as "floodplain regulators" and fail to recognize the critical role CAs play in providing expert opinion on the role wetlands play in preventing flooding and their symbiotic relationship with surrounding natural heritage and hydrologic features, including the broader natural heritage system. Staff recommend that in the event the Province proceeds with this proposal, the Minister consult extensively with the relevant CA and municipality prior to granting an exemption to a proposed development from requiring a permit under the *CA Act*.**

5. ERO Posting 019-6172 – Proposed *Planning Act* and *Development Charges Act Changes* (original commenting deadline: November 24, 2022, since changed to December 9, 2022; comments submitted on November 24, 2022)

5.1 Changes to Parkland rates and costs

The Province proposes to update the maximum alternative parkland dedication rate, which is the maximum amount of parkland that can be required for higher density developments as follows:

- for the purposes of land conveyed, from the current rate of 1 hectare for each 300 dwelling units, to 1 hectare for each 600 dwelling units; and
- for the purposes of cash payment-in-lieu of land, from the current rate of 1 hectare for each 500 dwelling units, to 1 hectare for each 1000 dwelling units.

To provide further cost certainty to developers, no more than 15 percent of the amount of developable land (or equivalent value) could be required for parks or other recreational purposes for sites greater than 5 hectares, and no more than 10 percent for sites 5 hectares or less.

The Province also proposes that parkland dedication rates be set at the time the city receives a site plan application for a development; or if a site plan is not submitted, at the time the city receives an application for a zoning amendment (the status quo would apply for developments requiring neither of these applications). To encourage development to move to the building permit stage faster and provide greater certainty of costs, the parkland dedication rates is also proposed to be frozen for two years from the date the relevant application is approved.

Staff comments: Staff support in principle the proposal to update the current rate of land conveyance for parkland required for high density development from 1 hectare per 300 units to 1 hectare per 600 units, because high-density development generates a disproportionately high amount of parkland on a per unit or per person basis than what is generated from a low density residential development. However, the proposed changes will limit the size and type of parks that the City will now be able to obtain in the future, particularly in high-density areas where the City will be pushed to accept smaller park "pockets" and linear parks.

Although the proposed update provides a more equitable application to parkland dedication, it does not address the flawed methodology to calculate the land area for parkland dedication based on the number of units irrespective of the unit types. Unit types do not generate the same number of people nor the same parkland needs. Parkland dedication should be based on the number of people generated from the development.

Regarding the proposal to update the cash-in-lieu payment of land, by reducing the current rate from 1 hectare per 500 dwelling units to 1 hectare per 1,000 dwelling units for development in High Density Residential Areas and Mixed Use Areas, the disparity between how cash in-lieu is calculated for low density residential development vs. how it is calculated for high density residential and mixed development, would be reduced. However, the Province did not provide any rationale or analysis in support of their proposal to reduce the rate from 1 hectare per 500 dwelling units to 1 hectare per 1,000 dwelling units.

As for the proposal that no more than 15 percent of the amount of developable land (or equivalent value) could be required for parks or other recreational purposes for sites greater than 5 hectares and no more than 10 percent for sites 5 hectares or less, staff has no objection or concern.

Regarding the proposal that parkland dedication rates be set at the time the City receives a site plan application for a development or if a site plan is not submitted, at the time the City receives an application for a zoning amendment, staff has no objection.

As for the proposal to freeze parkland dedication rates for two years from the date the relevant application is approved, staff has no objection. Parkland dedication rates, once approved, remain generally unchanged for a long period of time. It is assumed that this freeze would not apply to calculating cash-in-lieu of parkland, which would present a problem, because it does not account for the potential increase in the value of land over the 2-year period.

5.2 Support more efficient use of land and provide for more parks quickly

To make more efficient use of available land in a development and to provide for parks more quickly for a community, developers would be able to identify land, including encumbered land (e.g., land with underground transit tunnels or other infrastructure) and privately owned public spaces that would count towards any municipal parkland dedication requirements if defined criteria, as set out in a future regulation, were met.

With regard to privately owned public spaces, a municipality would have the ability to enter into agreements with the owners of the land, which may be registered on title, to enforce parkland requirements.

In cases, where disputes arise about the suitability of land for parks and recreational purposes, the matter could be appealed to the Ontario Land Tribunal (OLT).

Staff comments: No objection to this change, subject to review of the regulations to be released.

The implications of this proposal can be explained by the following scenarios:

Scenario 1: The City will be conveyed lands for park space that may be partially encumbered. This may limit the type of plantings and City infrastructure that can be installed in certain portions of the park. However, this land will still provide public green space (lawns, sports fields, etc.).

Scenario 2: Easements, in favour of the City, over Privately Owned Publicly accessible Spaces (POPS) will result in publicly-accessible park space that is not the responsibility of the City to maintain. Provided that these spaces meet minimum City requirements for accessibility, access, design, as well as seasonal and preventative maintenance, this approach would be desirable. It locates park space in the immediate vicinity of the residents it is intended to serve. The creation of the park space would directly coincide with the occupancy of the related development.

5.3 Build transparency and other measures to support the faster acquisition of more parks

To build more transparency and accountability on planning for and acquiring parks, municipalities would be required to develop a parks plan before passing a parkland dedication by-law. Currently, this is a requirement before a municipality can adopt the official plan policies required to use the alternative parkland dedication rate for higher density developments. Now, this requirement is extended to municipalities that plan to use the standard parkland dedication rate. This rate requires that the maximum land to be conveyed for park or other public recreational purposes not exceed 2 percent for development or redevelopment for commercial or industrial purposes, and 5 percent for all other developments. This proposed change would apply to the passage of a new parkland by-law.

