

Report To:	Regional Chair and Members of Regional Council
From:	Jim Harnum, Commissioner, Public Works
Date:	May 22, 2019
Report No. - Re:	PW-31-19 - Information and Preliminary Comments on the Proposed <i>Environmental Assessment Act</i> and <i>Environmental Protection Act</i> Related Changes and Schedules 6 and 7 in Provincial Bill 108

## RECOMMENDATION

1. THAT Report No. PW-31-19 re: "Information and Preliminary Comments on the Proposed *Environmental Assessment Act* and *Environmental Protection Act* Related Changes and Schedules 6 and 7 in Provincial Bill 108", be endorsed by Regional Council.
2. THAT staff be directed to prepare a submission to the Province of Ontario on Environmental Registry of Ontario (ERO) 013-5101 "Modernizing Ontario's Environmental Assessment Program", ERO 013-5102 "Modernizing Ontario's *Environmental Assessment Program-Environmental Assessment Act*", Schedule 6 of Bill 108 pertaining to the *Environmental Assessment Act*, ERO 013-5000 "Excess Soil Regulatory Proposal and Amendments to the Site Condition (Brownfield) Regulation", ERO 019-0023 "Holding Polluters Accountable by Enhancing Ministry of the Environment, Conservation and Parks' Enforcement Tools" and Schedule 7 of Bill 108 pertaining to the *Environmental Protection Act* consistent with the direction outlined in Report No. PW-31-19.
3. THAT the Regional Clerk forward a copy of Report No. PW-31-19 to the Ministry of the Environment, Conservation and Parks, the Halton Area MPPs, the City of Burlington, the Town of Halton Hills, the Town of Milton and the Town of Oakville for their information.

## REPORT

### **Executive Summary**

- Bill 108, re: *More Homes, More Choice Act, 2019* passed First Reading in the Legislative Assembly of Ontario on May 2, 2019, with a Second Reading currently underway. Schedule 6 to Bill 108 outlined proposed changes to the *Environmental*

*Assessment Act, 1990* and Schedule 7 to Bill 108 outlined proposed changes to the *Environmental Protection Act, 1990*.

- On April 25, 2019, the Province of Ontario posted two notices for consultation on the Environmental Registry of Ontario (ERO) regarding proposed changes to the *Environmental Assessment Act*. If enacted, changes to legislation may have an impact to the Municipal Class Environmental Assessment process in Halton Region. The deadline for Halton Region to submit comments is May 25, 2019.
- On May 1, 2019, the Province of Ontario posted two notices for consultation on the Environmental Registry of Ontario regarding proposed changes to the *Environmental Protection Act*. The deadline for Halton Region to submit comments is May 31, 2019.

## Background

Provincial consultations on the Growth Plan and the Housing Supply Action Plan have resulted in Bill 108 – More Homes, More Choice Act. Bill 108 proposes to amend a number of Provincial statutes through different Schedules of the Bill, including:

- Schedule 1 *Cannabis Control Act, 2017*
- Schedule 2 *Conservation Authorities Act*
- Schedule 3 *Development Charges Act, 1997*
- Schedule 4 *Education Act*
- Schedule 5 *Endangered Species Act, 2007*
- Schedule 6 *Environmental Assessment Act*
- Schedule 7 *Environmental Protection Act*
- Schedule 8 *Labour Relations Act, 1995*
- Schedule 9 *Local Planning Appeal Tribunal Act, 2017*
- Schedule 10 *Occupational Health and Safety Act*
- Schedule 11 *Ontario Heritage Act*
- Schedule 12 *Planning Act*
- Schedule 13 *Workplace Safety and Insurance Act, 1997*

There are specific changes associated with Bill 108 and/or the implementation of the Housing Supply Action Plan that have been posted by the Province of Ontario to the Environmental Registry. Below a list of postings, their ERO reference number and timing for consultation:

