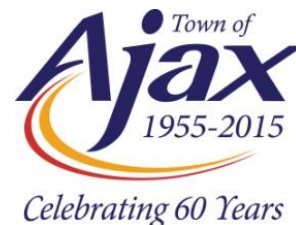


The Corporation of the Town of Ajax
GENERAL GOVERNMENT COMMITTEE



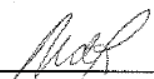
Thursday, April 9, 2015

Open Meeting at 2:00 p.m.

In-Camera to follow immediately after open meeting

River Plate Room, Town Hall

65 Harwood Avenue South

Confirmed by: 

AGENDA

Alternative formats available upon request by contacting:
accessibility@ajax.ca or 905-619-2529 ext. 3347

Anything in **blue** denotes an attachment/link. By clicking the links on the agenda page, you can jump directly to that section of the agenda. To manoeuvre back to the agenda page use the **Ctrl + Home** keys simultaneously. **OR** use the "Bookmark" icon to the left of your screen to navigate from one report to the next

P. Brown, Chair
J. Dies, Vice Chair

Open Meeting

1. **Call To Order**
2. **Disclosure of Pecuniary Interest**
3. **Consent Agenda** – *Considered to be routine, these items may be approved by one motion. Items may be separated and referred to the Discussion Agenda*
 - 3.1 **Annual Investment Report - January 1 to December 31, 2014**, S. Strain, Interim Director of Finance/Treasurer / S. Serrao, Interim Manager of Budgets and Accounting Services 3
 - 3.2 **Development Charge Reserve Fund – Treasurer’s Annual Statement**, S. Strain, Interim Director of Finance/Treasurer / D. Valentim, Senior Financial Analyst 6
 - 3.3 **Revised Corporate Policy 076 – Use of Corporate Resources for Election Purposes**, M. de Rond, Director of Legislative & Information Services/Clerk / N. Wellsbury, Manager of Legislative Services/Deputy Clerk 10
4. **Presentations / Discussion**
 - 4.1 **Urban Forestry Management Plan Five Year Update**, D. Meredith, Director of Operations & Environmental Services / T. Field, Manager Environmental Services / C. Blencowe, Urban Forestry Technician 18

4.2	Comments on the Proposed <i>Great Lakes Protection Act (Bill 66)</i> , P. Allore, Director of Planning & Development Services / B. Hodgins, Senior Policy Planner	28
4.3	Ajax Council Code of Conduct Complaint Report , Harold Elston, Contracted Integrity Commissioner	41

5. Departmental Updates

In-Camera

6. Authority to Hold a Closed Meeting and Related In-Camera Session

- *A matter pertaining to litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board [Sec. 239 (2)(e), Municipal Act, 2001, as amended]*
- *A personal matter about an identifiable individual, including municipal or local board employees; [Sec. 239 (2)(b), Municipal Act, 2001, as amended]*

6.1 Confidential Legal Property Matter

6.2 Restructuring & Realignment Plan

7. Adjournment

TOWN OF AJAX REPORT



REPORT TO: General Government Committee

SUBMITTED BY: Sheila Strain CPA, CGA
Interim Director of Finance/Treasurer

PREPARED BY: Sandy Serrao CPA, CMA
Interim Manager of Budgets and Accounting Services

SUBJECT: Annual Investment Report - January 1 to December 31, 2014

WARD(S): All

DATE OF MEETING: April 9th, 2015

REFERENCE: Investment Policy – Corporate Policy No. 45

RECOMMENDATION:

That the Annual Investment Report for the period January 1 to December 31, 2014 be received for information.

BACKGROUND:

The Investment Policy defines the goals, objectives and policies for the investment of the Town's surplus cash, reserves and reserve funds. A requirement of the policy is a report to General Government Committee on an annual basis.

DISCUSSION:

Since September 2010 and throughout 2014, the Bank of Canada target overnight rate has been held at 1.00%. On January 21, 2015 Bank of Canada lowered its target overnight rate by one-quarter of one percentage from 1.0% to 0.75%. The reduction in the interest rate was in response to the impact on growth and inflation as a result of the drop in oil prices.

One of the goals of the Financial Sustainability Plan is to enhance the Town's short and long term financial strength and sustainability by building and strengthening reserves. As a result of growing reserve balances along with low interest rates, three Guaranteed Investment Certificates were purchased in July 2014 from the Royal Bank of Canada totaling \$40,000,000. The interest earned on these investments was \$320,547.94 in 2014. The rate of return on these GICs range from 1.55% to 2.2% compared to 1.30% earned on our bank account. The summary page below shows additional details on these investments. Also shown on the summary page is the total balance and interest earned on our bank accounts and promissory notes as of December 31, 2014.

Town of Ajax Royal Bank Summary by Fund - December 31, 2014		
Fund	Balance	Interest Income
Revenue Fund*	\$25,634,959.55	\$ 989,497.07
Parkland Reserve Fund	\$ 761,573.35	\$ 9,860.34
Federal Gas Tax Reserve Fund	\$ 6,080,264.04	\$ 62,351.27
Dev Chgs. (2008) Reserve Fund	\$ 3,726,464.86	\$ 48,816.66
Dev Chgs. (2013) Reserve Fund	\$17,686,436.66	\$ 252,004.21
Total	\$53,889,698.46	\$ 1,362,529.55

* Includes interest income from internal debt (see below)

A comparison of average rates for the last four quarters is detailed below, for the funds held on deposit at the bank

Term	1st Qtr 2014	2nd Qtr 2014	3rd Qtr 2014	4th Qtr 2014
Deposit Accounts	1.30%	1.30%	1.30%	1.30%

Summary of Internal Debt As of December 31, 2014			
	Principal	Interest Income	Interest Rate
Ajax CC Twin Ice Pads	\$ 540,378.89	\$ 21,806.60	2.69%
Operations Centre	\$ 2,126,000.00	\$ 67,820.00	various
Audley Recreation Centre	\$ 2,283,000.00	\$ 76,259.74	various
Total	\$ 4,949,378.89	\$ 165,886.34	

Summary of Investments As of December 31, 2014			
	Principal	Interest Income	Interest Rate
RBC 5 Year Laddered GIC - Revenue Fund	\$20,000,000.00	\$ 188,054.79	2.20%
RBC 18 months Non Redeemable GIC - Revenue Fund	\$15,000,000.00	\$ 99,369.86	1.55%
RBC 18 months Non Redeemable GIC - DC Charges (2013)	\$ 5,000,000.00	\$ 33,123.29	1.55%
Total	\$40,000,000.00	\$ 320,547.94	

Summary of Veridian Promissory Notes Held as of December 31, 2014			
Issuer	Principal	Interest Income	Interest Rate
Veridian Connections Inc.	\$14,060,000.00	\$ 783,142.00	5.57%
Veridian Corporation	\$ 5,550,000.00	\$ 333,000.00	6.00%
Total	\$19,610,000.00	\$ 1,116,142.00	

CONCLUSION:

All investments undertaken during the period starting January to December 31, 2014 were in accordance with the Town's investment policies and goals.

Sandy Serrao – Interim Manager of Budgets and Accounting Services

Sheila Strain – Interim Director of Finance/Treasurer

TOWN OF AJAX REPORT



REPORT TO: General Government Committee

SUBMITTED BY: Sheila Strain, CPA, CGA
Interim Director of Finance/Treasurer

PREPARED BY: Dianne Valentim, B.Comm, CPA, CGA
Senior Financial Analyst

SUBJECT: Development Charge Reserve Fund – Treasurer’s Annual Statement

WARD(S): All

DATE OF MEETING: April 9, 2015

RECOMMENDATION:

That the report “Development Charge Reserve Fund – Treasurer’s Annual Statement” be received for information.

