May 31, 2019

Hon. Steve Clark
Minister of Municipal Affairs and Housing
777 Bay Street
Toronto, Ontario M5G 2ES

Dear Minister Clark,

RE: Proposed Changes to Bill 108-More Homes, More Choice Act, 2019

Thank you for the opportunity to comment on the proposed changes to Bill 108:*More Homes, More Choice Act, 2019* (Schedule 5, 11 and 12). Although the City of Guelph supports building more housing to meet Ontario's growing needs, the City is concerned that Bill 108 threatens the ability of municipalities to develop complete communities and provide livable cities for all its residents.

Several changes proposed to the *Planning Act* jeopardize Guelph's ability to meet its community needs for parkland, affordable housing and other community benefits that enhance the wellbeing for all residents. Additional clarity on the proposed changes are also required to ensure that municipalities have the tools to consistently and fairly implement the proposed legislation. The City has attached additional comments related to Bill 108 and we appreciate consideration of our feedback.

We respectfully request to be included in future consultation when developing regulations associated with Bill 108 prior to the Bill coming into force. Transparent and extensive consultation with municipalities on regulations will be crucial to ensure we have a comprehensive understanding of the impacts of Bill 108. We look forward to ongoing discussions on Bill 108 and its associated regulations in the future. Please do not hesitate to contact me if you have any questions regarding the City of Guelph's feedback.

Sincerely,

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Administration's Comments

Schedule 12 – Amendments to the Planning Act

Section 16 (3) Additional residential unit policies

The City of Guelph (City) is supportive of providing opportunities to add additional residential units where appropriate. The City has been a leader in enabling additional residential units and we acknowledge their important role in increasing density and promoting efficient use of infrastructure. However, through our experiences and ongoing community feedback we also recognize that additional residential units can pose challenges if they are not properly regulated to consider the local context. Some concerns include parking considerations, servicing feasibility and safe access to units.

The City requests that the Province clarify that these policy directions are not as of right and would be subject to additional municipal regulations so that municipalities can ensure that additional units are sensitive to their local planning context.

Although the City understands and supports this concept to increase housing supply and agrees that the exemption for second dwelling units in new residential buildings would achieve more units. However, the City urges the province to put in place a mechanism to ensure this reduction to the cost of housing is transferred to the homebuyer.

Further, the City is requesting the province to acknowledge that exempting Development Charges (DCs) does not change the cost of the infrastructure required for that development and this is a form of cost downloading to the citizens of Ontario. The lost DCs that would have otherwise been collected on these units will need to be recovered from property taxes and user fees. The *Development Charges Act, 1997* (DCA) is based on a full cost recovery model, and any revenues not collected through DCs are subsidized by the property tax base.

Section 16 (5) Inclusionary Zoning

Providing affordable housing is an important area that Guelph continues to explore. There has been significant local interest in using additional tools to incentivize inclusionary housing options. As a result, it is disappointing to see that inclusionary zoning will no longer be a tool available to Guelph as these provisions have been limited to areas with protected major transit stations and development permit systems. The City believes that tools to assist with inclusionary zoning should continue to be supported and accessible in order to address the growing need for affordable housing in Guelph as well as communities across Ontario.

Reduction of processing timelines

Bill 108 has reduced the timelines for processing an official plan or official plan amendment from 210 days to 120 days, a zoning bylaw amendment from 150 days to 90 days and a draft plan of subdivision from 180 days to 120 days. The existing timeframes were previously examined as part of the province's review of the Planning Act, which occurred prior to the introduction of the *Building Better Communities and Conserving Watersheds Act, 2017* ("Bill 139" in the 41st Parliament, 2nd Session) and it was determined that the existing timelines introduced through Bill 139 were necessary to provide adequate time to assess planning matters, hear input from the public before making a decision, and enable municipalities to negotiate solutions to issues throughout the process. The timelines established in Bill 139 were lengthened to reduce the number of appeals and contribute to a more transparent and efficient decision making process. Now Bill 108 is proposing to condense the timelines for approvals to a period that is even shorter than the timelines pre-Bill 139. No additional study appears to have been conducted, or additional rationale provided, for these proposed reduced timelines. The City believes the proposed timelines in Bill 108 compromise the municipality's ability to make comprehensive decisions that consider public feedback. Therefore, it is recommended that the existing timelines as established in Bill 139 be maintained.

