November 13, 2019

Building Services Transformation Branch

777 Bay Street, 16th Floor

Toronto, ON M5G 2ES

Dear Building Services Transformation Branch,

**RE: Environmental Registry of Ontario Number 019-0422, Transforming and Modernizing the Delivery of Ontario’s Building Code Services**

Peterborough Public Health (PPH) is the Principal Authority delivering services related to Part 8 of the Ontario Building Code (OBC) for the City of Peterborough and six local municipalities within the County of Peterborough. Our staff related to the enforcement of the OBC include one Chief Building Official and three qualified Inspectors for onsite sewage systems. PPH has reviewed the discussion paper titled *Transforming and Modernizing the Delivery of Ontario’s Building Code Services* published by the Ministry of Municipal Affairs and Housing, Fall 2019. We would like to take this opportunity to comment on the discussion paper and the proposed use of an administrative authority.

## **Theme 1: Getting people working in the building sector**

## Examination Development and Delivery

PPH often receives feedback from local individuals attempting to qualify as an onsite sewage system installer. We commonly hear that the exam is long, challenging, and not reflective of the work that the installer does. Many individuals attempt the exam several times before successfully achieving the minimum 70% passing grade. The structure of these exams has been consistent for quite some time and needs to be evaluated. Having exams that are reflective in content and length of the complexity of the Building Code material being tested would be more suitable than arbitrarily requiring all examinations to be comprised of 75 multiple choice questions.

## Pre-Qualification Training

With respect to pre-qualification training, there tends to be a shortage of *local* courses offered through George Brown College. Although online training options are available, this is not typically the preference of the individuals we work with. Accordingly, the onus is placed upon other local and provincial agencies to arrange and promote training. The Ontario Onsite Wastewater Association (OOWA) is excellent at coordinating and promoting training courses. Training could be improved by ensuring that courses are offered at various locations across the province, including rural areas, to ensure equal access to training. A role for the administrative authority could be working with other local agencies, such as OOWA or the Ontario Building Officials Association (OBOA) to coordinate training efforts and promotion. It would be beneficial if there was one centralized database listing the schedule for all training courses across the province. Our office frequently receives calls from individuals inquiring about becoming a qualified sewage system installer and it is difficult to direct the caller to one source of information. It would streamline efforts if all training and qualification information was located in a centralized database.

## Recruiting Experienced Building Code Professionals

As mentioned in the discussion paper, recruitment of Building Officials is challenging. The concept of offering provisional licences for practitioners to gain on-the-job experience before attempting the ministry exams and becoming fully qualified would be a positive change for this industry and would likely facilitate increased recruitment. Having this additional classification of a provisional licence would help to recruit students who are in similar fields of study, but may not have considered a career path as a Building Official. However, it would be important to ensure that the Ministry exams continue to apply in order to become fully qualified, whether or not an individual has enrolled in an internship or holds a provisional licence. This will help to ensure that there is a consistent understanding of the OBC, roles and responsibilities across the province.

## Using Coordinating Professionals

The discussion paper speaks to the use of “Prime Consultants” and “Certified Professionals” in order to support a streamlined building permit application process. However, the paper was not clear as to the qualifications that will be required for these individuals. Additionally, it is concerning whether or not these coordinating professionals will be in rural and northern Ontario. Utilizing these professionals will reduce the active role of local Building Code Officials, and perhaps reduce the application of local knowledge of the area, especially if local Building Officials are not conducting the inspections.

The other consideration that has not been addressed is liability. If coordinating professionals are used for a project, presumably this professional will hold the majority of the liability for a project. There are some unknowns about this; the Municipal Building Official is still issuing building permits and occupancy permits based on letters of assurance from the coordinating professional, so what will the liability be on part of the Municipality? If an engineering firm is used as a certified professional and the firm ceases to exist several years after project completion, what are the implications in the event that there is a structural failure? One of the benefits of having Municipal Building Officials complete reviews and inspections is that the Municipality will always be there in some form, so there is always an agency accountable and responsible for any issues or failures.