BACKGROUND:

The Development Charges Act, Section 43 (1) states that “The treasurer of a municipality shall each year on or before such date as the council of the municipality may direct, give the council a financial statement relating to the development charge by-laws and reserve funds established under section 33.” In addition, paragraphs 12 and 14 of Ontario Regulation 82/98 provide specific guidance with respect to the information to be included in the Treasurer’s annual statement.

In accordance with the Act and the regulations, attached is the 2014 Development Charge Reserve Fund Annual Statement.

DISCUSSION:

The attached Development Charge Reserve Fund Annual Statement provides the opening and closing balances of each service category maintained by the Town of Ajax, and reports transfers between service categories as applicable. Attachment 2 provides information, by capital project, of the development charge transfers made to capital accounts during the fiscal year, as well as other sources of financing provided to each project.

The closing balance as of December 31, 2014 is the cash balance in the development charge account. However, this balance does not consider committed funds for capital projects currently in progress. Therefore, the actual development charge funds available for future projects are less than the closing balance.

COMMUNICATION ISSUES:

Section 43 (3) of the Development Charges Act requires a copy of this report to be provided to the Minister of Municipal Affairs and Housing within 60 days from the date of presentation to council.

CONCLUSION:

The completion of the Development Charge Reserve Fund Annual Statement fulfills the reporting requirements of the Development Charges Act.

ATTACHMENTS:

ATT-1: Development Charge Reserve Fund Annual Statement
ATT-2: Development Related Capital Growth Reserve Fund Transfers

Dianne Valentim, B.Comm, CPA, CGA

Sheila Strain, CPA, CGA – Interim Director of Finance/Treasurer

ATTACHMENT 1
Development Charge Reserve Fund Annual Statement
For the Town of Ajax - Town Services
For the Year Ended December 31, 2014

	Total	Development Related Capital Growth Studies	Fire Stations, Vehicles and Equipment	Transportation (incl Roads and related)	Operations (incl Works Yards and Equipment)	Parkland Development and Equipment	Major Indoor Recreation Facilities and Related	Libraries and Related (incl Materials)
Balance as of January 1, 2014	21,521,747	(1,345)	(1,638,574)	7,833,630	(52,492)	8,133,408	4,778,035	2,469,085
Plus:								
Development Charges Collections	6,624,593	95,322	165,232	3,507,483	169,075	1,002,148	1,446,941	238,392
Accrued Interest	333,944	612	(21,476)	125,630	(143)	118,539	75,614	35,168
Repayment of Monies Borrowed from Fund and Associated Interest								
Subtotal	6,958,537	95,934	143,756	3,633,113	168,932	1,120,687	1,522,555	273,560
Less:								
Amount Transferred to Capital (or Other) Funds (ATTACHMENT 2)	9,795,941	27,960		8,931,458	95,228	460,505	-	280,790
Amounts Loaned to Other DC Reserve Fund								
Credit								
Monies Borrowed from Fund for Other Municipal Purposes								
SUBTOTAL	9,795,941	27,960	-	8,931,458	95,228	460,505	-	280,790
December 31, 2014 Closing Balance	18,684,343	66,629	(1,494,818)	2,535,285	21,212	8,793,590	6,300,590	2,461,855

ATTACHMENT 2
Development Charge Reserve Fund Annual Statement
For the Town of Ajax - Town Services
For the Year Ended December 31, 2014

DEVELOPMENT RELATED CAPITAL GROWTH RESERVE FUND TRANSFERS					
Capital Project	DC Reserve Fund Draw	Reserve Draw	Other Reserve Fund Draws	Other	Total
Description					
904411 ChambersDr-CarruthersCreek-Design	10,930	575			11,505
916311 Rossland Rd-West Limit-Church	140,079	18,278			158,357
925411 Sportsplex Outdoor Rec - Construction	81,973	8,657		20,000	110,630
926711 Church St-Taunton to Rossland	3,779	577			4,356
930511 Audley Trail Ph3-SWMP to Bayly	10,487	1,072			11,559
930711 Carruthers Trail-Kingston to Kerrison	11,135	1,085			12,220
931711 Bayly St E - Street Lighting	46,897	3,313			50,210
931811 Traffic Signals-Audley & Williamson	2,686	151			2,837
932011 Audley Reconstruction-Rossland to Kerrison	4,252	1,248			5,500
936911 Development Charge Study 2012	1,525	128			1,653
942811 Hwy 2 Rapid Transit Street Lighting	42,279	2,225			44,504
948711 Menkes Imagination NP - Design	11,223				11,223
948811 Duffins North (HEPC) Trail	40,010	7,180			47,190
949011 Castlefield NP - Hollier / Styles	113,205				113,205
949711 Street Lighting - Taunton Road	123,686	6,486			130,172
949811 MUT Salem - Achilles to Bayly	6,010	668			6,678
949911 Audley Reconstruction Design - Taunton/CPR	37,433	10,558			47,991
957911 Millers Trail - Kingston/Ritchie	6,719	687			7,406
958111 Stammers Drive Parkette	149,460	15,234			164,694
958411 Carruthers Trail - Rossland/Taunton	36,293	3,705			39,998
958511 MUT - Taunton Road	5,954	662			6,616
959111 Church St - Stage 4 Arch.	85,631	9,515			95,146
959311 Audley Rd - Taunton to Rossland	2,541,611	431,033			2,972,644
959511 Top Asphalt Harwood - Woodcock N	89,755	18,435			108,190
959611 Rossland Road - West Limit to Church	5,743,363	364,709			6,108,072
959811 Hunt and Finley Improvements E	37,016	1,948			38,964
959911 MUT - Salem - Rossland to CPR	10,097	1,122			11,219
960211 Transportation Demand Management	26,435				26,435
960511 Collection Growth Related - 2014	90,500	9,500			100,000
960811 Add'l Equipment - Brush Chipper	27,864	4,719			32,583
960911 Add'l Equipment - Staketruck/Chipper	67,364	11,424			78,788
11409 Debt Repayment Reserve	190,290				190,290
Totals	9,795,941	934,894	-	20,000	10,750,835

TOWN OF AJAX REPORT



REPORT TO: General Government Committee

SUBMITTED BY: Martin de Rond
Director of Legislative and Information Services/Clerk

PREPARED BY: Nicole Wellsbury
Manager of Legislative Services/Deputy Clerk

SUBJECT: **Revised Corporate Policy 076 – Use of Corporate Resources for Election Purposes**

WARD(S): N/A

DATE OF MEETING: April 9, 2015

REFERENCE: None

RECOMMENDATION:

That the revised Corporate Policy 076 – Use of Corporate Resources for Election Purposes be approved.

BACKGROUND:

It is necessary to establish guidelines on the appropriate use of corporate resources during an election period to protect the interests of both the Members of Council and the Corporation. The *Municipal Elections Act, 1996* as amended prohibits a municipality from making a contribution to a candidate. The Act also prohibits a candidate, or someone acting on the candidate's behalf, from accepting a contribution from a person who is not entitled to make a contribution. As a contribution may take the form of money, goods or services, any use by a Member of Council of the Corporation's resources for his or her election campaign would be viewed as a contribution by the municipality to the Member, which is a violation of the Act.

The Use of Corporate Resources for Election Purposes Policy was last reviewed in 2013 and the following fairly minor changes were approved at that time:

- The policy was modified to permit debates at Town facilities.
- A more fulsome definition of "corporate resources" was added to be clear that it includes town-supplied information technology devices.
- A clause was added to prohibit the use of town-owned photos for election purposes.

The existing policy is based on the industry standard provided by the Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO). However, more so than ever before, issues around use of town-owned digital content have become more complex as campaigns have largely moved into online spheres. This development and others have necessitated a more detailed review and update of this policy.

DISCUSSION:

While the principles and content of the policy remain very much the same, the content has been re-organized into distinct sections, as follows, for ease of reading and understanding.