To incent municipalities to acquire parks more quickly, municipalities would be required to allocate, or spend, at least 60 percent of their parkland reserve balance at the start of each year.

Staff comments: The requirement to allocate 60% of the parkland reserves annually is acceptable, providing this is an internal process only. Allocating funds from the parkland reserve to one or more park acquisition projects will help build-up funds to acquire larger parcels of land required in strategic areas. However, the City needs the flexibility to shift priorities internally should an

unexpected opportunity or requirement occur. However, a requirement to spend 60% annually is unacceptable. This will inhibit the ability to build up a reserve to develop community parks in strategic locations. Staff recommends that the words "or spend" be deleted from the Bill.

Encourage the Supply of Rental Housing

To incent the supply of rental housing units, particularly **family-friendly rental housing**, a tiered discount would be provided on development charges (DCs) levied on purpose-built rental units. The discount would be deeper depending on the unit type (i.e., 15 percent for a 1-bedroom unit (or smaller), 20 percent for a 2-bedroom unit; and 25 percent for a 3+ bedroom unit). This proposed change would be in effect immediately upon Royal Assent of Bill 23.

The definition of purpose-built rental would be based on the definition that is currently used in a regulation under the *Development Charges Act*, 1997: "a building or structure with four or more dwelling units all of which are intended for use as rented residential premises".

Staff comments: Action Item 2.2 of the Pickering Housing Strategy & Action Plan 2021-2031 directs Finance staff to "Consider waiving fees or providing a grant equivalent to certain development application fees, development charges, property taxes, and/or parkland dedication requirements, for affordable rental, affordable ownership, and/or supportive housing developments on a case-by-case basis." This work is intended to be undertaken in the medium-term (5-10 years).

The benefit of the proposed development charge discount incentive for family-friendly, purpose-built rental housing, is that it should create a level playing field for all Ontario municipalities when considering development applications for this type of housing. In addition, it could provide the necessary incentive for builders to provide much needed family-sized rental housing within the City (this size of rental housing was identified as a gap through the City's Housing Strategy Study). However, discounts on DCs will impact the City's ability to fund infrastructure. **The Province's proposal precludes the in-depth study that Finance staff has been directed to undertake.**

Also of concern is that new purpose-built rental units are exempt from Ontario's rent control guidelines. It is uncertain whether the new rental units will be affordable relative to a household's income.

It is recommended that municipalities continue to have the flexibility to determine the appropriateness, structure, and magnitude of Development Charges discounts for rental housing units.

5.4 Encourage the supply of Affordable Housing

To incent the supply of more affordable housing, affordable ownership and rental housing units, affordable housing units in a development subject to inclusionary zoning, as well as non-profit housing developments, would be exempt from development charges (DC), community benefits charges (CBC), and parkland dedication requirements.

An affordable housing unit would be any unit that is no greater than 80 percent of the average resale purchase price for ownership or 80 percent of the average market rent for rental, for a period of 25 years.

A Minister's (Municipal Affairs and Housing) bulletin would provide the information needed to support municipal determination of the eligibility of a unit for DC and parkland dedication exemptions. To benefit from a DC exemption, a developer must enter into an agreement with a municipality, which may be registered on title, to enforce the affordability period of 25 years and any other applicable terms set out by the municipality, such as the eligibility of buyers and renters. The Minister of Municipal Affairs and Housing would have the authority to impose the use of a standard agreement to ensure the effective implementation of these exemptions.

Affordable housing units would also be exempt from parkland dedication requirements. With regard to the standard parkland rate, the exemption would be implemented by discounting the maximum parkland rate of 5 percent of land, or its value, based on the number of affordable housing units to be built as a proportion of total units in a particular development. With regard to the alternative parkland dedication rates, the maximum parkland requirements would only be calculated based on the market units in a particular development.

Similarly, affordable housing units would be exempt from CBCs. The exemption would be implemented by discounting the maximum CBC of 4 percent of land value by the floor area of affordable housing units as a proportion of total building floor area.

Staff comments: In encouraging affordable housing through exemptions from development charges, community benefits charges and parkland dedication requirements, the Province is using a new definition of "affordable housing". The Province's new definition of "affordable housing" is "any unit that is no greater than 80 percent of the average resale purchase price for ownership or 80 percent of the average market rent for rental, for a period of 25 years".

There are two significant problems with this definition:

- **the proposed new definition is unrelated to an individual's, or household's, ability to pay (i.e., their income) as is the case now; and**
- **the affordability period is set at 25 years.**

Regarding the definition of "affordable housing", although the City of Pickering Official Plan does not formally define "affordable housing", it does describe it as meaning annual housing costs (rent or mortgage payments) that do not exceed 30 percent of gross household income. Action Item 1.1 of the Pickering Housing Strategy & Action Plan 2021-2031 directs staff to add a definition of "affordable housing" to the City's Official Plan which includes reference to the average purchase price and average market rent in accordance with the definition in the Provincial Policy Statement, 2020. The foundation of the City's definition of affordable housing is based on income.

CMHC defines affordable housing as generally meaning a housing unit that can be owned or rented by a household with shelter costs (rent or mortgage, utilities, etc.) that are less than 30 percent of its gross income. The Province, in the Provincial Policy Statement, 2020 (PPS) and Durham Region, in its official plan, similarly define affordable housing including the measure based on income.

Through the Envision Durham consultation, the City's response to Durham Region's question about redefining "affordable housing", Council recommended that the Region maintain its definition of affordable housing to be consistent with the Provincial Policy Statement and other municipalities in the Greater Toronto and Hamilton Area.

