

City of Hamilton Staff Comments on Bill 5, *Protect Ontario by Unleashing our Economy Act, 2025*

Note that Hamilton Planning Committee and City Council will be reviewing these comments at their July 8, 2025, and July 16, 2025 meetings. Hamilton City Council may choose to amend or add to the enclosed comments which would be provided in a subsequent letter. City of Hamilton staff did not have any comments on Schedule 1, 3, 4, 5, 6 and 8 of Bill 5.

Bill 5 – Protect Ontario by Unleashing our Economy Act, 2025	
Schedule 2 – Endangered Species Act, 2007	
Proposed Change	Comments
The purpose of the act is amended. Amend subsection 2(1), and section, 7, 17. Repeals section 18, 20, 30, 57, and Schedules 1 to 5. Adds subsection 20.3(7) to (9), 20.19, and 22.1. Other various amendments.	Species at Risk (SAR) have been listed as extirpated, endangered, threatened, and special concern because they are the most vulnerable to threats. Hamilton is a biodiversity hotspot with many unique habitats that support both common species as well as SAR. The current <i>Endangered Species Act, 2007</i> has not been a barrier to development in the City of Hamilton with the use of Formal Consultation to identify Species at Risk early in the process. City of Hamilton staff are not supportive of the proposed changes to the <i>Endangered Species Act, 2007</i> as they will: i. undermine successful species recovery efforts within the Province as a whole, as well as within Hamilton; ii. undermine the intent of Provincial and Municipal Strategies (i.e., Ontario Biodiversity Strategy, Hamilton Biodiversity Action Plan, Hamilton's Urban Forest Strategy) as well as Provincial requirements (policies associated in Section 4.1 of the Provincial Planning Statement); and iii. increase species loss within the Province and Hamilton. Specific concerns with the proposed changes include: • Purpose of the Act: The purpose of the act is proposed to be changed to: i. identify species at risk based on scientific information; and ii. provide protection and conservation of species while taking into account social and economic considerations including the need for sustainable economic growth in Ontario.

	There is concern with the proposed change to the purpose of the act as the change does not help protect biodiversity. As noted in the Value for Money Audit “Protecting and Recovering Species At Risk” (November 2021-Office of the Auditor General), habitat loss from land use and disturbance from human alteration is the biggest threat to species in Ontario. The proposed amendment also does not align with the scientific based approach that is to be used to identify species at risk. Since SAR are the most vulnerable species, there should be a focus on efforts to stop or reverse the impacts. These species could become downlisted or removed from the SAR list. Definition of Habitat: The definition of “habitat” within the current <i>Endangered Species Act</i> recognizes that species may use broad areas (directly or indirectly) to carry out life processes (i.e., breeding, rearing, hibernation, migration, feeding) and includes places used as dens, nests, hibernacula, or other residences. The definition of “habitat” is proposed to be changed to only the dwelling place and the area immediately around the dwelling place. There is concern with this approach since it takes a narrow view and does not consider that species rely on areas other than their dwellings to complete life processes. For example, Jefferson Salamander, an endangered species, lives in the soil under logs or leaf litter in a forest. This species travels to woodland ponds to breed. If the proposed definition was used, it would not provide protection for the breeding area for this species. If the <i>Endangered Species Act</i> is changed, the current definition of “habitat” should remain as part of the Act. Listing of Species: The Committee on the Status of Species at Risk in Ontario (COSSARO), an independent committee, currently identifies which plants and animals should be considered as SAR. This is based on scientific knowledge, community knowledge, and Indigenous Traditional Knowledge. Currently, once a species is to be determined as a SAR, it is listed within the regulation. Changes have been proposed that would remove the requirement to create a regulation once a species has been listed. Specific information has not been provided on how this will be implemented. This approach is not equitable and will result in species not being adequately protected. This will result in a loss in biodiversity. In addition, it is unclear how Species of Special Concern will be addressed. These species are considered a component of a Significant Wildlife Habitat within the Provincial Planning Statement.
--	---