- General Provisions
- Technology-related Provisions
- Facilities-related Provisions
- Communications-related Provisions
- Employee Provisions
- Limitations

Staff conducted a review of similar policies from comparable municipalities to ensure quality and consistency. The substantial changes and additions to the policy are as follows:

1. Campaign material proposed to be permitted at debates held at Town facilities

- Several candidates felt strongly during the 2014 election that campaign literature should be permitted at debates, whereas the existing policy states that campaign literature is not permitted on town property in any circumstances. As other municipalities do not permit debates at town facilities at all, it was not possible to benchmark this policy among other municipalities. However, staff propose to loosen the policy and permit a modest amount of campaign literature at debates on town property, subject to the limitations noted in Section 5 of the proposed revised policy, intended to maintain the sanctity and relative neutrality of town venues, particularly the Council Chambers.

2. Employee Provisions expanded

- The “Application” section of the policy was included to encompass all town staff. A clause was added to emphasize the importance of staff behaving in a manner that the public and candidates view to be fair, impartial, and neutral.

3. Further clarity around use of Town-owned digital content & resources

- The 2014 election brought to light new issues around candidates electronically re-distributing (or posting) town documents such as strategies, photographs, news items, etc. These policy areas have been clarified in the proposed new policy and explain that linking to public-realm town resources is acceptable, but hosting them on a candidate website is not.
- The policy is proposed to be loosened in the area of election communication materials. The Town makes great efforts to develop promotional materials for the election (e.g. the 2014 How to Vote Infographic, promotional videos), and many candidates wish to redistribute or promote these materials electronically or by other means. As candidates play a central role in building awareness around an election, this is proposed to be permissible, provided that the Town’s content is not modified in any way.

4. Additional “Communications-related” provisions

- Added a clause prohibiting the use of town-owned distribution/contact lists for campaign purposes
- Added a clause restricting edits to Council biographies on the town website in an election year.
- Added a clause restricting campaign-related car stickers or wraps to be parked on town property or at a polling station.

5. Clearly establishing the ongoing role of incumbent members in performing their representative duties

- A number of clauses were added or modified to be clear that incumbent members are permitted to partake in their usual activities as an elected member of Council. For example, Council-member websites that are used throughout the term as a means of communicating with constituents can remain linked from the town website, provided that no election-related material is contained on the site. Council members are also permitted to continue with their regular activities such as town-supported community/ward meetings, provided that they have been a regular practice throughout the term and are not used for campaign purposes.

While the content of the policy has been organized more logically in the proposed new version, there are no substantive content changes besides those noted above.

FINANCIAL IMPLICATIONS:

None.

COMMUNICATION ISSUES:

N/A

CONCLUSION:

The revised policy remains heavily based on the industry standard provided by the AMCTO, and used by many municipalities throughout Ontario, but has been updated to address some of the issues that regularly arise as the nature of campaigns change.

As the Province has committed to conducting a fulsome review of the *Municipal Elections Act* prior to the next municipal election, it is likely that forthcoming changes to the Act may warrant further changes to this policy. If so, a revised policy will be brought back before the Committee for consideration.

ATTACHMENTS:

ATT-1: Proposed Corporate Policy 076 – Use of Corporate Resources for Election Purposes

Nicole Wellsbury – Manager of Legislative Services/Deputy Clerk

Martin de Rond – Director of Legislative and Information Services/Clerk



CORPORATION OF THE TOWN OF AJAX

CORPORATE POLICIES AND PROCEDURES

SUBJECT: USE OF CORPORATE RESOURCES FOR ELECTION PURPOSES

ISSUED:	REVISED:	REVISION NO.:	PAGE 1 OF 5	POLICY: 076
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1. GENERAL POLICY STATEMENT

- 1.1 The purpose of this policy is to clarify that Members of Council and candidates running for the office of municipal council within the Town of Ajax as well as anyone acting on their behalf are required to follow the provisions of the *Municipal Elections Act, 1996*, as amended as it relates to the use of corporate resources for election purposes. The *Municipal Elections Act* [sec. 70 (4)] prohibits the municipality from making contributions in any form, which includes its assets, resources and employees.

2. APPLICATION

- 2.1 This policy is applicable to all Members of Council and candidates running for the office of municipal council within the Town of Ajax as well as anyone acting on their behalf. The policy is also applicable to all staff of the Town of Ajax.

3. GENERAL PROVISIONS

- 3.1 That, in accordance with the spirit and intent of the *Municipal Elections Act, 1996*, as amended:
- 3.1.1 Corporate resources and/or funding, including but not limited to facilities, equipment, services, staff, and information technology devices (computers, smartphones, tablets, etc.) may not be used for any election-related purpose;
 - 3.1.2 The tenets of this policy also apply to an acclaimed Member or a Member not seeking re-election;
 - 3.1.3 The Municipal Clerk be authorized and directed to take the necessary action to give effect to this policy;

ISSUED:	REVISED:	REVISION NO.:	PAGE 2 OF 5	POLICY: 076
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3.1.4 This policy does not preclude a member of Council from performing their duties as a Councillor, nor inhibit them from representing the interests of their constituents;

3.1.5 Individuals who have questions about this policy are encouraged to contact the Clerk to obtain further clarification.

4. TECHNOLOGY-RELATED PROVISIONS

4.1 Candidates and members of Council shall not use Corporate resources for any election-related purposes, including computers, cell/smart phones, tablets, printers, scanners, or other services such as email, internet and file storage;

4.2 Websites or domain names that are funded by the Town of Ajax shall not include any election-related campaign material, or links to sites that feature campaign material, with the exception that each candidate may have a single URL linking to a campaign site or social media page from the town's election website;

4.3 Once a member of Council registers to be a candidate, any links from a town website to his/her website or social media pages will be removed from the town's webpages if the website or social media page contains campaign material or is being used for some purpose other than to fulfill their representative role as an elected member of Council. If the website has been utilized consistently over the member's term of office for the purposes of communications with constituents, and contains no election-related material, it will be permitted;

4.4 In an Election year, Mayor and Council biographies on the Town website will remain static and no changes to these pages will be allowed;

4.5 The Town of Ajax's voicemail system shall not be used by candidates to record campaign-related messages nor shall the computer network, including the email system, be used to distribute campaign-related correspondence.

5. FACILITIES-RELATED PROVISIONS

5.1 Members of Council and candidates may not use their constituency office, or any municipally-provided facilities for any election-related purpose, which includes the display of any campaign-related signs in the window or

ISSUED:	REVISED:	REVISION NO.:	PAGE 3 OF 5	POLICY: 076
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on the premises, as well as the display of election-related material in the office;

5.1.1 Notwithstanding clause 5.1 in the event of a public debate hosted by a community service group, a Town facility may be offered as the venue at the discretion of the Town Clerk, provided that all registered candidates, within each specific category must be invited to attend such meetings, and provided that the event meets any other requisite criteria established by the Clerk;

5.1.2 Should the Town Clerk sanction an event for this explicit purpose, candidates will be permitted to distribute a modest amount of campaign literature at the event such as flyers, brochures, or business cards, in a controlled manner. Large posters, signs, buttons, giveaways, and campaign clothing will not be permitted;

5.1.3 Campaign literature shall be permitted only for candidates within the electoral category for which the debate is being held (e.g., a Mayoral candidate may not distribute literature at a Ward 3 debate);

5.1.4 The above limitations apply only where a debate is held at the town facility; debates held at other venues will be subject to any rules and requirements which may be established by the host.

5.2 Candidates with campaign material affixed to a vehicle may not park the vehicle in the parking lot of a town facility, or within viewing distance of a polling station.