It is recommended that the Province continue to define affordability based on income, not selling price and rental rates.

As far as the proposed inclusion of an "affordability period" in the definition of "affordable housing" is concerned, the current definition of "affordable housing" contains no limiting time period. In other words the housing must continue to meet affordability measures forever. **The concern with adding a limiting time period to the definition of "affordable housing" is that, after the 25 years those affordable housing units could be converted to market units, thus reducing or depleting the affordable housing stock.**

It is possible that the Province believes that 25 years is a suitable time period since the time period may relate to the life of the physical housing units. After 25 years the housing units may require significant upgrades. However, what protections will be in place to maintain affordable housing stock beyond the 25 years? What happens to renters and the amount they pay in rent beyond the 25 years? What happens to the ownership housing stock? Will there be a "windfall" in the increased sale price to the last owner? Providing a maximum affordability period of 25 years will likely result in affordable units being converted to market units, reducing the supply of affordable units in the future.

It is recommended that an affordability period not be applied to rental housing, and that an appropriate timeframe of affordability for ownership housing be determined by the municipality.

As for the proposal that municipalities could determine the eligibility of a unit for DC and parkland dedication exemptions based on information provided by the Minister and that agreements be entered into between the municipality and developers to benefit from such exemptions, the content of the proposed agreement is unknown at this time and there is no information on if, or how, the Province may consult with municipalities on this matter. **There should be consultation and agreement by the municipality on the criteria to qualify for exemptions and the contents of this agreement.**

Regarding the proposal to exempt affordable housing from parkland dedication and community benefits charges, **there is no evidence to support the premise that the cost savings associated with parkland dedication and community benefits charges will lead to more affordable housing.** There is however, a direct relationship

between the reduction of parkland dedication and community benefits charges collected by a municipality, and its ability to provide parks, which contribute to community livability and positive human and environmental health. In addition, **this proposal will directly lead to a reduction in the amount of parkland, and the level of service associated with parks.**

5.5 Encourage the supply of "Attainable" housing

To incent the supply of attainable housing units, a residential unit, in a development designated through regulation, would be exempt from DCs, CBCs, and parkland dedication requirements. The Lieutenant Governor in Council would be provided with regulation-making authority to prescribe any applicable additional criteria that a residential unit would need to meet to be exempt from municipal development-related charges.

The parkland dedication and CBC exemptions would be calculated based on the same approach proposed for affordable housing exemptions.

Staff comments: There is no evidence to support the premise that the cost savings associated with exempting DCs, parkland dedication and CBCs will lead to more attainable housing. There is, however, a direct relationship between the reduction of DCs, parkland dedication and CBCs collected by a municipality, and its ability to provide necessary infrastructure, including parks, which contribute to community livability and positive human and environmental health.

It appears that the definition of "attainable housing" is related to the Province designating a residential development and to the price of a unit being sold at or below the average resale purchase price. A Minister's bulletin will set out the average market resale values for each geographic market/municipality at the time of proclamation of the attainable housing designation. As with the Province's proposed new definition of "affordable housing", its proposed definition of "attainable housing" is in no way related to an individual's, or household's, ability to pay (i.e., their income).

It is recommended that the Province continue to define affordability based on income.

It is recommended that any proposed new definition for "attainable housing" be income based.

5.6 *Development Charges Act* Changes

It is recommended that the Province not proceed with this proposal.

The passage of Bill 23 will have a significant financial impact on the City. The City collects Development Charges (DC) to fund growth related infrastructure. However, with the reduction of DC collections based on Bill 23, the City would not have adequate funds to finance these growth related project costs that are needed for the anticipated increase in population. Ultimately, these costs would be passed on to existing taxpayers. To put another way, the loss of the DC dollars will probably translate into future property tax increases or a possible decrease in City services.

Bill 23 also introduces the false argument that the notion that Development Charges is a major factor contributing towards higher housing prices. However, Bill 23 provides no evidence that the reduction in DC charges will be passed on directly to homebuyers through reductions of housing prices. If these reductions are indeed passed on to home buyers, shifting costs onto the tax base increases the property tax burden and those costs are ultimately shared by all tax payers, including the City's existing low-income homeowners, who do not enjoy the benefits of the growth-related capital projects.

5.6.1 Mandatory Phase-In of Development Charges:

Bill 23 is proposing a phase-in for the first 5-years of a DC bylaw, starting with 80% of the maximum charge in Year 1 (2023) and increasing by 5% each year until Year 5, where the full charge would then be in place. It is interesting to note, that one of the goals of Bill 23 is to address housing affordability and supply. However, the proposed DC fee phase-in decrease also applies to non-residential DC fees.

Staff comments: This phase-in approach will result in a significant decrease in DC revenues. With the City completing its most recent DC Background Study in July 2022, the potential revenue loss is quantified below:

Year 1 – Approximately $3.1 million in lost revenue (assuming 6 months of lost revenue)
Year 2 – Approximately $4.6 million in lost revenue
Year 3 – Approximately $3.1 million in lost revenue
Year 4 – Approximately $1.5 million in lost revenue

The proposed phase-in of DCs will result in a loss of an estimated $12.3 million in DC revenue for the City over 4-years, and a subsequent slower development of growth related infrastructure or in an increase in property taxes for taxpayers, or a combination of both. It is recommended that the Province not proceed with this proposal.

5.6.2 Changes in DC Eligible Capital Costs:

Bill 23 further excludes capital costs that would be eligible for DC funding.