Section 37: Community benefits charges and changes to the *Development Charges Act, 1997*

The City of Guelph is opposed to the proposed changes to Bill 108 related to a community benefits charge. Guelph is committed to maximizing community benefits for residents and are concerned that the proposed changes will compromise our ability to provide these amenities. The proposed community benefits charge also appears inconsistent with the Province's commitment to ensure that "Growth pays for growth".

By removing options for land conveyance for parks and limiting the community services function of DCs, Guelph will be unable to provide parkland and a range of other community facilities and services that the community requires. The community benefits charge will be limited to a prescribed percentage which may force municipalities to choose between competing community needs. A percentage limit could also result in a financial shortfall and force the municipality to look to other sources of funding to pay for community needs or become unable to provide them at all.

In addition, the ability to provide additional facilities and services through increased height or density has been removed in Bill 108. The elimination of this provision prevents Guelph from using height and density bonusing as a tool to assist in addressing some of its rapidly growing community needs as it continues to develop.

Although the Province has stated a desire to provide municipalities with the resources to support complete communities, the community benefits charge will result in the opposite. The City of Guelph requests more information on how the percentage limitation on the charge will be determined. We request consultation on developing this percentage limit to ensure it will adequately provide for a diverse range of community needs and to confirm it will be based on the principle that "growth should pay for growth". Additional information is also required to highlight the financial impact of this provision so the City can assess how this charge compares to the benefits provided through existing Development Charges and conveyance of land for parks. This information will be crucial to ensure that Guelph can continue to support community benefits that improve the quality of life for all its residents.

From a municipal finance perspective, the proposed changes to eliminate DCs for the collective "soft or social services" will likely result in a capital funding shortfall for growth-related infrastructure required for indoor and outdoor recreation (parks, trails and recreation centres), libraries, public health, child care and social housing, homes for the aged, paramedic services and parking. Without the specific regulations, Guelph cannot quantify the impact of these changes. Nevertheless, we do know that it leaves approximately $155 million of capital funding vulnerable considering these monies were planned in our DC Study that was approved in February 2019. These services are critical to creating livable, healthy communities and it is expected that new populations/businesses fund the growth infrastructure that is necessary for services in the same way as the other critical services such water, wastewater, roads and fire/police services. The current DCA provides a measurable and equitable means to quantify the cost of these services in each municipality based on existing service levels. Replacing this system with a Community Benefit Charge (CBC) regime based upon land value has many faults:

i) Land value is subject to market conditions making it a very unreliable long-term financial planning tool – the Province advocates long-term capital planning with capital asset management plans and policies however is proposing to make a reliable capital revenue become unpredictable and unplannable.
ii) Land value can vary based on proximity to the GTA making it an unfair method for funding common infrastructure needed across the province. The cost of building a recreation centre or a park may only vary upwards of 15% across the province whereas land value in the GTA for a single family lot may be 20 times that of the same size lot elsewhere in the province. This will create the have/have-not effect of urban centres versus rural communities where the revenue generation tool is unequitable to the cost of infrastructure.
iii) The need for appraisals and the ability for the applicant to challenge the appraisal will create more burden and expense for municipalities rather than it creating a streamlined process that was the original intention of the province.
iv) In a regional or county government system, the DCA contained guidance for the apportionment of the DC revenue collected according to the

> government body levying the charge considering it was directly attributable to their respective capital project plan. A system established on land value will create a new undefined, burdensome process to determine how this Community Benefit Charge would be allocated between the local and regional/county bodies.

Guelph recommends that municipalities be given the option to choose between the DCA and Section 37 CBC as the growth-related revenue tool for soft services. Let municipalities make a choice rather than forcing the implementation of a separate, cumbersome, costly and unnecessary CBC regime, which will require separate studies, by-laws and administration.