6. COMMUNICATIONS-RELATED PROVISIONS

6.1 Members of Council are responsible to ensure that the content of any communications material, including web sites and printed material such as newsletters, advertising, etc. funded by the municipality for the operation of each Councillor's Office, is not directly election-related;

6.2 Candidates shall not print or distribute any election campaign-related material using municipal funds; the Town of Ajax will not distribute material, through electronic or non-electronic means, which it determines is election campaign-related;

6.3 The Town's corporate logos, crest, coat of arms, slogans, etc. shall not be printed or distributed on any election materials or included on any election campaign related website;

ISSUED:	REVISED:	REVISION NO.:	PAGE 4 OF 5	POLICY: 076
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- 6.4 Town resources (e.g. strategic plans, staff reports, minutes and agendas) may be linked to from candidate websites, but may not be housed on the candidate website, or modified/reproduced for use in any campaign related material. The only exception to these rules shall be that candidates may promote and/or distribute town materials developed by the town specifically for promotion of the election (e.g. promotional videos, infographics, voting calendars), provided that they are not modified from their original format in any way;
- 6.5 The following be discontinued for Members of Council from the day prior to Nomination Day in a municipal election year to Voting Day:
- 6.5.1 All printing, high speed photocopying and distribution, including printing and general distribution of newsletters unless so directed and approved by Council;
- 6.5.2 The ordering of business cards and stationery.
- 6.6 Members of Council may not deliver any unsolicited material outside their existing ward where the printing and/or distribution costs are paid by the municipality. Care should be taken to ensure that the mailing of information is restricted to the member's ward only (with accommodation made for the normal spillage associated with Canada Post postal walks). This recommendation is to be effective not only during an election year but at all times;
- 6.7 As per Sec. 4.2 of this policy, Candidates may provide a single URL to a website that includes election-related material or messaging, which will be linked directly from the Town's Election website with the permission of the candidate;
- 6.8 Candidates and Members of Council may not use the Town's corporate logo and/or messaging in any election-related campaign communications including candidate web sites and printed materials, except as permitted under Section 6.4;
- 6.9 Photographs produced for and owned by the Town of Ajax may not be used for any election purposes;
- 6.10 Members of Council may not:
- 6.10.1 Print, post or distribute any material paid by municipal funds that illustrates that a Member of Council or any other individual is registered in any election or where they will be running for office;

**TOWN OF AJAX
REPORT**



REPORT TO: General Government Committee

SUBMITTED BY: Dave Meredith, Director
Operations & Environmental Services

PREPARED BY: Craig Blencowe, Urban Forestry Technician
Operations & Environmental Services
Tim Field, Manager Environmental Services

SUBJECT: **Urban Forestry Management Plan Five Year Update**

WARD(S): All

DATE OF MEETING: April 9, 2015

REFERENCE: **Urban Forestry Management Plan**

RECOMMENDATION:

That Council receive the Ajax Urban Forest Management Plan Five Year Update for information.

BACKGROUND:

Trees play an important role in the enhancement of streets and open spaces. The Town of Ajax's focus on the urban tree canopy has been directed towards enhancing and promoting a healthy and diverse urban forest, comprised of trees in various stages of maturity located on boulevards, park, open spaces and in greenbelts. By increasing the volume of trees through planting and managing the asset, the Town can increase the overall benefits trees provide to the urban environment.

In order to ensure a long term plan to protect and increase the Town's urban canopy, Council adopted Ajax's Urban Forest Management Plan in 2011. Within the plan a number of recommendations were made. These recommendations can be summarized as follows:

- Review and implementation of Arboricultural standards and practices,
- Urban forest enhancement,
- Pest/ invasive species management,
- Consideration of a private tree by-law,
- Protection & enhancement of woodlots,
- Awareness, engagement and partnerships

The Plan is designed to be implemented over a period of 20 years. The plan is segregated into 5 year intervals which help to ensure strategic management of Ajax's forest cover, taking into account short and long term actions.

To date, of the 32 recommendations 12 have been completed and 16 are currently started, but are ongoing.

One of the major projects that has assisted with the progression of the Urban Forestry Management Plan implementation is the 2011 municipal tree inventory. The results of this study shows that Ajax's current canopy cover consists of 42,542 trees, which is estimated to cover 23% of municipal owned property in comparison to hard surfaces (road/sidewalk).

One of the threats to Ajax's urban canopy is the presence of invasive species; including the aggressive Emerald Ash Borer (EAB) which was first identified in Ajax in 2012. As per the recommendations highlighted within the Urban Forestry Management Plan (UFMP) the Town has created, and is currently in the third year of implementing the Emerald Ash Borer Management Plan. This Plan manages the pest through treatment and removals to reduce the impacts on the Town of Ajax's tree cover.

The success of the UFMP has been as a result of the amplified level of engagement with community members. Town Staff continue to increase levels of communication with community members regarding the urban canopy, as well as produce educational material and provide greater opportunities for community participation.

DISCUSSION:

The intent of this report is to provide an update on the progress that has been made in Ajax's urban forestry management over the past five years and highlight the direction in which the Town is heading. Over the next five years, the Town's focus will relate to:

- Monitoring and Implementing the Emerald Ash Borer Management Plan
- Development and Implementation of a Restoration Plan and Tree Planting Plan
- Partnerships and Community Engagement
- Long term Initiatives

i. Emerald Ash Borer (EAB)

The Emerald Ash Borer (EAB) beetle is a non-native insect that attacks and kills ash trees (white/green). Adult beetles lay their eggs on the trees during the summer months. The eggs will hatch into larvae; they tunnel under the tree's bark to feed. Tunneling prevents the flow of water and nutrients, stressing out the tree and causing it to die.

Ash trees are a popular species planted on the Town property (boulevards /park spaces), due to its hardiness. When the tree inventory was created in 2011 of those trees inventoried 8 % were of the ash variety. Currently, the inventory has expanded to 42,542 trees, with the ash population decreasing to 5%. Since the implementation of the EAB Plan in 2012, 736 replacement trees have been planted with alternative species thereby increasing the species diversity throughout the Town.

As recommended in the EAB Management Plan, existing ash trees planted in the right location, with good structure, larger than 20cm dbh (diameter at breast height) and no evidence of EAB, were treated with TreeAzin. TreeAzin is an insecticide injected under the tree's outer bark into the conductive tissues that move water and nutrients up the tree. This product kills EAB larvae feeding on the inner tissues of the tree wall, not posing a health risk to people, pets or wildlife. To be effective, ash trees are injected on a two year cycle. Table 1, identifies the ash trees treated throughout the Town in the last three years. These numbers in 2015 may be altered due to the health of the trees prior to injection in the spring.

Table 1: Ash trees treated with TreeAzin

Treatment Cycle	Year	No. of Trees Treated
Cycle 1	<i>2012</i>	115
	<i>2013</i>	822
Cycle 2	<i>2014</i>	299
	<i>2015 (proposed)</i>	650

December 2013 Ice Storm

The ice storm that hit Ajax in December 2013 caused significant damage to trees in the urban landscape of Ajax. Due to the extreme weather and the large amount of ice buildup on the branches, trees started to fail. Thousands of trees were affected on the boulevards and throughout park spaces. Approximately 460 trees were removed due to major structural issues. With EAB present in the ash population, along with poor tree structure, a large percentage of these tree removals were ash species.

The clean-up process involved prioritizing work orders, addressing and removing immediate hazards, while pruning trees that were structurally safe. Four crews from three different companies were hired to clean up fallen debris on the boulevard from resident's trees as well as Town owned trees. The cost of the entire ice storm (not including replacement trees) was \$511,000. These funds have been claimed through the recovery process set up by the Provincial Government. The replacement tree cost was \$93,000 for 445 replacement trees. Resident input was taken into consideration, during the replacement tree process, keeping in mind species diversity on boulevards.