Land, excluding parkland, is currently an eligible cost under the *Development Charges Act*. Bill 23 would allow for regulations to prescribe which services land could be included as a capital cost. Depending on which services are prescribe to allow for the inclusion of land, the impact to the City could be substantial. **There are various City facilities with land requirements in the current DC Background Study, which are at risk of losing DC funding, such as the Seaton Fire Station, Animal Shelter and By-Law Services facility, Notion Road 401 Crossing, City Centre facilities and the Seaton Regional Library.**

Growth studies is another significant area that will be excluded from receiving DC funding. Bill 23 will allow for growth studies already included in DC Background Studies prepared prior to the passage of the bill to be eligible for DC funding, but future DC Background Studies and by-laws will exclude all growth studies.

The City is currently planning to undertake multiple master planning studies (such as Transportation and Recreation Master Plans), in order to examine the increase in need of services in response to growth. **The City's current DC Background Study has approximately $6.9 million in gross costs for studies, with $5.3 million being eligible for DC funding. With these studies being excluded for DC funding in the next DC Background Study, the full cost of the studies will ultimately be passed on to taxpayers.**

With the reduction in DC revenues due to Bill 23, the City would recommend that the Province develop an infrastructure funding program to help municipalities to offset the loss of DC revenues. Without this, the City will be forced to re-prioritize growth related capital projects, resulting in delays or cancellations of growth projects, in turn delaying new development.

Staff comments: It is recommended that the Province not proceed with this proposal.

5.6.3 Community Benefit Charges exemptions:

Bill 23 proposes additional statutory exemptions for the payments of Community Benefit Charges (CBC). Affordable Units, Attainable Units and Inclusionary Zoning Units will be exempt from CBC payments.

Staff comments: These additional exemptions will result in further revenue loss for the City, which will need to be made up by other funding sources (i.e., taxpayers).

The City of Pickering is a going through a transformational growth stage due to major planned growth related capital projects such as the City Centre, Pickering Heritage & Community Centre, Animal Shelter, Seaton Fire Hall and Seaton Recreation & Library. These capital projects, rely on development charge funding, to varying degrees, as a major source of capital dollars. With a reduction in DC dollars, and taking into consideration that there is one other source of financing, the "Pickering Taxpayer," there will probably have to be some difficult decisions made regarding property tax affordability, green lighting of capital projects, and/or change in capital project scope.

New residents usually have an expectation regarding the level of municipal services for their new community. They expect their new community to have a wide range of recreational facilities, vibrant parks, and modern libraries. Bill 23 proposes to change that vision and/or expectation. The reduction in DC fees collected will probably result in an overall decrease in the quality of life viewed from a municipal lens. Existing facilities will become over crowded due to the possible reluctance of the existing local taxpayer to subsidy the construction of growth related facilities. **It is recommended that the Province not proceed with this proposal.**

6. ERO Posting 019-6196 – Proposed *Heritage Act* Changes (original commenting deadline: November 24, 2022, since changed to December 9, 2022; comments submitted on November 24, 2022)

6.1 Proposed new requirements for Municipal Registers and inclusion of non-designated properties on the Municipal Register.

The Ministry of Citizenship and Multiculturalism (MCM) is proposing legislative changes to municipal practices around the inclusion of non-designated properties on a municipal register by:

(a) Requiring municipalities to make an up to date version of the municipal register available on a publicly accessible website. Municipalities would have 6 months time to make the necessary changes to their website.

(b) Allowing for property owners to use the existing process under the *Ontario Heritage Act* for objecting to the inclusion of their non-designated property on the municipal register regardless of when it was added to the municipal register.

(c) Increasing the standard for including a non-designated property on a municipal register by requiring that the property meet prescribed criteria. MCM is proposing to have the criteria currently included in O. Reg. 9/06 (Criteria for determining cultural heritage value or interest) apply to non-designated properties included on the municipal register, and is proposing that the property must meet one or more of the criteria to be included, which would be facilitated through a regulatory change. MCM is further proposing that this requirement would apply only to those non-designated properties added to the municipal register on or after the date the legislative and regulatory amendments come into force.

(d) Removal of a property from the register:

i. If council moves to designate a listed property, but a designation bylaw is not passed, the property would have to be removed from the municipal register.
ii. Non-designated properties, currently included on a municipal register, would have to be removed if council does not issue a notice of intention to designate (NOID), within two years of the amendments coming into force.
iii. Non-designated properties included on the register would have to be removed if council does not issue a NOID within two years of the property being included.
iv. If removed from the register under any of the above three circumstances, the property cannot be relisted for a period of five years.

Staff comments: Proposed legislative changes to municipal practices around the inclusion of non-designated properties on a municipal register and the associated timelines, will create additional administrative, planning/heritage, and financial resource demands on the City.

Increasing the standard for including a non-designated property on a municipal register will generally weaken the City's heritage protection ability, will result in a reduction in the number of listed properties, and will limit how long future listings last.

It is recommended that the Province does not change the criteria set out in O. Reg. 9/06 (Criteria for determining cultural heritage value or interest), and that it does not move forward with the requirement for either designated or non-designated register properties to meet two of these criteria.

The proposal requiring a review of listed properties and decision-making on whether or not to designate within two years of the amendments coming into force, will create a resource burden, both financial and staffing, to the City. Although there may initially be a large number of properties designated, the proposal ultimately puts heritage properties at a high risk of complete loss.

It is recommended that the Province not move forward with the proposal regarding removing properties from the register.

6.2 An increase in the threshold for designation of individual properties and new limitations on designation for properties subject to proposed development

MCM is proposing to increase the threshold for designation of individual properties by requiring that a property meet two or more of the criteria prescribed in regulation, whereas currently a property must meet one of the criteria prescribed in regulation.