The other point that the paper speaks to is the concern of stakeholders that building permit approvals can be a lengthy process. It is important to remember that the OBC has designated timeframes for permit issuance and completion of inspections. If these timeframes are not being adhered to, there are currently no ramifications for Building Code Officials and perhaps efforts would be better spent exploring options for the accountability of Building Code Officials to maintain the legislated timeframes. Furthermore, it is the experience of our office that many delays in permit issuance typically arise from noncompliance with applicable law such as the applicant obtaining a permit from the Conservation Authority prior to the issuance of a Building Permit for a new sewage system. We work with several Conservation Authorities, each with different timeframes required by individual policy. Standardizing the requirements of applicable law (whether Planning Act applications or permits from Conservation Authorities) would help to achieve a streamlined building permit process.

## **Theme 2: Promoting Sustainability and Transparency in the Building Code Profession**

## Public Registry and Registration Process

PPH hosts an annual meeting for onsite sewage system industry professionals. A common item on the agenda is the QuARTS database; we have heard on several occasions from our installers that the current registration process is extremely difficult. Some installers have advised us that they are unaware if and when their qualifications expire and indicate that they do not get notified of expiry by the Ministry. Our Inspectors who use the public registry to search whether someone is a qualified installer experience frequent issues including the database being inaccessible. The paper indicates that Building Code Transformation could include modernization of the current QuARTS database to make it more user-friendly. This would be a welcome change. If professional development credits are implemented for qualified professionals, the system should have the capacity for tracking these credits. Members of the public should easily be able to search for an individual to see if they are qualified. It would also be beneficial to make publicly available other pertinent information such as an individual’s provincial associations (e.g. Ontario Building Officials Association or the Ontario Onsite Wastewater Association), links to a website offered by the individual or the firm the individual is registered with, as well as any previous charges or offences. This would help members of the public make informed decisions when choosing service providers.

## Continuing Professional Development

As mentioned in the Position Paper, there is a lack of continuing professional development (CPD) required for Building Officials. Due to the fact that the building industry is continuously adapting and changing, continuing professional development would be good practice to ensure highly qualified and education professionals are working in the provincial building industry. However, as the paper discusses, many building professionals belong to other associations that require CPD credits or hours. A role for the administrative authority could be coordinating CPD efforts. It would be beneficial if the Ministry established the CPD requirements for each professional qualification under the Ontario Building Code. Qualified professionals could use QuARTS to report their credits or indicate the agency to cross-reference with. For example, the Ontario Onsite Wastewater Association has a Registered Professional Program, which includes continuing education requirements. If the Ministry establishes CPD for onsite sewage supervisors, it would be beneficial to align with these existing requirements and allow for compliance with the OOWA Registered Professional Program to be proof of compliance for Ministry CPD requirements.

## Registration Compliance and Enforcement

It may be beneficial to have provincial Codes of Conduct for various Building Code professionals, particularly for professionals who are not governed by a Code of Conduct through their place of employment, such as a Municipality. Care must be taken to ensure that provincial Codes of Conduct are complementary to Municipal Codes of Conduct. An annual attestation would be necessary to ensure building code professionals are maintaining their requirements, and should be linked to the annual renewal of qualifications through the QuARTS database in order to reduce the reporting burden. This allows for a consequence to be established if the attestation is not completed, which would be the inability to renew one’s qualification. This should be a consideration when the database is modernized.

A complaints process for members of the public would also be beneficial, although significant planning would need to go into establishing such a process to ensure that it is fair, equitable and valuable. Establishing a complaints system means that a response system would also need to be established and there would need to be dedicated individuals to investigate and respond to complaints to ensure consistency across the province. Rather than financial penalties, failure to adhere to compliance with registration requirements should be penalized with a progressive system; for example: a suspension of qualifications for a first offence; requirements to re-write examinations for a second offence; and revocation of qualifications for a third offence.

## **Building Code Administration and Enforcement**

## Enhanced Municipal Enforcement

The establishment of enhanced municipal enforcement tools would be a welcome addition and has been lacking for far too long. The use of administrative penalties can facilitate creating a culture for compliance within a jurisdiction. Additionally, the use of administrative penalties can provide a history of non-compliance when further enforcement action (e.g. prosecution) is taken, which may assist with the determination of penalties. Having administrative penalties would allow agencies to use a progressive enforcement approach, similar to the enforcement of other pieces of legislation such as the Smoke-Free Ontario Act. Enforcement should begin with education, progress to administrative penalties, then to Orders and prosecution, if necessary.