	While there have been no changes to the composition of COSSARO, staff recommend the appointment to this committee be fully transparent and that COSSARO's recommendations be included within any regulation to ensure that decisions respecting endangered species are made based on a scientific basis. Recovery and Management Strategies: The promotion of recovery (where decline of a SAR is stopped or reversed) is a component of the current <i>Endangered Species Act</i>. This recognizes that there is the opportunity to improve the status of SAR based on scientific knowledge. Biodiversity loss including the loss of ecosystem services is important to the economy. As noted in the Value for Money Audit "Protecting and Recovering Species At Risk" (November 2021-Office of the Auditor General), "failing to protect and recover species will increase problems such as soil erosion, air pollution, forest fires, floods". The requirement for creating recovery strategies and management plans is proposed to be removed. These plans are required to reverse the fate of species. This represents a very narrow view (once a species is listed there is no likelihood of long-term survival) and does not consider the resiliency of species if concerted efforts are employed. Species may be down listed or removed from the SAR list altogether. An example of species recovery is the Bald Eagle. The City of Hamilton supports habitat for this species. This species was once identified as "Endangered" because of a pesticide (DDT). Through efforts of Conservation Organizations as well as a Management Plan prepared by the province several actions were identified to ensure that this species recovered to achieve a stable or increased population. This has led to a change in the status of this species to "not at risk". If the <i>Endangered Species Act</i> is changed, the current process of requiring recovery and management strategies should remain as part of the Act. Species at Risk Conservation Fund: Additional information is necessary to understand how the existing funds in the Species at Risk Conservation fund will be utilized before City of Hamilton staff provide comment. Transparency: City of Hamilton staff have concerns that the proposed changes will decrease transparency and access to information, specifically as it relates to removal of the requirement for regulations and posted notices and the appointment of members to COSSARO.
--	--

Schedule 7 – Ontario Heritage Act

Amends Section 51.2, 66, and 68.3.

Adds section 61.1, 66.1, 66.2, 69.1, 69.2 and Part VI.1.

A core principle in the City of Hamilton is early and meaningful engagement with First Nations. The City has developed an Archaeology Master Plan to assist in meeting that principle and are concerned that the proposed legislation will exclude respectful participation of First Nations in archaeological assessments and would result in degradation of Indigenous historical sites.

Without First Nations being able to participate in archaeological assessments, and without the Ministry providing artifacts to First Nations there is the potential for a loss of important cultural history and information.

Section 51.2

City of Hamilton staff note that under the existing *Ontario Heritage Act* only licensed archaeologists are permitted to conduct archaeological assessments. The addition of sections 51.2 (1)(b) expands this authority to appointed inspectors, for whom there are no professional credentials required. City of Hamilton staff recommend the inclusion of clear mechanisms through which they will ensure appointed inspectors are required to hold necessary credentials or expert council to conduct archaeological assessments. City Staff also recommend that additional language be added requiring inspectors to notify First Nations on whose territory the inspection is occurring and provide them with the opportunity to send a delegate to attend the inspection.

Considering the proposed amendments under section 66 of this Act, City of Hamilton staff recommend that the province clarify and strengthen the processes through which an inspection may be triggered and clarify whether the proposed changes would exempt designated properties from ministerial inspections. City of Hamilton staff are not supportive of any language which would exempt properties from inspections.

City of Hamilton staff note that archaeological materials, under Part VI of the *Ontario Heritage Act*, are managed by the Province of Ontario, stewarded by license holders on behalf of the province unless they are formally repatriated. City of Hamilton staff requests clarification in the return of archaeological artefacts to persons who are not licensed archaeologists.

Section 51.3

City of Hamilton staff are supportive of expanding the authority for reporting beyond solely assessing the license holders' compliance with regulations, terms, and conditions under the *Ontario Heritage Act*. Staff