If the Province feels that reducing municipal development charges is necessary, it would be preferable to keep soft services in the DCA and simply limit the extent of recovery within the existing DCA to a cap as prescribed by the province.

Section 37: Combining parkland dedication, bonusing and development

The proposed CBC would take three distinct revenue streams with unique purposes and authorities, like the conveyance of land, and consolidate them into one, less dynamic revenue tool. The parkland conveyance authority is fundamental to accessing land at the most affordable point in a development. If municipalities are required only to collect funds in lieu of parkland and in turn strategically buy parkland parcels throughout the city, this is a more expensive alternative and will decrease parkland affordability in the city. Removing the conveyance of parkland option will significantly increase the cost of development as buying land after an area is built up is more costly than acquiring it early in the development. This would effectively result in less overall parkland for residents and a decrease in access to open spaces and outdoor recreation opportunities.

The process of developing a Community Benefits Strategy would provide municipalities with greater flexibility for funding services; however, it will likely mean less funding in total to build community assets. If the intent of the legislation is to encourage growth and development, these proposed changes would mean that residents in new neighborhoods will likely see a drastically lower service level than those built under previous legislation.

The City urges the province to remove the either/or option for Section 37 or Section 42/51.1. Require a choice between soft DCs in the DCA or Section 37 of the Planning Act (with a provincially legislated cap) but not both. It is also encouraged that Section 42 remain intact to be used in conjunction with Section 37 or DCA to convey parkland so the City can ensure parks are available for future residents.

Section 37: Special Fund and Requirement to spend or allocate

The requirement to spend or allocate 60% of the funds received via the proposed CBC would drastically change how Guelph funds large recreation infrastructure. Funds to build arenas, swimming pools or acquire land for parks and sports fields require substantial investment that can take years of accumulation of funds to afford.

The City of Guelph requests that the definition of the word "allocate" includes ear-marking funds for future large projects where spending will not occur for many years until funds are sufficiently accumulated.

Section 42 and 51.1: Eliminating the alternative rate

The proposed legislation removes reference to the alternative rate for parkland dedication. The contemplated changes would result in less parkland overall, and more specifically, less parkland for residents that purchase homes under the proposed legislation. This would either create a service level disparity between 'older' homes and 'newer' homes or would require that municipalities contemplate tax increases to maintain parkland service levels. This results in an increased burden on taxpayers and a significant shift away from the 'Growth pays for Growth' principle.

The City of Guelph requests that the alternative rate for parkland dedication remains so that future communities can enjoy the same access to parks as older communities.

Section 70.2. Orders re development permit system

The City of Guelph requests more information and clarification on the criteria for the Minister to require a local municipality to adopt or establish a development permit system. The City's previous examination of development permit systems illustrated that alternative instruments would be more effective in implementing the goals of the Growth Plan due to the challenges associated with a development permit system. As a result, greater certainty around this provision would allow the City to better assess the proposed change.

Appeal to L.P.A.T

Bill 108 proposes a fundamental shift in the system of land use planning appeals in the Province of Ontario, and generally repeals changes introduced through Bill 139. The effect of these changes is a return to the "de novo hearing" standard of review that had historically been applied in appeals to the former Ontario Municipal Board.

A return to the hearing "*de novo*" standard as proposed in the current Bill 108 is contrary to the province's agreement that municipalities are a mature, accountable order of government and that local governments should have the appropriate authority to uphold their provincially approved Official Plans and promote community driven planning.

The City of Guelph continues to support a system of true appeals under which reviews of planning decisions are undertaken on a standard of reasonableness, primarily based on the record before the approval authority. Elected municipal councils should

continue to have primary responsibility for local planning decisions, as their decisions d comply with the *Planning Act* are consistent with applicable provincial policies they should not be subject to review by an external agency. The Local Planning Appeal Tribunal (LPAT) should have the power to overturn or replace a municipal level decision on a planning matter only under the conditions where the original decision is outside of its jurisdiction, is inconsistent with good planning principles (*e.g.* "political" decisions), or does not conform with relevant local and provincial planning policies.