1. *Planning Act*, Schedule 12 of Bill 108 (ERO 019-0016)
  - consultation open until June 1, 2019;
2. *Development Charges Act*, Schedule 3 of Bill 108 (ERO 019-0017)
  - consultation open until June 1, 2019;
3. *Ontario Heritage Act*, Schedule 11 of Bill 108 (ERO 019-0021)
  - consultation open until June 1, 2019;

4. *Environmental Assessment Act*, Schedule 6 of Bill 108 (ERO 013-5102)
  - consultation open until May 25, 2019;
5. Excess Soil Management Regulatory Proposal through changes to the *Environmental Protection Act* (ERO 013-2774)
  - consultation window closed June 2018;
6. *Endangered Species Act* (ERO 013-5033)
  - consultation window closes on May 18, 2019;
7. *Conservation Authorities Act* (ERO 013-5018 and ERO 013-4992)
  - consultation closes on May 21, 2019;
8. Growth Plan transition regulation through O. Reg. 311/06 (ERO 019-0018)
  - consultation open until June 1, 2019

Unless listed above, the balance of the proposed changes related to Bill 108 have not been posted for consultation.

This report addresses matters related to the *Environmental Assessment Act* (Schedule 6 in Bill 108) and the *Environmental Protection Act* (Schedule 7 in Bill 108). Comments related to changes that have implications for Growth Related Financing (*Development Charges Act* and part of the *Planning Act*) are provided in Report No. FN-31-19. Changes related to the New Growth Plan and transition regulation, the *Planning Act* and the *Ontario Heritage Act* are profiled in Report No. LPS70-19.

### ***Environmental Assessment Act***

In recent years, the Ministry of the Environment, Conservation and Parks (formerly the Ministry of Environment and Climate Change) has been interpreting the *Environmental Assessment Act* as it relates to requests for referral to an individual Environmental Assessment (or Part II Order) with unexpected consequences, namely:

- Part II Order Requests could be not be restricted to a specified review period. A Part II Order Request could be submitted and would be accepted by the Ministry of the Environment, Conservation and Parks at any time, which provided uncertainty with respect to implementation of a project as well as a project's status to receive funding from upper levels of government (i.e. contingent on *Environmental Assessment Act* requirements having been fully addressed), and;
- Schedule A and A+ undertakings, which include operational activities such as snow plowing, were subject to Part II of the *Environmental Assessment Act*. A process and timeline for review of these requests was not clear (i.e. if a request relates to plowing of snow is received, what should a Municipality do?) These undertakings had been considered not subject to Part II of the Act and could not be elevated to a higher degree of review such as an Individual Environmental Assessment.

From a Public Works Department perspective, the current process for Municipal Class Environmental Assessments as it related to timely decisions to Part II Order Requests has a significant impact on project timelines wherein projects are delayed until the Minister reviews the requests and provides a decision. In some cases, this has been in excess of two years.

Bill 108, re: *More Homes, More Choice Act, 2019*, passed First Reading in the Legislative Assembly of Ontario on May 2, 2019, with a Second Reading currently underway. Schedule 6 to Bill 108 outlined proposed changes to the *Environmental Assessment Act, 1990* wherein the Province of Ontario will enact several initial actions to provide immediate relief under the *Environmental Assessment Act* as outlined in ERO 013-5102 when Bill 108 receives Royal Assent, namely:

- Exempting low-risk activities such as those identified as Schedule A and A+ in the Municipal Class Environmental Assessment;
- Providing the Director of the Environmental Assessment and Permissions Branch the authority to make administrative amendments/changes to an approved Class Environmental Assessment;
- Grounds for a Part II Order are scoped to matters pertaining to an existing aboriginal or treaty rights of the aboriginal peoples of Canada or a prescribed matter of provincial importance;
- Requests for a Part II Order are limited to residents of Ontario;
- The Minister will decide on a Part II Order request by a prescribed deadline and will provide a written reason why a decision was not made by a deadline;
- Part II Order requests will be reviewed by the Director of Environmental Assessment and Permissions Branch to determine whether or not the matter pertains to an existing aboriginal or treaty rights of the aboriginal peoples of Canada or a prescribed matter of provincial importance, and;
- Amendment to wording in Subsection 31 will provide greater clarity as to when and whom the Minister may delegate the reconsideration of a decision to the Tribunal.