Future Impacts of Emerald Ash Borer in Ajax

In order to continue the implementation of the EAB Management Plan the Town intends to complete a woodlot inventory in 2015 (Appendix A). This involves a survey to be undertaken to identify the types and conditions of trees located on Town owned woodlots. This will work in conjunction with the street/park inventory to establish and record all ash trees located on Town owned land. Priority woodlots have been identified to undergo the inventory during 2015; these areas were selected depending on the density of forest cover, concentration of ash trees, proximity to trails and private property. These factors are those that determine the severity of the impact of EAB on woodlots.

Staff will continue to inspect for possible treatment, and remove ash trees under the diameter of 20cm dbh as outlined in the EAB management plan.

In order to expand awareness and understanding throughout the community, the Town will continue to explore educational opportunities with residents through campaign delivery, a presence at Town events and direct communication with homeowners whose street tree has been impacted by EAB.

ii. Restoration and Tree Planting Plan

For the last four years, the Town has been planting large caliber trees (50mm), whips and shrubs along the Miller Creek Greenbelt. The areas of focus began at Rossland Road West following the river corridor south to the 401. Each year, a section of greenbelt was planted with approximately 1,250 pieces.

The newly developed Tree Planting Plan for the next five years will incorporate, where possible community plantings events with contracted planting, designed to restore and establish native trees and shrubs along creek corridors and throughout the Town's open spaces. These areas have been identified throughout the Town within all four wards.

Contracted planting sites will consist of approximately 1,500 pieces of plant material per year, from 50mm caliber trees; which will create an instant impact to deciduous whips for future growth and ground shrubs (Appendix B). Funding for this project will be through existing & future tree compensation paid by the development community in conjunction with the Department's operating budget.

Two woodlots identified to be planted in the fourth and fifth year of the contracted planting plan are located along Clements Greenbelt. Woodlot one, is located on the southeast corner of Emperor Street and Harwood Avenue South to Clements Road East. Woodlot two, located south of Clements Road West, west of Frazer Road and east of Whittington Court. These two woodlots are dense with mature trees, with a large population of Ash trees. With the increasing spread of the EAB within these two woodlots, the impact of EAB will reduce the privacy that currently exists.

In addition to the contracted planting plan, a five year community planting plan has also been created (Appendix C). This plan allows for strategic planting sites to be identified in regards to accessibility; allowing for community participation. The Westney Leash Free area will be the primary focus for plantings for the years, this area was selected as reforestation of this area will provide a visual buffer from Westney Rd and provides aesthetic improvements along the Duffins trail. Through consultation with the Ministry of Environment (MOE) and Climate Change (MOECC) and the TRCA planting this area was recommended as a practical way of improving the aesthetics of this site without compromising ongoing monitoring of the site, for the purpose of reporting to MOECC. In order to ensure public safety, soil testing will be completed to ensure provincial compliance. The intent is to plant approximately 1,200 native trees per public planting event and 400 trees per school planting event. To date, the number of volunteers attending planting events range from 100-300 people, showing that there is a strong desire to help aid in the enhancement of Ajax's urban tree canopy.

iii. Partnerships and Community Engagement

Increasing the Town's relationships and enhancing current partnerships with many different stakeholders allows greater advancement in protecting and enhancing Ajax's urban canopy. To

date, the Town has been the given opportunity to work alongside a number of groups to increase the number of trees. Partnerships have included:

- Veridian Connections provides financial support towards Ajax's Green Living Days events annually
- Toronto and Region Conservation Authority have worked with the Town on a number of projects and have provided both financial and staff support to aid in increasing native species within Ajax watersheds.
- Forest Ontario alongside Honda Canada have partnered with the Town to enhance public communication and awareness through community planting.
- Sierra Club Canada have provided financial and staff support through their success of the RBC Blue Water project grant to increase the urban canopy at the new Pickering Beach bio swales.

iv. Future Partnerships and Community Engagement Opportunities

Planting Programs for Private Property

Over the next five years the Town continues to develop and expand partnerships to benefit the residents of Ajax. As outlined in the UFMP, one of the actions needed to be implemented are programs that encourage planting trees on private property. Recently, the Town has engaged with new organizations to help implement suitable programming that will provide residents the tools and information to plant and care for trees on their own property.

In 2014, Local Enhancements and Appreciations of Forests (LEAF) approached the Town regarding the possibility of expanding their Backyard Planting Program to Ajax. This program is currently only available in York Region and the City of Toronto. The Town, Region of Durham and the TRCA have agreed to fund a pilot program set to be implemented in late spring 2015.

In conjunction with the Region of Durham, the Town is also promoting programs offered by Forests Ontario. These programs subsidize tree planting on private property that spans one hectare or more. By significantly reducing landowner's costs of large-scale tree planting, the Town is able to increase the number of trees planted, providing a greater benefit in mitigating the impacts of climate change.

By constantly improving community engagement methods, the Town can help to further educate stakeholders and residents on the benefits of trees and how they improve the community.

2015 Summary of Initiatives:

- Update the Urban Forestry page on the Town of Ajax website
- Provide ongoing community stewardship opportunities including two planting events with the community, and one planting event with school groups.
- Promote private property planting opportunities through partnerships with LEAF and Durham Region
- Update Tree Inventory by capturing trees in Woodlots
- Implement the Emerald Ash Borer Management Plan

- Restoration Planting of Woodlots
- Continue to provide educational material to community members to help understand the Town's maintenance program and aid with correct tree care on private property including:
 - Presence at community events
 - Promotion of the tree care kits
 - Distribution of Pruning, removal & replanting notification to individually impacted properties.

v. Long Term Initiatives

As outlined in the UFMP, additional initiatives being considered for implementation include:

a) Private Tree by- Law

The development of a diameter based private tree By-Law was outlined in the UFMP as a long-term initiative for the Town of Ajax. This bylaw will help in regulating and monitoring the trees located on private property. The Town recommends that consideration to implement a Private Tree By-law be held off until such time as the full impacts of EAB are understood, and analysis regarding the resource impacts that a private tree By-Law would have on Staff's ability to manage and enforce such a By-Law.

b) Pruning Cycle

Presently the pruning cycle for boulevard trees is six to seven years, depending on species. Pruning of the boulevard trees takes place twice a year, taking place in the spring and the fall. Approximately 5,500 street trees are pruned annually throughout the Town. Recently, the Town has increased its focus on the small trees located in areas recently assumed. By focusing on the smaller trees, the Town can prune for improved branch structure and reduce poor branch attachments, therefore, increasing the lifespan of the tree and lower future pruning costs. The Town continues to work towards reducing the pruning cycle on boulevard trees to five years by 2025. Reducing the pruning cycle will further increase the growth of a more structurally sound urban forest.

FINANCIAL IMPLICATIONS:

Funding for the continuation of the Urban Forestry Management Plan is identified through annual operating budgets and are also supported by tree compensation received in conjunction with development applications. The Town continues to pursue additional funding opportunities through grants and partnerships.