	also recommend including language to circulate reports to First Nations on whose territory the site is located and municipal planning authorities where applicable. Section 61.1 City of Hamilton staff are supportive of providing clear mechanisms through which assessments may be issued and the inclusion of language which offers clear stop work directives for proponents. Section 66 City of Hamilton staff are supportive of expanding regulations and options to permit the depositing of artefacts with an Indigenous community. Section 66.1 City of Hamilton staff are concerned that the exemption of a property from an archaeological assessment without consultation or consideration of the cultural heritage value or interest of a property, will lead to unintended consequences. City of Hamilton staff are not supportive of these proposed exemptions and recommend refining the proposed regulation to better address incompatibilities with existing Provincial and Municipal planning contexts, and establishing clearer requirements for consultation with affected municipalities, stakeholders, and rightsholders. City of Hamilton staff further recommends adding requirements to consider the existing public interest cultural heritage value or interest and archaeological potential of a property. While City of Hamilton staff are supportive of including a provision which prevents the exemption of properties from provisions and regulations under the <i>Funeral, Burial, and Cremation Services Act, 2002</i>, staff note that a key aspect of archaeological assessments includes identifying potential burial or funeral sites. The exemption of properties from archaeological assessments poses a strong risk of damage or destruction to undiscovered burial and funeral sites which may exist on exempted properties. It is unclear whether knowingly exempting a property which holds archaeological potential (including the possibility of unknown burials) from further assessment may be incompatible with the <i>Funeral, Burial, and Cremation Services Act, 2002</i> which states that only persons appointed by the coroner may disturb burial sites. City of Hamilton staff are therefore not supportive of these exemptions, and the mechanisms through which exemptions will be identified.
--	---

	City of Hamilton staff requests further clarification on the impacts of these proposed regulations in the instance that archaeological materials, which are not covered by the <i>Funeral, Burial, and Cremation Act, 2002</i>, are found on an exempted property outside of an archaeological assessment. City of Hamilton staff note that the proposed amendments in sections 51.2 and 51.3 of the Act provide expanded authorities to inspect properties which may hold archaeological potential, but the pathways through which these inspections may be triggered are unclear. It is further unclear whether a site which has been deemed exempt from the Part VI of the Act would additionally be exempt from ministerially ordered inspections. City of Hamilton staff are concerned that this may erode municipal and provincial abilities to prevent the destruction of cultural heritage assets once discovered. City of Hamilton staff also have concern that the proposed exemptions from the <i>Ontario Heritage Act</i> will erode requirements to report the identification of archaeological remains. Exempting properties from reporting requirements under Part VI of the Act, without access to expert assessments, reports, and monitoring of work, risks the destruction of sites on a given property, including but not limited to those protected under the <i>Funeral, Burial, and Cremation Services Act, 2002</i> due to a lack of expert interpretation on the contents of a site. City of Hamilton staff recommends prohibiting a property from being exempt from sections 51.1, 51.2, 51.3, 52, 53, 54, 55, 56, 61, 62, 63, 64, 65, 68, and 69 of the Act. These sections provide ministerial authority to investigate, identify, and designate sites of archaeological interest, and provide the authority through which work may be ordered to stop by ministerial authority. City of Hamilton staff are concerned that exemption from these sections of the Act risks removing ministerial and municipal abilities to intervene in cases where archaeological materials, including but not limited to burials and funeral sites, may be further investigated should there be identified interest. Section 66.2 City of Hamilton staff are not supportive of extinguishing cause to action as a result of anything done in accordance with the proposed Section 66.1 of this Act. City of Hamilton staff note that the exemption of properties from archaeological assessment requirements increases the risk of destruction or damage to cultural resources of value or interest, including but not limited to burials and funeral sites.
--	---

Schedule 9 – *Special Economic Zones Act, 2025*

Proposed Change	Comments
The schedule enacts the <i>Special Economic Zones Act, 2025</i> .	City of Hamilton staff supports the province having the ability to quickly take actions to support Ontario's economy in the face of rising global uncertainty and tariffs. Staff acknowledge the potential to leverage these zones into economic benefits for the City of Hamilton, including job creation and incentivizing and attracting investment for economic activity in the proposed "Special Economic Zones". While the proposed legislation would provide the Government of Ontario with another tool in responding to economic threats and facilitating economic development opportunities, additional information is necessary to understand how a Special Economic Zone would be implemented before the City of Hamilton concludes its comments on the legislation. In preparing the associated regulations with the Act, City of Hamilton staff strongly encourage the province establish clear rules on when, where and how these zones and trusted proponents would be selected and that the process include rights holder and municipal collaboration to facilitate the best economic outcomes for communities. Without clearly defined criteria, it makes it difficult for the city to plan for any changes or to complete any proactive work. At this time, City staff have concerns that the legislation's ability to 'override' other Provincial legislation, regulations and municipal by-laws could result in unintended consequences and is a move away from Ontario's planning policy framework established through the Provincial Planning Statement, 2024. This can include unintended issues related to public infrastructure and facilities, land use compatibility, municipal finances, natural heritage, planning for a changing climate and protection of archaeological resources among others. Specifically with respect to archaeological resources City of Hamilton staff note that archaeological assessments are a core feature of First Nations engagement. If site alteration occurs without archaeological assessment, Indigenous Historical Sites may be destroyed and may also cause a loss of significant natural areas and hunting lands which are a Treaty and Aboriginal right protected by Section 35 of the Canadian Charter of Rights and Freedoms, which the province has a duty to uphold. If archaeological requirements are to be removed within the Special Economic Zones, clarification will be needed regarding how these exemptions will conform with Section 35 of the Canadian Charter of Rights and Freedoms.