Having set fines for violations of the Building Code Act and Ontario Building Code would be a significant benefit to ensure that Chief Building Officials and Inspectors are performing their enforcement duty to the best of their ability. Discussions between regulators for onsite sewage systems in neighbouring jurisdictions have revealed that prosecution is not always pursued for noncompliance due to time and financial barriers. Having administrative penalties is a critical tool for regulators establish authority, achieve compliance and to be able to demonstrate the seriousness of noncompliance.

## Supporting Local Building Service Delivery

The discussion paper considers providing smaller, rural and/or northern municipalities the ability to enter into agreements with the administrative authority to transfer some or all of their building service delivery. This could certainly be beneficial in areas where recruitment is a challenge or there are knowledge gaps with complex buildings. However, if these agreements are going to be established, there must be opt-out language considered for both the administrative authority and the municipality. The other consideration when utilizing the services of an administrative authority is liability. In situations where an agreement is established, roles, responsibilities and associated liability needs to be clearly outlined.

In order to support smaller, rural, and/or northern municipalities, perhaps it would be beneficial to also consider memorandums of understanding with neighbouring, larger municipalities. These could include sharing of professional expertise, resources, and services. This system could be established between municipalities upon demand at the local level.

## Unincorporated Areas

Considering one of the primary goals of the Ontario Building Code is the protection of health and safety of residents of Ontario, increased enforcement in unincorporated areas would be beneficial and enhance consistency and fairness across the province. Due to the isolation and rural nature of unincorporated areas, a risk-based approach would be logical. The administrative authority should be used for these areas when it is determined that permits and inspections are required, especially for public buildings. The paper is not entirely clear on the funding model for the administrative authority other than to say that the authority may charge fees for services delivered and collect a small levy from municipalities (0.016% of the construction cost estimate on the building permit application). In the event that the authority provides services for unincorporated areas, the authority should also receive funding from the Ministry. Accessibility to the administrative authority must be considered and it may be beneficial to consider satellite offices strategically located across the province to enhance use and uptake.

## **Improving Building Sector Supports**

## Promoting a Consistent Application of Code Requirements

Currently, there are many different interpretations of Code requirements across the province. This is demonstrated monthly at the local OBOA chapter meetings during round-table discussions between Inspectors from different jurisdictions. Specifically with Part 8, discussions among several regulators from neighbouring jurisdictions on an annual basis confirms that there are various interpretations and inconsistent application of Code requirements. Without published interpretation results from the Ministry, this will continue. Establishing a process for Code interpretation requests is one mechanism, but this must be accompanied by a searchable database or registry for these interpretations so that they are written, published, and accessible by all Building Code Professionals and members of the public. This will aid with interpretation and assist with the goal of streamlining the building permit process. When the process for Code interpretation requests is considered, timelines for response must also be established for this type of system to work well.

## Digital Service Transformation

Currently, accessing the Ontario Building Code electronically through the e-Laws website is rather difficult. It is a large document and takes a long time to load on a computer; often, the file will not load when attempting to access from a mobile device. Having a digital version of the Code through a mobile phone application would be a significant improvement for the industry as a whole, but particularly beneficial to Building Code Professionals who are primarily field-based.

## Building Sector Data and Research

PPH collects data only with respect to the Part 8 activities and services that we are responsible for within our jurisdiction. If we were required to submit reports to an administrative authority, that would not likely be an undue burden, however, we would be curious as to what data was to be submitted and the purpose or use for the data. It is always beneficial to have provincial data and research when making evidence-based decisions so having an administrative authority conduct some of these activities for the province would be helpful, provided that there was an annual report published, which could be accessed by Principal Authorities for planning purposes.

## **Funding Better Service Delivery**

It is not clear in the discussion paper if the proposed levy, which may be collected by principal authorities and remitted to the administrative authority will apply to all principal authorities. As mentioned, Peterborough Public Health offers Part 8-related services for the City of Peterborough and several local townships. If the levy is based on reported construction cost estimates, this is typically reported on the permit application for the building, and not on the application for the sewage system. We would seek clarification as to whether or not we would be required to remit a levy to the administrative authority and what that levy would be based on.

Thank you for the opportunity to provide feedback on the proposal to transform and modernize the delivery of Ontario Building Code services. We look forward to learning more about the implementation of these proposed changes.

Sincerely,



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