COMMUNICATION ISSUES:

The Town will continue to enhance the urban forestry communication plan; the following will be completed in the next five years:

- Improving the Urban Forestry web page on the Town's website
- Update tree inventory
- Review EAB communication plan

- Deliver Exceptional Customer Service
- Promoting events

CONCLUSION:

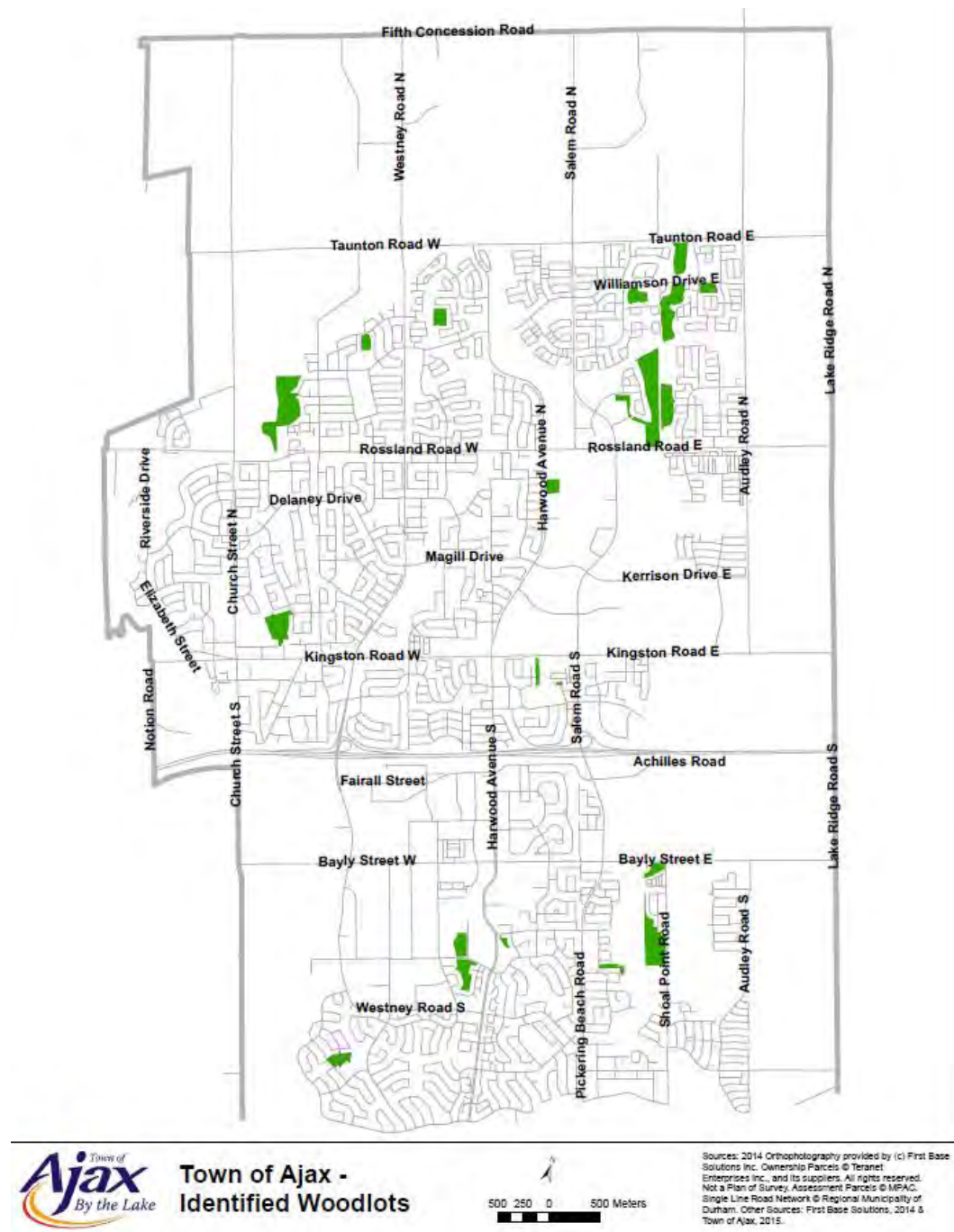
The Town of Ajax's focus on the urban tree canopy has been directed towards enhancing and promoting a healthy and diverse urban forest, comprised of trees in various stages of maturity located on boulevards, in parks, open spaces and throughout greenbelts. In order to ensure a long term plan to protect and increase the urban canopy in Ajax, Council adopted Ajax's Urban Forest Management Plan in 2011. To date, of the 32 recommendation 12 have been completed and 16 are currently started, and ongoing.

Craig Blencowe, Urban Forestry Technician, Environmental Services

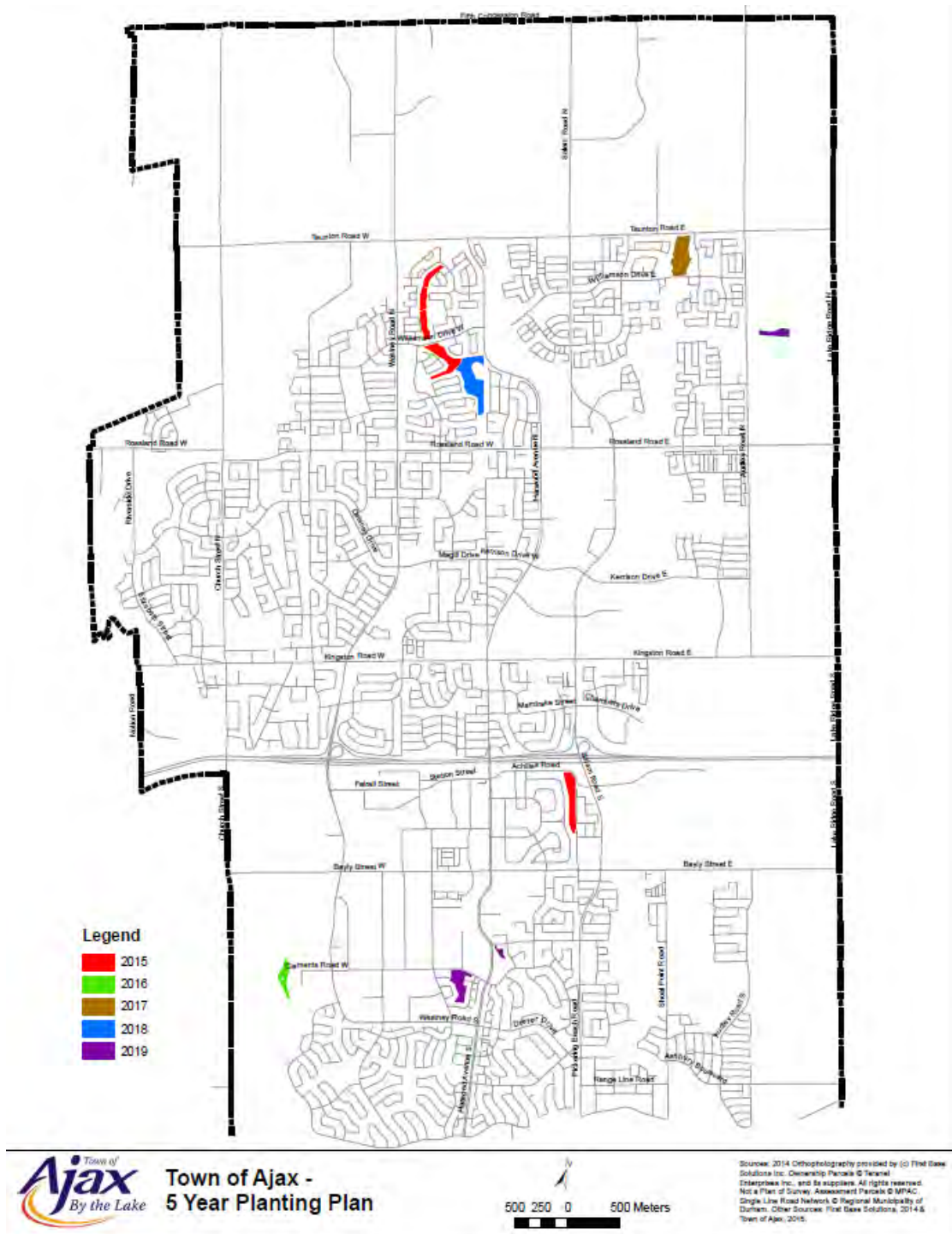
Tim Field, Manager of Environmental Services