In addition, the Province is proposing to change the criteria in O. Reg. 9/06 (Criteria for determining cultural heritage value or interest). It is not know exactly what those changes will be.

Staff comments: Increasing the threshold for designation of individual properties will limit the number of properties that can be designated. It will prevent certain properties that have heritage value within, and to, a community from being protected. This proposal ultimately results in placing some heritage properties at risk of loss.

In addition, should Council propose to amend an existing bylaw, the amended by-law would need to meet the new threshold for designation. This could result in the loss of some heritage properties.

It is recommended that the Province not move forward with the proposal for increasing the threshold for designation of individual properties and proposed new limitations on designation for properties subject to proposed development.

The criteria in O. Reg. 9/06 (Criteria for determining cultural heritage value or interest) reflect long standing concepts in the field of heritage conservation that evolved over decades and align with international standards. They were codified in 2006, ensuring consistency across municipalities.

It is recommended that any proposed changes to the criteria in O. Reg. 9/06 (Criteria for determining cultural heritage value or interest) be determined by the Province in consultation with municipalities, heritage committees, and heritage associations across the province.

6.3 Prohibiting Heritage Designation once a Planning Application has been made under the *Planning Act*

MCM is proposing to require that council would only be able to issue a notice of intention to designate (NOID) where a property is included on the municipal heritage register as a non-designated property. Therefore, if a planning application is submitted with respect to a property, a NOID may only be issued if the property was already included in the municipal register as a non-designated property on the date of the application. The 90-day timeline for a municipality to issue a NOID following application submission would then apply.

Staff comments: The proposal that a municipality can only issue a NOID if a property is already included on the municipal register will surely result in the loss of cultural heritage resources. Often a municipality will not be aware of a heritage property until a planning application is submitted and there is a review of the subject property, and a more detailed Heritage Impact Assessment is undertaken. Most municipalities don't have the resources (staff and financial) to undertake a comprehensive municipality-wide survey and analysis of all potential cultural heritage resources within its boundaries. This work would have to be done to ensure that all cultural heritage resources are identified on the heritage register so that when a planning application is made there would be certainty about any cultural heritage resources present on the site.

It is recommended that the Province not move forward with the proposal to prohibit a heritage designation once a planning application has been made under the *Planning Act*.

6.4 Changes to Heritage Conservation Districts (HCD)

MCM is proposing to require municipalities to apply prescribed criteria to determine a HCD's cultural heritage value or interest. This would include a requirement for HCD plans to explain how the HCD meets the prescribed criteria. MCM is proposing to have the criteria currently included in O. Reg. 9/06 (Criteria for determining cultural heritage value or interest) apply to HCDs and is proposing that the HCD must meet two or more of the criteria in order to be designated.

MCM is also proposing to introduce a regulatory authority to prescribe processes for municipalities to amend or repeal existing HCD designation and HCD plan bylaws. The proposal would help create opportunities to align existing HCDs with current government priorities and make HCDs a more flexible and iterative tool that can better facilitate development. If passed, MCM would consult on the development and details of the amendment and repeal processes at a later time.

Staff comments: The proposed requirement to apply prescribed criteria to determine a HCD's cultural heritage value or interest may add a measure of complication to designating a HCD. In addition, the proposal that the HCD must meet two or more of the criteria in order to be designated, may limit the number of properties included in a HCD, and ultimately result in the loss of some heritage properties.

It is recommended that the Province consult with municipalities prior to making any changes to the requirements for Heritage Conservation Districts.

7. ERO Posting 019-6173 – Inclusionary Zoning (commenting deadline: December 9, 2022; comments not yet submitted)

7.1 Proposed Inclusionary Zoning Regulatory (IZ) changes

Inclusionary zoning is a land use planning tool, authorized under the *Planning Act*, which municipalities may use to require affordable housing units to be included in residential developments of 10 or more units, in identified Protected Major Transit Station Areas (PMTSAs) or in Community Planning Permit System (CPPS) areas, ordered by the Minister. Inclusionary zoning can be a useful tool to facilitate the supply of affordable housing in areas that generally have characteristics such as growth pressures, high housing demand and availability of higher order transit.

The *Planning Act* and O. Reg. 232/18 set out the legislative and regulatory requirements for municipal implementation of inclusionary zoning, including the authority for municipalities to adopt inclusionary zoning official plan policies and make inclusionary zoning by-laws. Beyond the prescribed minimum requirements, municipalities have flexibility and discretion to tailor their inclusionary zoning policies to their local context. Currently under the regulation, municipalities have the discretion to establish an affordability period, to determine the percentage of total units to be set aside as affordable, and to develop an approach to determining affordable prices/rents for inclusionary zoning units.

The Province proposes amendments to O. Reg. 232/18 that would establish an upper limit on the number of units that would be required to be set aside as affordable, set at 5% of the total number of units (or 5% of the total gross floor area of the total residential units, not including common areas). It would also establish a maximum period of 25 years over which the affordable housing units would be required to remain affordable. Amendments would also prescribe the approach to determining the lowest price/rent that can be required for inclusionary zoning units, set at 80% of the average resale purchase price of ownership units or 80% of the average market rent (AMR) for rental units. These proposed amendments would only apply on lands within PMTSAs.

The proposed changes are intended to provide more development cost certainty, and establish a more consistent approach to inclusionary zoning requirements across the province.