A more appropriate balance between the current (*i.e.* post Bill 139) system and the previous (pre Bill 139) system would be to permit the LPAT to overturn or replace only those municipal decisions found to be lacking jurisdiction or not falling within a reasonable spectrum of good planning as established by local and provincial policies, and eliminating the current requirement to refer those decisions back to the municipal councils that made them. This will ensure the decisions of democratically-elected municipal council are respected while offering a more streamlined process for appeals. It would also encourage better decision making at the municipal level by providing improved guidelines on local planning matters and meaningful oversight of those decisions.

If the *de novo* standard is to be reintroduced despite the City's objections, the City of Guelph recommends that the *Planning Act* include stronger requirements that the LPAT fully consider the decision of municipal councils. There should be specific direction to the LPAT that it only replace a municipal decision with its own decision where there is a specific, identified, public interest in doing so. Where a municipal level decision satisfies applicable policies and the public interest, that the Tribunal might have made a different decision on the same facts should not, on its own, be sufficient grounds to overturn the decision of an elected municipal council.

The changes introduced through the current Bill 108 would also limit the ability for new evidence introduced at a hearing to be sent back to the municipality for review. This has the potential to undermine the process at the municipal level by discouraging applicants from putting their "best foot forward" as part of the initial application. The tactic of introducing a revised or "improved" application as the subject of a *de novo* review on appeal to the former Ontario Municipal Board was not uncommon before Bill 139. Combined with the proposal to reduce timelines for municipal review of applications, the effect will be to reduce the ability to improve applications at the municipal level and reduced input from elected municipal councilors on proposals before they may be appealed to the LPAT.

The City is supportive of changes that will allow the LPAT to restrict new evidence from being entered on the hearing of an appeal, as this is consistent with the view that appeals ought to continue to be based primarily upon the record of the application at the municipal level. The City would propose that these provisions be strengthened to indicate that the LPAT shall only allow new evidence to be introduced

where it is satisfied that the municipal record is insufficient to make a decision on the appeal.

The City of Guelph generally supports restrictions on appeals, and who may be a party to an appeal, introduced through Bill 108 as long as they achieve the objective of reducing the number of appeals to local planning decisions. The proposed restrictions on appeals to non-decisions on official plans that are not exempt from approval are important, as they will resolve the current situation where the entirety of an official plan may be appealed by any person where an approval authority fails to make a decision on that plan. Restrictions on who may appeal a decision to approve or refuse a draft plan of subdivision will potentially result in a reduced number of appeals of municipal decisions. It must be noted, however, that there may be instances where other related applications required in conjunction with plan of subdivision applications (*e.g.* Zoning By-law amendments, Official Plan amendments) may remain subject to appeal by third parties. There may also be circumstances were legitimate public interest appeals will be restricted by these changes.

It is unclear whether the transitional rules introduced for *Planning Act* appeals will require existing appeals under the post Bill 139 system to be re-filed under the post Bill 108 system. The City of Guelph would request the opportunity to review and comment on the proposed regulations before this transition takes effect.

Section 37, 42 and 51.1: Transitional concerns

The City of Guelph notes below a number of additional concerns and impacts that may arise with the passing of Bill 108 in its current form:

- Non application of Section 42(6.1) to CBC requires an amendment to the building code to include a section 37 by-law as applicable law for the purposes of subsection 8(2) of the Building Code Act, 1992.
- Non application of s. 42(7) to CBC means redevelopment will potentially be subject to a fresh charge even where parkland conveyance or even previous community benefits or DCs have been paid for the same services.
- Lack of rationalization between proposed Section 37 and 51.1 means that municipalities who chose to take land as a condition of subdivision approval will be unable to impose a charge for soft services. Alternatively, if a CBC is imposed, it may be forced to buy or expropriate land within the proposed subdivision from the developer for the provision of park and other recreational services which will likely require paying at a greater rate than the rate used to determine the charge.
- Key terms in Section 37 are not defined and will need further clarity in the development of the regulations including the words “allocated”, “value of the land”, “land” and “development”.
- Effect of repealing current Section 37 will be that the certain Official Plan (OP) policies that require “bonusing” to allow increased height and/or density will be unavailable (i.e. They will be capped at lower heights and densities then were previously available through the application of the existing section

37 of the Planning Act).