Dave Meredith, Director of Operations and Environmental Services

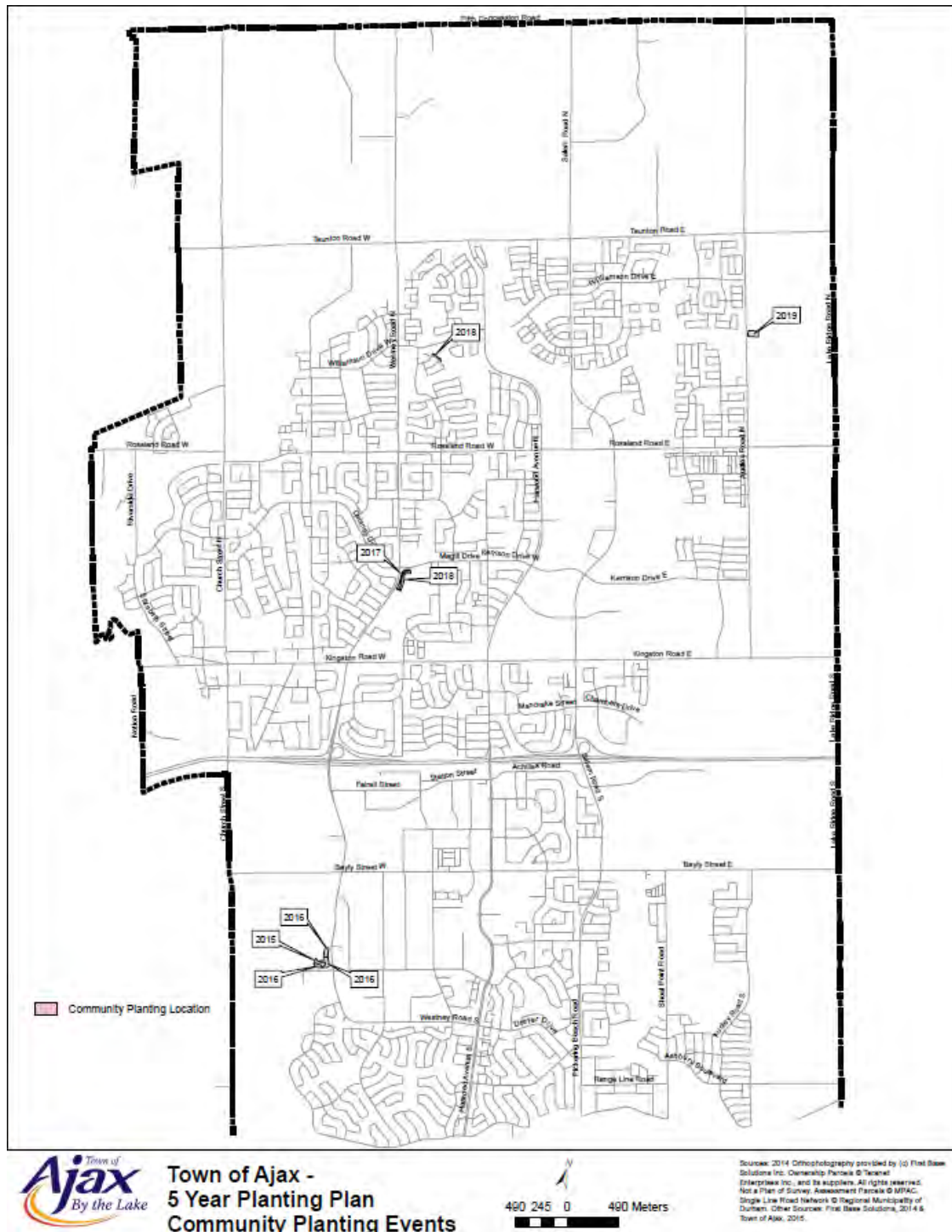
Appendix A- Identified Woodlot Inventory Map



Appendix B- 5 Year Contracted Planting Plan



Appendix C- 5 Year Community Planting Plan



TOWN OF AJAX REPORT



REPORT TO: General Government Committee

SUBMITTED BY: Paul Allore, M.C.I.P., R.P.P.
Director, Planning & Development Services

PREPARED BY: Barb Hodgins, M.C.I.P., R.P.P.
Senior Policy Planner

SUBJECT: **Comments on the Proposed *Great Lakes Protection Act* (Bill 66)**

WARD(S): All

DATE OF MEETING: April 9, 2015

REFERENCES: Community Strategic Plan – Environmental Leadership
Report to General Government Committee on the Province’s “Healthy
Great Lakes, Strong Ontario Discussion Paper”, dated May 7, 2009

RECOMMENDATION:

1. That the report titled “Comments on the Proposed *Great Lakes Protection Act* (Bill 66)”, dated April 9, 2015, be endorsed as the Town’s comments on the proposed legislation, per Environmental Bill of Rights Registry Posting 012-3523;
 2. That the Minister of the Environment and Climate Change be respectfully requested to invite the Town of Ajax to join the proposed Great Lakes Guardian Council when it is being established; and,
 3. That a copy of the report be sent to the Ministry of the Environment and Climate Change, Durham Region, Durham area municipalities, Ontario’s Environment Commissioner, the Toronto and Region Conservation Authority and the Central Lake Ontario Conservation Authority.
-

BACKGROUND:

On February 18, 2015, the Province released a proposed *Great Lakes Protection Act* (Bill 66), which has received first reading and was posted to the Environmental Bill of Rights Registry (012-3523)¹ by the Ministry of the Environment and Climate Change (MOECC) for a 60-day comment period that ends on Sunday, April 19, 2015.

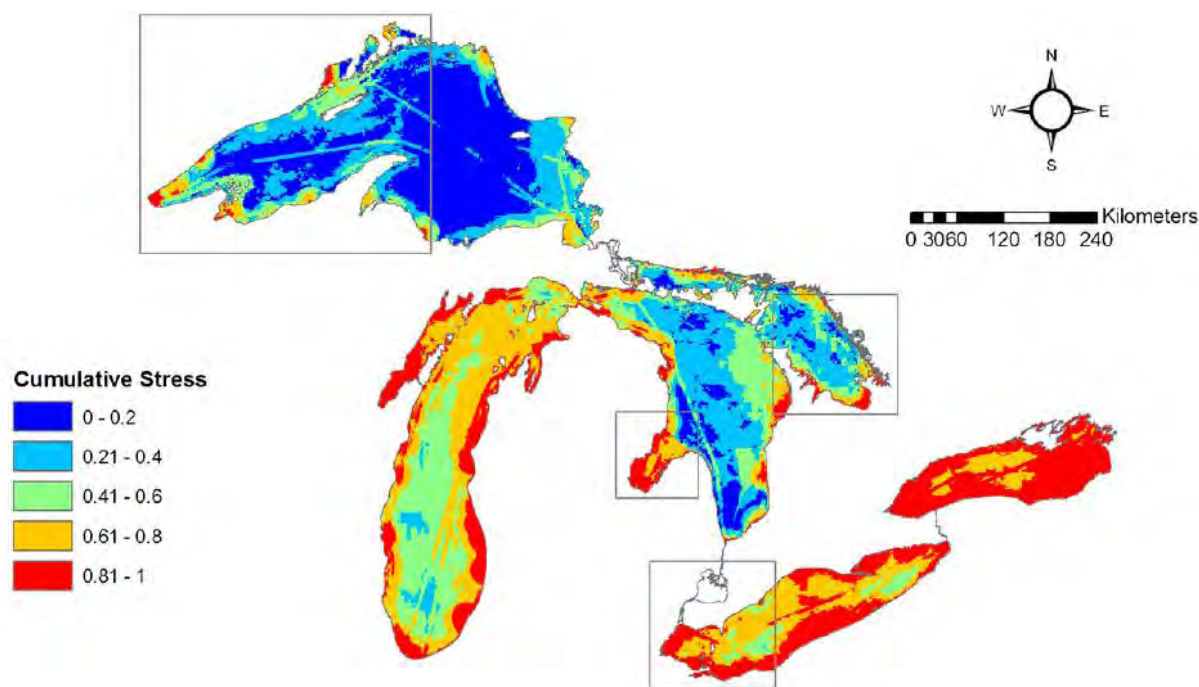
¹ Link to EBR Posting 012-3523: <http://www.ebr.gov.on.ca/ERS-WEB/External/displaynoticecontent.do?noticeId=MTI0NDM5&statusId=MTg3Mzc5&language=en>

DISCUSSION:

The proposed *Act* put forward by the MOECC is intended to help keep the Great Lakes “drinkable, fishable and swimmable” by:

- Helping fight climate change, reduce harmful algal blooms and protect wetlands and other coastal areas;
- Monitoring and reporting on the Great Lakes health;
- Encouraging local action on priority issues from “Ontario’s Great Lakes Strategy”²; and,
- Meeting commitments in the Canada-Ontario Agreement on Great Lakes Water Quality and Ecosystem Health (COA 2014)³. The COA 2014 is the primary mechanism by which the Federal and Provincial governments co-ordinate their respective work to address commitments made in the Canada-U.S. Great Lakes Water Quality Agreement (GLWQA 2012)⁴.