Staff comments: In order for a municipality to utilize the “inclusionary zoning” provisions enabled through the *Planning Act*, it must undertake an “assessment report” to inform the development of appropriate official plan policies and zoning by-law provisions. In accordance with Ontario Regulation 232/18, this assessment report must include an analysis of municipal demographics and population, household incomes, housing supply by type (current and planned), housing types and sizes that might be needed to meet anticipated demand for affordable housing, current average market price/rent by housing type across the municipality, and a written opinion on this analysis

from a person independent of the municipality and who is qualified to review the analysis. The assessment report must be updated every five years to determine whether the official plan policies require amending. A report detailing the performance of the inclusionary zoning by-law is required to be prepared every 2 years and address prescribed matters. In addition, provincial regulation prohibits the application of Section 37 Density Bonusing on developments where inclusionary zoning is applied.

The adoption of by-laws to implement inclusionary zoning cannot be appealed to the Ontario Land Tribunal, except by the Minister of Municipal Affairs and Housing.

Currently, there are no policies in the Pickering Official Plan that enable the use of inclusionary zoning. The Region of Durham has indicated that they will be preparing an assessment report for their jurisdiction. This work, when completed, will enable the local municipalities, including the City of Pickering, to establish official plan policies and zoning by-law provisions related to inclusionary zoning.

Under the *Planning Act*, the IZ regulation currently provides municipalities with the discretion to establish an affordability period, to determine the percentage of total units to be set aside as affordable, and to develop an approach to determining affordable prices/rents for IZ units.

The proposed cap of 5% on affordable units precludes the ability of the City to establish a "made-in-Pickering" approach that would be the result of the detailed analysis expected from the Assessment Report currently being prepared by the Regional Municipality of Durham.

The detailed analysis contained in the Assessment Report is intended to inform matters such as "affordability period" as well as assist municipal decision-makers in targeting the level of household needs for their municipality. The proposal for the Province to establish the "affordability period" to be no more than 25 years essentially disregards the detailed analysis undertaken through an Assessment Report and removes the flexibility for a "made-in Pickering" approach.

Proposed amendments would also prescribe in regulation the approach to determining the lowest price/rent that can be required for IZ units: 80% of the average resale purchase price for ownership units; or 80% of the average market rent (AMR) for rental units. There would be no income based approach to setting unit cost (ownership or rental).

CMHC defines affordable housing as generally meaning a housing unit that can be owned or rented by a household with shelter costs (rent or mortgage, utilities, etc.) that are less than 30 percent of its gross income. The Province, in the Provincial Policy Statement, 2020 (PPS) and Durham Region, in its official plan, similarly define affordable housing based on income.

Through the Envision Durham consultation, the City's response to Durham Region's question about redefining "affordable housing", Council recommended that the Region maintain its definition of affordable housing to be consistent with the Provincial Policy Statement and other municipalities in the Greater Toronto and Hamilton Area.

It is recommended that the Province continue to define affordability based on income.

It is recommended that the Province continue to enable municipalities to define the number of units and the associated affordability period for IZ units based on the detailed, municipality-specific, work undertaken through the Assessment Report.

8. Ontario Regulatory Registry Posting – Proposal #22-MMAH017 - proposed changes to the *Municipal Act* (original commenting deadline: November 24, 2022, since changed to December 9, 2022; comments submitted November 24, 2022)

8.1 Seeking Feedback on Municipal Rental Replacement By-Laws

Under s.99.1 of the *Municipal Act*, 2001, municipalities may enact bylaws to regulate the demolition or conversion of multi-unit residential rental properties of six units or more. Rental replacement by-laws vary among municipalities and currently include requirements around number, size, type, and cost of rental units, as well as right of first refusal for existing tenants.

The government is proposing to enact a Minister's regulation-making authority to enable the Minister to make regulations to standardize and clarify municipal powers to regulate the demolition and conversion of residential rental properties. The proposed legislative amendments will not impact renter protections or requirements under the *Residential Tenancies Act* (RTA).

The MMAH is also considering new regulations under this proposed authority to standardize rules and requirements municipalities may include in their by-laws (e.g., those that may be negatively impacting housing construction or renter protections).

Staff comments: The Council approved Pickering Housing Strategy & Action Plan 2021-2031 directed staff to add new official plan policies to protect existing rental housing stock from conversion, and to prohibit the demolition of existing rental housing units unless the proposed redevelopment meets specified conditions (Action Items 1.5 and 1.6).

The proposed Minister's regulation-making authority to standardize municipal rental replacement bylaws could directly affect what can/cannot be included in any future rental replacement policies and by-laws. This would remove the City's ability to create its own made-in-Pickering solution and preclude the outcome of City staff's current work. The proposed legislative changes and new regulations could lead to a loss of rental housing stock.

The Durham Region Official Plan (ROP) policies currently protect purpose-built rental housing by discouraging condominium conversions when vacancy rates are at or below 3 percent. Durham Region, through Envision Durham, is considering adding policies that would permit conversions subject to certain conditions. Through the Envision Durham consultation process, the City has requested clarification of these conditions and has recommended that a ROP Amendment continue to be required for requests for rental housing conversions.

The ROP does not currently have policies to protect rental housing from demolition. However, it is considering adding policies that encourage area municipalities to protect rental housing from demolition.

Removing municipal authority to require replacement units and "right to return" for tenants could be seen as reducing renter protections. These policies and by-laws may prevent displacements of tenants due to no fault evictions, and enable replaced rental units for those tenants to remain in the same type of unit as before (e.g., help prevent demolition displacing tenants to create luxury rentals). In addition, the proposed changes may result in increased pressure on municipal community housing wait lists.

It is recommended that the Province continue to give municipalities the flexibility to regulate the demolition and/or conversion of multi-unit residential rental properties tailored to the specific needs of the municipality.