- Proposed Section 37 "in kind contribution" language appears to require reduction of payments to be based on estimates rather than actual costs. There is no allowance made to permit a credit where the amount of an in kind contribution would exceed the charge. No statutory power to enter into agreements, and nothing on how in-kind community benefits and DC credit for services agreements are allowed to interact. In kind contributions also do not appear to be limited to facilities, services or matters included in the CBC by-law.
- Proposed Section 37 could be read as permitting multiple charges where there are multiple triggers; or the land value cap could be circumvented where multiple triggers exist.
- Proposed Section 37(13), which deals with payment of CBCs under protest, appears to say "shall" where it should likely say "may".

Schedule 11 – Amendments to the Ontario Heritage Act

Changes proposed by Bill 108 to the Ontario Heritage Act (OHA) could significantly impact the City of Guelph's ability to conserve its heritage resources.

Adjudication of heritage designation by-laws and Part IV heritage matters by LPAT

Under the proposed changes to the OHA, Part IV designation by-law appeals would be adjudicated by the LPAT. Currently, Council has the final authority for heritage designation under Part IV of the OHA. Designations (and alterations) can be referred/appealed to the Conservation Review Board (CRB), but its members review the merits of a Council decision and make a recommendation back to Council- their decisions are not binding.

The City of Guelph has significant concerns with proposed amendments that reduce municipal Council's decision-making authority. It is recommended that municipal Councils retain their current authority on all Part IV heritage matters. Such appeals should only be permitted to new heritage designations initiated post-Bill 108.

Further, the City does not support broadening the scope and type of hearings managed by the LPAT. The inclusion of Part IV heritage matters under the LPAT's authority will add complexity to the heritage process, as well as incur additional staff resources and costs to municipalities and applicants.

LPAT adjudicators should have heritage expertise

The proposed elimination of the existing CRB hearing process and recommendation will give control over municipal heritage protection to the LPAT.

The City is concerned that the LPAT members will not have the heritage expertise comparable to that of CRB members. Taking authority over heritage designation

away from municipalities could have a negative impact on heritage conservation, which should be determined locally as well as respected.

Alteration vs. demolition

Bill 108 proposes that appeals to a Council's decision with respect to both proposed alterations under section 33 and proposed demolitions under section 34 of the OHA, be adjudicated by the LPAT.

The City believes that municipalities should retain control over the final authorization of alterations to designated heritage properties. With the narrowing of the definition of "alteration", significant changes will be required to the City's heritage permit application process to ensure that the proposed legislative requirements are followed with respect to the proposed demolition of any heritage attribute.

Complete application requirements for alteration and demolition permits

Bill 108 proposes a new 60-day timeline for notifying property owners on when their (heritage permit) applications for alteration and demolition are complete – a new concept in the context of the OHA. However, the Bill is unclear in terms of what would occur in the event of a "notice of incomplete application."

The City recommends that a process to address incomplete applications should be provided by the legislation. Given the emphasis on expeditious decision-making and mandatory adherence to a complete application review for all alterations and demolitions, the City will need to review and adapt the existing heritage permit application process, including the creation of new documents for complete and incomplete applications.

Principles required to designate

Bill 108 proposes to amend the OHA to enable the Province to introduce "prescribed principles" in relation to Part IV properties as well as heritage conservation districts (HCDs) that a Council will be required to consider when making decisions about designating a property or district, or when making decisions affecting the property or district. Draft "prescribed principles" have not yet been released, and as such, the potential implications of this requirement are uncertain.

The City has concerns about the relationship between provincial "prescribed principles" and the stated objectives of a HCD Plan that is already in force. In addition, the new language that is proposed to be inserted into section 34.5(2) of the OHA makes it unclear how individual property attributes are intended to be regulated within a district plan area which, by definition, is intended to manage change on an area-wide scale and currently provides only general policies and

guidelines for alterations. Consultation on the "prescribed principles" should be undertaken with municipalities to determine the extent of revisions required to the City's existing HCD plan.