### ***Environmental Protection Act***

The *Environmental Protection Act* is the principal pollution control statute in the Province of Ontario. It aims to protect and conserve the Province of Ontario's natural environment.

Proposed changes have been in consultation with stakeholders since 2016. In April 2018, the then Ministry of the Environment and Climate Change posted a notice for consultation on the Environmental Registry of Ontario "Excess Soil Management Regulatory Proposal" (ERO 013-2774). Given Halton Region's role in reviewing

development applications with regard to contaminated sites, staff provided comments pertaining to the Proposed Amendments to O. Reg. 153/04 - Record of Site Condition to Ministry of Environment, Conservation and Parks on June 15, 2018.

Bill 108, re: *More Homes, More Choice Act, 2019*, passed First Reading in the Legislative Assembly of Ontario on May 2, 2019, with a Second Reading currently underway. Schedule 7 to Bill 108 outlined proposed changes to the *Environmental Protection Act, 1990* wherein the Province of Ontario plans to enact several initial actions, namely:

- Clarify rules associated with managing and transporting excess soil, limit the amount of healthy soil being sent to landfill and lower greenhouse gas emissions through a new excess soil regulation and consequential amendments to Ontario Regulation 153/04 (Record of Site Condition Regulation) and Regulation 347 (General - Waste Management) under the *Environmental Protection Act*.
- Clarify rules and remove unnecessary barriers to redevelopment and revitalization of historically contaminated lands to address practical challenges and reduce barriers to redevelopment and revitalization of historically contaminated lands, putting vacant, prime land back to good use, while protecting human health and the environment.
- Deploy new enforcement tools to ensure compliance with the Province of Ontario's environmental laws, including future regulations to prescribe administrative penalties in areas such as the management of excess soil, and modernized administrative penalties and seizure powers such as the ability to seize vehicle plates when an environmental violation occurs for out of province haulers who illegally dump excess or contaminated soil.

## **Discussion**

### ***Environmental Assessment Act***

On April 25, 2019, the Province of Ontario posted a notice for consultation on the Environmental Registry of Ontario (ERO [013-5101](#)) regarding a discussion paper entitled "Modernizing Ontario's Environmental Assessment Program". In the "Made in Ontario Environmental Plan – Preserving and Protecting our Environment for Future Generations", the government committed to modernize the Province of Ontario's environmental assessment process, to eliminate duplication, streamline processes, provide clarity for applicants, improve service standards to reduce delays, and better recognize other planning processes. The discussion paper outlines some key features of the environmental assessment process, identifies the initial actions to provide immediate relief, and sets out a vision to bring the environmental assessment program into the 21<sup>st</sup> century.

Staff are recommending that Halton Region provide the following comments on Environmental Registry of Ontario 013-5101 in support of the proposed changes:

- Ensure better alignment between level of assessment and level of environmental risk with a project – support this approach, replace arbitrary assessments like cost (such as for roads in the Municipal Class Environmental Assessment) with environmental risk based criteria for triggers used to determine the appropriate level of rigour and assessment.
- Eliminate duplication between environmental assessments and other planning and approvals - support this concept and suggest that the Municipal Class Environmental Assessment be better aligned with the *Planning Act*, in particular.
- Find efficiencies in the environmental assessment process and related planning and approvals process to shorten the timelines from start to finish – support the introduction of timelines for review from all government agencies, allowing proponents to initiate and streamline certain permits and approvals would shorten timelines. Support the inclusion of how the timelines will be enforced.