9. ERO Posting 019-6177 – Provincial Plans and Policy (commenting deadline: December 30, 2022; comments not yet submitted)

9.1 Proposed merging of A Place To Grow (the Growth Plan) and the Provincial Policy Statement (PPS)

The government is reviewing the potential integration of the Grow Plan with the PPS in order to remove or streamline policies that result in duplication, delays or burden in the development of housing. The Province holds the view that evolution of the current land use planning policy framework in Ontario over the last three decades has left us with a complex system of overlapping policy instruments that can be difficult to navigate and implement. Given the importance of the PPS and A Place to Grow in guiding land use planning decisions the Province are considering ways to streamline policies to simplify navigation, to reduce complexity and create more outcome focused policies that are less prescriptive.

Staff comments: Although the proposal to "declutter" and simplify the Provincial planning policy framework and remove unnecessary duplication, is commendable, it is doubtful whether such steps would speed up housing delivery and the cost of housing. The Provincial policy framework is generally sound and appropriately articulates matters of provincial interest, as set out in section 2 of the *Planning Act*, through policy. **The current housing crisis cannot be attributed to what occurs at the front end of the planning process (when Provincial land use policies are reviewed for conformity and consistency), but rather to other matters and processes that are generally beyond the control of local municipalities, such as:**

- **the economy of land (land costs);**
- **the cost of development/construction;**
- **the bureaucracy and complexity associated with the funding and delivery of affordable and social housing;**
- **the length of time it takes for external agencies, including Provincial Ministries, to provide comments on development applications;**

- **the length of time associated with the approval of environmental assessments;**
- **the lack of financial tools to local municipalities to incentivize development, including affordable housing;**
- **NIMBYism (which often result in significant delays in planning approvals and costly and time-consuming Ontario Land Tribunal hearings); and**
- **the lack of co-ordination between the various levels of government and key stakeholders (banks and non-profit housing corporations).**

Although some of the matters above would be addressed in part by the changes proposed through Bill 23, addressing the above matters are equally if not more important to streamline the planning process and increase the housing supply in Ontario.

10. ERO Posting 019-6177 – Proposed *Supporting Growth and Housing in York and Durham Regions Act*, 2022(commenting deadline: November 24, 2022, since changed to December 9, 2022; comments submitted November 23, 2022)

10.1 Expansion to the Duffin Creek Water Pollution Control Plant in Pickering

Staff Comments: Pickering remains in support of the recommended solution (the Water Reclamation Centre in York Region) from the UYSS Individual Environmental Assessment (2014).

Pickering requests that the legislation, if approved, make a commitment to Pickering receiving community benefits through a Host Community Benefit Agreement as the planning and implementation of the project requires City resources through review and consultation, and results in community impacts related to twinning of the primary trunk sewer and future expansion of the Duffin Creek Water Pollution Control Plant without the benefit of these projects following the Environmental Assessment Act process.

Clarify who the “other proponent municipalities” are that are required to prepare environmental impact reports about the projects, as indicated in the Technical Briefing dated October 26, 2022.

Indicate who the “prescribed municipalities” are which are required to work together to implement the Lake Simcoe phosphorus reduction project. Are these prescribed municipalities only within York Region? Pickering does not want this project to be a burden to Pickering or Durham Region taxpayers as this is a “made in York Region solution” that benefits only York Region.

Provide details as to what is included in the improvements required for the “existing YDSS” within the geographical boundary of Durham Region, and specifically the City of Pickering. Does it include the YDSS Primary Trunk twinning from Finch Avenue to Duffin Creek Water Pollution Control Plant? Does it include the expansion of the Duffin Creek Water Pollution Control Plant to 840 MLD for the additional ultimate flow of 80MLD from York Region? Confirm that the recently constructed SEC through Pickering was designed for this additional flow.

Who is funding the required improvements to the YDSS, including the future expansion of the Duffin Creek Water Pollution Control Plant, for this project, considering the project only benefits York Region but cost sharing is typically an 80/20 split?

The proposed legislation indicates that “both projects” would be exempt from the Environmental Assessment Act. Specifically, which elements within Durham Region are exempt? For example, the Class EA for the twinning of the Primary Trunk Sewer south of Finch Avenue was to include a component to address the location of a pumping station in Pickering’s City Centre area to accommodate a flow diversion north of Highway 401. How will this project approval now be handled?

The Environmental Registry indicates capital upgrades to the existing YDSS would include:

- increasing capacity of existing Pumping Stations
- construction of new of twinned forcemains
- upsizing or twinning sanitary sewer pipes

but makes no mention of changes/expansion to Duffin Creek Water Pollution Control Plant, however a Phase 4 expansion is required after 2039 to accommodate flows to 80 MLD (beyond 40 MLD).

Growth projections made in the 2014 Individual EA (152,700 people/jobs by 2031) have been revised to not being recognized until 2039 for the 40 MLD solution, and that the 80 MLD solution could now service growth to 2055. Has the recent proposed Bill 23 legislation changed (accelerated) these revised projections?

Capital cost of the expansion of the Duffin Creek Water Pollution Control Plant to accommodate 80 MLD by 2055 has been estimated at $180M, however this only represents a portion of the total cost to expand from 630 MLD to 840 MLD (i.e. only 40 MLD out of 210 MLD). This cost estimate is misleading.

The advice by the panel is subject to satisfactory resolution of Hydraulic Modeling of the YDSS to confirm that the ultimate flow of 80 MLD can be accommodated within the existing and expanded infrastructure, and confirmation that the existing Intrabasin Transfer Agreement will be sufficient to support this servicing strategy to 2051 and beyond. When will this confirmation take place, and how is the proposed legislation impacted if either is not confirmed?