Schedule 10 – *Species Conservation Act, 2025*

Proposed Change	Comments
The act repeals the <i>Endangered Species Act, 2007</i> and enacts the <i>Species Conservation Act, 2025</i>.	Species at Risk (SAR) have been listed as extirpated, endangered, threatened, and special concern because they are the most vulnerable to threats. Hamilton is a biodiversity hotspot with many unique habitats that support both common species as well as SAR. City of Hamilton staff are not supportive of the creation of the <i>Species Conservation Act</i> as it will: i) undermine successful species recovery efforts within the province as a whole, as well as within Hamilton; ii) undermine the intent of Provincial and Municipal Strategies (i.e., Ontario Biodiversity Strategy, Hamilton Biodiversity Action Plan, Hamilton’s Urban Forest Strategy) as well as Provincial requirements (policies associated in Section 4.1 of the Provincial Planning Statement); and iii) increase species loss within the Province and Hamilton. Specific concerns include: • Purpose of the Act: The purpose has been identified as: i) identify species at risk based on scientific information and ii) provide protection and conservation of species while taking into account social and economic considerations including the need for sustainable economic growth in Ontario. There is concern with the proposed purpose of the act as it does not help protect biodiversity. As noted in the Value for Money Audit “Protecting and Recovering Species At Risk” (November 2021- Office of the Auditor General), habitat loss from land use and disturbance from human alteration is the biggest threat to species in Ontario. The proposed purpose of the act also does not align with the scientific based approach that is to be used to identify species at risk. Since SAR are the most vulnerable species, there should be a focus on efforts to stop or reverse the impacts. These species could become downlisted or removed from the SAR list. To recognize the importance of biodiversity conservation and the impacts that human activity has had on species, the purpose of the act should be revised to:

	i) identify species at risk based on scientific information; ii) protect species and their habitats and promote the recovery of species at risk; and iii) promote stewardship activities that assist in protection and recovery. • Definition of Habitat: The definition of “habitat” is proposed to include only the dwelling place and the area immediately around the dwelling place. There is concern with this approach since it takes a narrow view and does not consider that species rely on areas other than their dwellings to complete life processes. For example, Blandings Turtle, a threatened species, may travel long distances to find a mate or travel to a nesting site. If the proposed definition was used, it would not provide protection for the breeding area for this species. The definition should be changed to reflect the definition found within the current <i>Endangered Species Act</i>. • Listing of Species: The Committee on the Status of Species at Risk in Ontario (COSSARO), an independent committee, will identify which plants and animals should be considered as SAR. This is based on scientific knowledge, community knowledge, and Indigenous Traditional Knowledge. This role of this committee is limited to identifying and classifying species and providing reports to the Minister. This Act would not make it mandatory to create a regulation once a species has been listed. Specific information has not been provided on how this will be implemented. This approach is not equitable and will result in species not being adequately protected. This will result in a loss in biodiversity. In addition, it is unclear how species of Special Concern will be addressed. These species are considered Significant Wildlife Habitat within the Provincial Planning Statement. If the recommendations of COSSARO may not be automatically included within the regulation, there is the potential for decisions on endangered species being made not based on science. • Species Conservation Registry: Changes from permits (as identified within the current <i>Endangered Species Act</i>) to a registry system have been proposed. There is concern with this approach. It reduces further consultation, does not allow for conditions to be considered and does not consider the cumulative impacts on a species. There is also concern that rules/criteria associated with the registry have not been provided. The current permitting approach associated with the <i>Endangered Species Act</i> should continue to be more effective, consistent messaging (through the development of guidelines) should be provided by the SAR biologists.
--	---