August 6, 2019

# The Honourable Steve Clark, M.P.P., Minister of Municipal Affairs and Housing

Ministry of Municipal Affairs and Housing

777 Bay Street

Toronto, Ontario

M5G 2E5

# Re: ERO 019-0181

Dear Minister:

This submission represents the City of Burlington’s comments in response the proposed new regulations and regulation changes under the Planning Act, including transition matters related to Schedule 12 of *Bill 108 – the More Homes, More Choice Act, 2019.*

**1. It is proposed that the following changes which are part of Schedule 12 to Bill 108 be transitioned as follows:**

•Expanding the grounds of appeal of a decision on an official plan/amendment or zoning by-law/amendment and allowing the Local Planning Appeal Tribunal to make any land use planning decision the municipality or approval authority could have made would apply to:

•appeals of decisions that have not yet been scheduled for a hearing by the Local Planning Appeal Tribunal regarding the merits of the matter before the Tribunal

•Expanding the grounds of appeal of a lack of decision on an official plan/amendment or zoning by-law amendment and allowing the Local Planning Appeal Tribunal to make any land use planning decision the municipality or approval authority could have made would apply to:

•appeals of the failure of an approval authority or municipality to make a decision within the legislated timeline that have not yet been scheduled for a hearing by the Local Planning Appeal Tribunal regarding the merits of the matter before the Tribunal

•The removal of appeals other than by key participants (e.g. the province, municipality, applicant) and the reduction of approval authority decision timelines for non-decisions of official plan/amendments would apply where the approval authority has not issued a notice of decision at the time the proposed changes come into force.

•The removal of appeals other than by key participants (e.g. the province, municipality, applicant, utility companies, etc.) for draft plan of subdivision approvals, conditions of draft plan of subdivision approvals or changes to those conditions would apply where:

•the notice of the decision to draft approve or change conditions is given, or

•conditions are appealed other than at the time of draft approval

on or after the day the proposed changes come into force (e.g., appeals made during appeal periods that begin once the proposed changes come into force)

•The reduction for decision timelines on applications for official plan amendments (120 days), zoning by-law amendments (90 days, except where concurrent with official plan amendment for some proposal) and plans of subdivision (120 days) would apply to complete applications submitted after Royal Assent.

***City of Burlington Comments***

**Changes to the Basis for an Appeal:**

The expanded grounds for appeal are much broader and more general and will result in less deference being given to planning decisions made by Council. Broadening the grounds for appeal is expected to lead to an increase in the number of appeals a municipality receives. Responding to these appeals requires significant municipal resources. Municipalities should be afforded time to transition their practices and procedures to adjust to the changes made by Bill 108.

The expanded grounds for appeal should not apply to appeals that have already been made, regardless of whether or not a hearing has been scheduled by the LPAT. The expanded grounds should only apply on a go forward basis after the Bill 108 changes to the *Planning Act* are in force and effect.

**Reduction of *Planning Act* Application Processing Timelines:**

Municipalities require time to adjust their practices and procedures to ensure effective implementation of the significant planning changes under Bill 108. Accordingly, changes to decision-making timelines should apply on a go-forward basis to complete planning applications that are submitted after the Bill 108 *Planning Act* provisions come into force and effect and should not apply retroactively to June 6, 2019, the date that Bill 108 received Royal Assent. If these new timelines are to be effective for applications submitted after June 6, 2019, the Province should:

* Allow a robust pre-consultation process that provides municipalities the opportunity to conduct public engagement and identify issues early in the process, which could be addressed / resolved before an application is formally submitted and the decision timelines begin;
* Allow municipalities to deem an application incomplete for qualitative reasons (e.g. a required supporting study did not provide sufficient technical analysis in accordance with established submission criteria); and
* Add provisions that allow the timelines to be stopped / paused in order to allow the parties to work through any technical issues rather than simply allowing the timelines to expire and having the applicants file ‘protective’ appeals prematurely to the LPAT.

**2. Community Planning Permit**

Schedule 12 to Bill 108 includes provisions to remove the ability to appeal the official plan policies required by regulation for the establishment of a community planning permit system when the Minister issues an order to require a local municipality to adopt or establish a system. To further facilitate the implementation of the system, a change is also proposed to the community planning permit regulation that would remove the ability to appeal the implementing by-law. This change would support the streamlining of development approvals in areas where the Minister required a community planning permit system to be established.

***City of Burlington Comments***

Removing the ability to appeal the Community Planning Permit OP policies and implementing by-law is a positive step that would allow this process to be properly implemented, as intended.

The province should clarify if there will be timeframes associated with the implementation of the Minister ordered Community Planning Permit System. If so, these timelines should allow for detailed technical analysis and public consultation to take place. The province should also clarify if there are specific criteria that will be used to determine when the Minister may order a Community Planning Permit System.

The province should identify and provide for resources to support the upfront costs associated with the development and implementation of any Community Planning Permit Systems that may not have been planned for in the municipal budget.

**3. A regulation is proposed under s. 35.1(2)(b) of the Planning Act setting out requirements and standards to remove barriers to the establishment of additional residential units, as follows:**

•One parking space for each of the additional residential units which may be provided through tandem parking

* Where a municipal zoning by-law requires no parking spaces for the primary residential unit, no parking spaces would be required for the additional residential units
* Where a municipal zoning by-law is passed that sets a parking standard lower than a standard of one parking space for each of the additional residential units, the municipal zoning by-law parking standard would prevail
* “Tandem parking” would be defined as a parking space that is only accessed by passing through another parking space from a street, lane or driveway

•An additional residential unit, where permitted in the zoning by-law, may be occupied by any person in accordance with s. 35(2) of the Planning Act, and, for greater clarity, regardless of whether the primary unit is occupied by the owner of the property, and

•An additional residential unit, where permitted in the zoning by-law, would be permitted without regard to the date of construction of the primary or ancillary building.

***City of Burlington Comments***

A Halton Area Planning Partnership (HAPP) joint submission was provided to MMAH in June 2017 in response to EBR Posting 012-9694 on a proposed regulation prescribing requirements and standards for second residential units, which did not advance past consultation.

The proposed new regulation setting out requirements and standards to remove barriers to the establishment of additional residential units reflects the requirements and standards in the initial proposed regulation (2017). There are no concerns with the regulation proposed under s. 35.1(2)(b) of the Planning Act.

**4. (a) As Schedule 12 to Bill 108 provides for the removal of provisions in the Planning Act for second notice of subdivision applications and provisions for some non-decision appeals for official plans/amendments, housekeeping changes are required in O. Reg. 544/06 “Plans of Subdivision” and O. Reg. 543/06 “Official Plans and Plan Amendments” to remove the redundant notice of a subdivision application and the notice requirements for non-decision appeals, which would no longer be necessary.**

***City of Burlington Comments***

No concerns identified.

**4. (b) Schedule 12 to Bill 108 provides for section 37 (Increased Density) being replaced by the proposed provisions in respect of a community benefits charge. Housekeeping changes are required to amend O. Reg. 232/18: “Inclusionary Zoning” to remove the restrictions and prohibitions in respect of the municipal authority under section 37 (Increased Density) with inclusionary zoning.**

***City of Burlington Comments***

No concerns identified.

Thank you for providing the opportunity to comment on these regulations and regulation modifications.

Respectfully,

Helen Walihura

Government Relations Specialist