Attachment:

1. Location Map of Duffins-Rouge Agricultural Preserve Lands

Prepared By:

Original Signed By

Déan Jacobs, MCIP, RPP
Manager, Policy & Geomatics

Original Signed By

Nilesh Surti, MCIP, RPP
Manager, Development Review
& Urban Design

DJ:CR:ld

Approved/Endorsed By:

Original Signed By

Catherine Rose, MCIP, RPP
Chief Planner

Original Signed By

Kyle Bentley, P. Eng.
Director, City Development & CBO

Recommended for the consideration
of Pickering City Council

Original Signed By

Marisa Carpino, M.A.
Chief Administrative Officer

Greenbelt Plan, Oak Ridges Moraine Conservation Plan

Maps are for Consultation Purposes Only

Proposed Modifications Map 6

LEGEND

Ontario

- Greenbelt Area*
- Protected Countryside
- Natural Heritage System
- Towns/Villages
- Urban River Valleys
- Settlement Areas Outside the Greenbelt
- Municipal Boundary
- Road or Highway

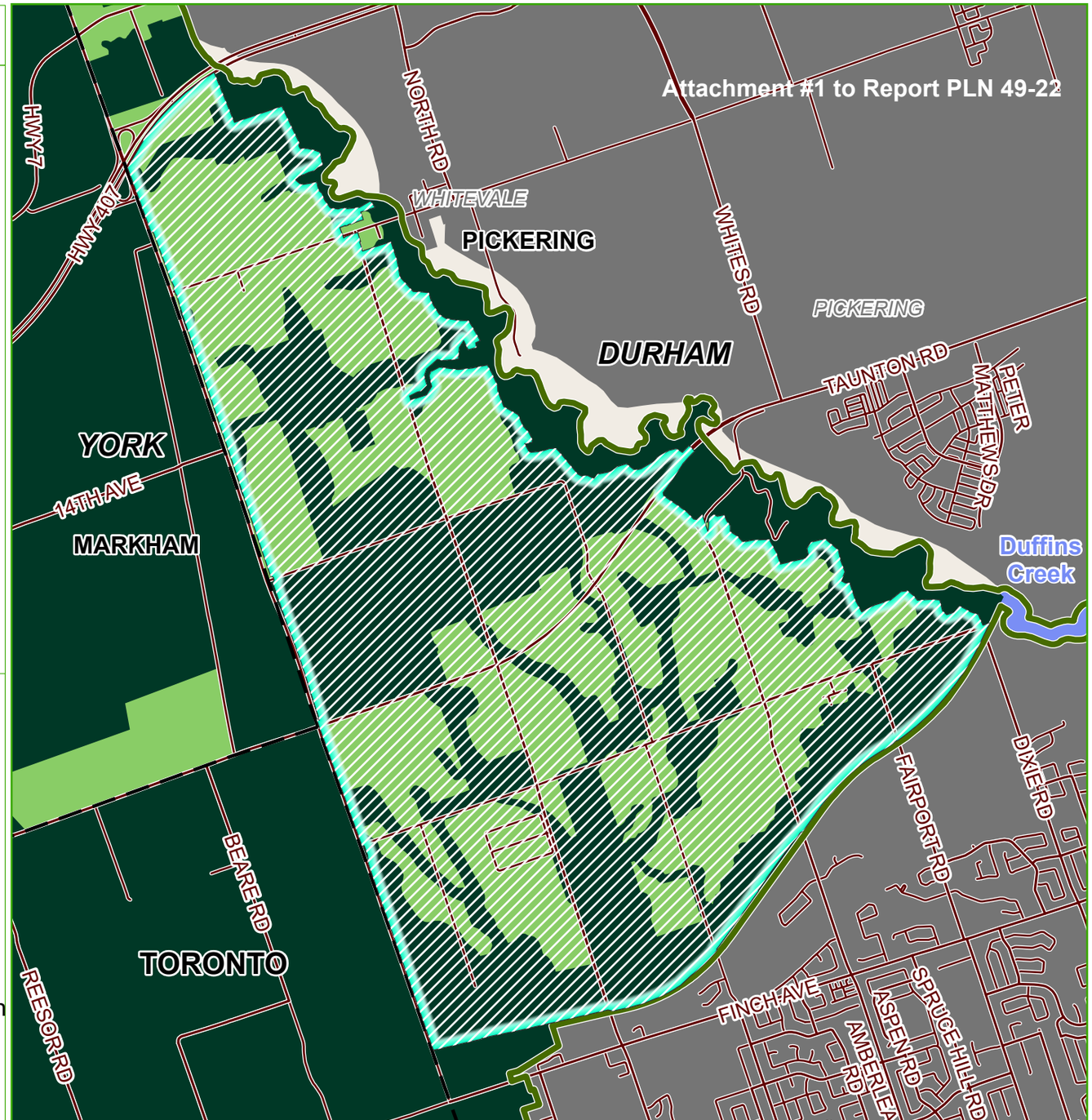
Proposed Modifications

- Greenbelt Redesignation
- Greenbelt Removal
- ORM Redesignation

0 0.33 0.65 1.3 Km

1 cm equals 394 m

Map North: 0°



Note: While every effort has been made to accurately depict the information, this map should not be relied on as being a precise indicator of locations of features or roads. For precise boundaries and locations of Settlement Areas, including Towns/Villages and Hamlets, the appropriate municipalities should be consulted.

Produced by and using data sources from the: Ministry of Municipal Affairs and Housing; Ministry of Northern Development, Mines, Natural Resources and Forestry; Ministry of the Environment, Conservation and Parks; and, the Ministry of Agriculture, Food and Rural Affairs.

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