A separate notice for consultation was posted the same day (ERO [013-5102](#)). “Modernizing Ontario’s Environmental Assessment Program – *Environmental Assessment Act*” proposal provides initial actions to provide immediate relief and modernize the environmental assessment program by focusing on high-risk projects by exempting low-risk activities such as snow-plowing and de-icing operations, constructing roadside parks and adding bike lanes. In addition, provide certainty for the timeline for review of requests, known as Part II Order Requests or “bump ups” by the Minister of Environment, Conservation and Parks and clarify the Minister’s authority to reconsider an approval of a project and ask for additional information on an individual Environmental Assessment, if deemed appropriate, as well as clearly defining which matters Part II Order Requests or “bump ups” would apply.

Staff are recommending that Halton Region provide the following comments on ERO 013-5102 in support of the proposed changes:

- The release of Bill 108 provided the clarity needed to understand what the initial actions or ‘quick wins’ that were outlined in ERO 013-5102. It is anticipated that they will provide greater certainty with respect to the timelines for decisions on Part II Order requests. In addition, it will focus resources on issues with the highest degree of risk and close a loop hole that was created with the interpretation of the Act to include Schedule A and A+ activities, operational in nature, to be subject to Part II of the Act.

The deadline for Halton Region to submit comments is May 25, 2019.

### ***Environmental Protection Act***

On May 1, 2019, the Province of Ontario posted a notice for consultation on the Environmental Registry of Ontario (ERO [013-5000](#)). “Excess soil regulatory proposal and amendments to Record of Site Condition (Brownfields) Regulation” proposes excess soil

regulations that would clarify the requirements for the reuse of excess soil in Ontario, as well as proposed amendments to regulations related to brownfield redevelopment.

Staff are recommending that Halton Region provide the following comments on ERO 013-5000 regarding the proposed changes:

- Among staff comments will be a recommendation that any reference to municipal wellhead protection areas should include Source Protection Plans prepared under the *Clean Water Act, 2006*, in order to ensure that the current wellhead protection areas are considered.
- Staff continue to engage in conversations with the Ministry of the Environment, Conservation and Parks over concerns regarding Phase I and Phase II Environmental Site Assessments potential differences between existing soil quality standards by those proposed under the new soil rules standards.

It is further recommended that Halton Region's local municipalities review and comment on the proposed soil rules, as these changes may impact planning at the local level.

Furthermore, staff will review ERO 013-5000 for alignment with previously submitted comments on "Excess Soil Management Regulatory Proposal" (ERO 013-2774) and submit any additional comments.

A separate notice for consultation was posted the same day (ERO [019-0023](#)). "Holding polluters accountable by enhancing Ministry of the Environment, Conservation and Parks' enforcement tools" proposes enhanced and additional enforcement tools that include higher administrative penalties penalty per contravention and a process to seize and dispose of plates from Ontario vehicles and out-of-province vehicles while further ensuring no new plates or permits are issued until the matter has been resolved.

The proposed changes to the *Environmental Protection Act* enforcement provisions, which are duties performed by the Province, staff are recommending be supported.

The deadline for Halton Region to submit comments is May 31, 2019.

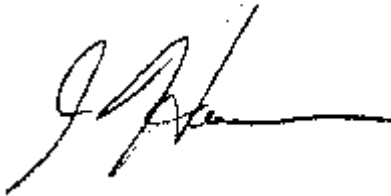
FINANCIAL/PROGRAM IMPLICATIONS

There are no financial implications arising from this report. Staff continue to monitor all changes associated with the Province of Ontario's proposed amendments through Bill 108. Staff will provide an update to Regional Council if any further changes related to this effort result in financial impact to Halton Region.

Respectfully submitted,



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Jim Harnum  
Commissioner, Public Works

Approved by



Jane MacCaskill  
Chief Administrative Officer

If you have any questions on the content of this report,  
please contact:

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Attachments: None