Interim protection during designation process

The City requests that the Province clarify that a property subject to an appealed designation by-law would also be treated "as designated" for the purposes of the OHA until the matter is adjudicated by the LPAT.

Restricting designation to 90 days after a "prescribed event"

Under Bill 108, Council will be required to consider and make a decision on a notice of objection to the designation of a property under section 29(1) of the OHA within 90 days after the end of the 30-day period during which a notice of objection may be filed. Until municipalities have an opportunity to review the regulations, it is difficult to determine the full impact of the proposed changes.

Clarification of defined "prescribed" terms and revision of regulations

New (or revised) criteria for determining whether a property has cultural heritage value or interest could be prescribed as a result of Bill 108; however it is currently unknown to what extent the changes will be to the existing criteria set out in O. Reg. 9/06.

The City recommends that before Bill 108 is passed or its corresponding regulations finalized, municipalities should be consulted on what constitutes a "prescribed event" (in addition to "prescribed criteria", "prescribed principles," and all the non-existent supporting regulations).

Notice to owners regarding the listing of heritage properties

Under Bill 108, a municipal Council will be required to provide notice to owners within 30 days of its decision to list a property on the heritage register as a non-designated property of potential cultural heritage value or interest. Regulations will prescribe the contents of the notification. This is generally the process already followed by the City of Guelph, although the contents of the notice will require changes to ensure that the prescribed content is included.

Bill 108 proposes that property owners be able to object to Council's decision to list a property, and Council be required to consider any objection and make a second decision to confirm or remove the listing. Council would then provide an additional notice to the owner within 90 days of its decision.

Under the proposed new section 27(3) of the Ontario Heritage Act, the City recommends that a time limit for objections be specified. It is noted that this new

objection process would not apply to properties included in the heritage register before Bill 108 comes into force.

The City recognizes that Bill 108 will substantially impact the resources available to heritage planners as it will require updates to internal procedures and information systems in order to ensure the delivery of heritage reports and notices within the specified timelines.

Schedule 5 – Amendments to the Endangered Species Act

The City of Guelph has a long history of protecting its natural heritage. In 1993, the Hanlon Creek Subwatershed Study put the City at the forefront of watershed planning in Southern Ontario. This led to a series of subsequent studies, which were a key influence on the evolution of our Official Plan policies. In 2010, the City completed its natural heritage strategy. This strategy provided the technical basis and background for the development of a new comprehensive set of natural heritage policies and the identification of a natural heritage system, one of the first in Ontario. These policies came into full effect in 2014. Through this environment first approach the City has made a commitment to protect, monitor, restore and enhance the natural heritage system to support biodiversity. Many of these commitments will be realized through the implementation of our Natural Heritage Action Plan that was developed in 2018.

The natural heritage system contributes to enhancing the quality of life within the city and represents a portion of the City's natural assets that supports natural processes, populations of indigenous species and sustains local biodiversity.

Recently the City of Guelph released its Community Plan, the culmination of a year-long engagement process where we heard from more than 10,000 community members, visitors, and City staff. One of the common community values identified in our plan is environmental stewardship. We are passionate about our green spaces and the beauty of our natural environment. We understand the crucial need to take care of it. We are proud to be environmental leaders, helping address pressing national and international concerns.

In light of the above, the proposed changes within Schedule 5 of Bill 108 (i.e. the proposed changes to the Endangered Species Act) are of concern to the City. Many of the changes run contrary to science-based evidence and decision-making. Further, the proposed change to allow proponents to take advantage of paying into a conservation fund rather than protecting Species at Risk and their habitats could potentially result in a net loss of species/habitats in Guelph. As proposed, the monies collected in this arrangement do not necessarily have to be directed towards the conservation of the particular species/habitat that was impacted and do not even have to be used for beneficial projects in the geographical area where the impacts occur. Additionally, the agency overseeing the fund would be able to spend

a portion of the monies collected on its establishment, administration and operation. Overall, the proposed changes to the Endangered Species Act appear to represent reduced protection for Species at Risk and their habitats that will result in worse outcomes compared to the existing legislation.

Given our concerns, the City urges the province to remove Schedule 5 from Bill 108.