Within the Great Lakes Basin, Lake Ontario is the Town’s sole source of drinking water that sustains this growing community. Accordingly, Lake Ontario is a highly-valued asset of Ajax residents and visitors that needs to be protected and restored. Positioned at the lower end of the Basin, Lake Ontario is under tremendous cumulative threat, as shown in the Figure⁵ below:



² Link to Ontario’s Great Lakes Strategy 2012: <https://www.ontario.ca/document/ontarios-great-lakes-strategy>

³ Link to COA 2014: <https://ec.gc.ca/lcpe-cepa/default.asp?lang=En&n=E9A42FF1-1>

⁴ Link to GLWQA 2012: <https://www.ec.gc.ca/grandslacs-greatlakes/default.asp?lang=En&n=A1C62826-1>

⁵ Source of GLEAM Map: www.pnas.org/cgi/doi/10.1073/pnas.1213841110 : <file:///C:/Users/bhodgins/Desktop/GLEAM%20%20%20Great%20Lakes%20Environmental%20Assessment%20and%20Mapping%20Project.html>

Cumulative pressure is generated by stressors such as human activities, urbanization and infrastructure, and tends to be concentrated along the nearshore, as evidenced by declining water quality, excessive algae growth (eutrophication) and unattractive, smelly shorelines.

The proposed *Act* would establish a legislative framework for developing Initiatives, indicators of ecological health, targets to be met, performance requirements and progress reports potentially anywhere within the Great Lakes Basin where water drains into a Great Lake or the St. Lawrence River.

Observations, Gaps and Recommendations

The observations, gaps and recommendations set out in this staff report focus primarily on those aspects of the proposed *Act* that are particularly relevant to the Town's interests. Underlining has been added to emphasize certain points.

Builds on the *Lake Simcoe Protection Act, 2008*

The proposed *Act* was written to reflect parts of the *Lake Simcoe Protection Act, 2008*, which has a companion Lake Simcoe Protection Plan that includes a Phosphorus Reduction Strategy. Currently, Bill 66 refers to, but does not include, actual clauses (mapping, permits, prohibited activities, entering property and enforcing regulations) from the *Lake Simcoe Protection Act*, and would adopt a hierarchy of policies, with and without legal force, use terms such as “delegated policies” which are used in the Lake Simcoe Protection Plan.

Recommendation: Replace each reference to a clause from the *Lake Simcoe Protection Act* with the actual clause. Add definitions and explanations of the policy hierarchy and terms such as “designated policies” per the Lake Simcoe Protection Plan, in order to make the proposed *Act* easier to interpret.

Considers Cumulative Impacts

In its preamble, Bill 66 states that the Basin is vulnerable to effects of climate change, and that cumulative pressures from population growth, development, loss and degradation of natural features and pollution have led to the decline of Lakes Ontario, Erie and Huron.

Gap: The proposed *Act* lacks provisions and policies to ensure that individual stressors and cumulative impacts will be identified, measured and then addressed, such as stressors arising from provincially-planned growth and infrastructure. Also, provisions and policies regarding how to reduce the Basin's vulnerability to climate change through *adaptation* and *mitigation* are absent.

When studied individually, nutrients, chemicals and other pollutants may not be deemed by the Federal or Provincial governments to pose threats to the health of humans and the aquatic environment. However, if studied and analysed together to measure their cumulative impacts, the sources of such pollutants should become uncovered and become the focus of future Initiatives and Targets.

Support from sustained, reliable funding from federal, provincial, regional and municipal sources will be required to study and take effective actions to reverse cumulative impacts on Lake Ontario's ecological health, especially its nearshore.

Recommendations: Add provisions and policies to ensure that not only individual stressors but also cumulative impacts will be identified, measured and addressed, such as arise from provincially-planned growth and infrastructure; add provisions and policies regarding how to reduce the Basin's vulnerability to climate change through *adaptation* and *mitigation*; and establish reliable, sustained Federal and Provincial funding to support this work.

Relies on Ontario's 2012 Great Lakes Strategy

The proposed Act refers to and relies on the 2012 Ontario's Great Lakes Strategy and reflects its principles and performance measures.

MOECC staff advise that the 2012 Strategy was due for review this year but the review process has not commenced. The Minister is responsible for maintaining the Strategy, and would be required under the proposed Act to review it before December 18, 2018 and every six years afterwards, and have the authority to amend the Strategy between reviews. The principles set out in the 2012 Strategy, which are reflected in the proposed Act but have been strengthened, as shown in bold type, are to:

1. Protect human health and well-being through protection and restoration of **water quality, hydrologic functions** and the Basin's ecological health, including eliminating or reducing harmful pollutants;
2. Protect and restore **watersheds**, wetlands, beaches, **shorelines** and other coastal areas;
3. Protect and restore natural habitats and biodiversity;
4. **Protect and improve the Basin's capacity to respond to impacts and causes of climate change;**
5. Improve understanding and management of the Basin by advancing science **and promoting consideration of traditional ecological knowledge** related to existing and emerging stressors **and by establishing and maintaining monitoring and reporting programs or actions with respect to its ecological conditions;** and,
6. Enrich quality of life in communities by supporting environmentally sustainable economic opportunities, innovation and use of natural resources.

Gap: The first principle refers to protecting human health and restoring water quality, but needs to also specify protecting aquatic health and particularly the nearshore, in order to truly take an ecosystem approach.

Recommendation: Strengthen Principle 1, to read as follows: Protect human and aquatic health and well-being through protection and restoration of water quality, particularly in the nearshore, hydrologic functions and the Basin's ecological health, including eliminating or reducing harmful pollutants.

Establishes a Great Lakes Guardians Council

The proposed Act would establish a Great Lakes Guardians Council and have it meet at least annually. The Guardians Council would include, in addition to the Minister of the Environment and Climate Change and other Great Lakes Ministers:

- municipal representatives;
- conservation authorities with jurisdictions located wholly or partly in the Basin;
- First Nations and Metis communities;
- environmental organizations;
- scientists; and,
- industrial, agricultural, recreational and tourism sectors.

The Guardians Council would be responsible for identifying priority actions and potential funding measures and partnerships for projects, facilitating information sharing, and obtaining input regarding:

- establishing targets;
- criteria for selecting and prioritizing geographic areas for which Proposals for Initiatives will be developed; and,
- Developing and implementing approved Proposals and inter-jurisdictional agreements related to protecting or restoring the Basin's ecological health.

Requesting Seat on Great Lakes Guardians Council

To advance the Town's interests and protect its investment in restoring its waterfront and nearshore, it would be invaluable for the Town to be a member of the proposed Great Lakes Guardian Council. Also, for the Province to ensure accountability and transparency, Council meetings and related materials need to be made available to the public throughout the Great Lakes Basin, which crosses time zones.

Recommendations: That the Minister invite a representative of the Town of Ajax to be a member of the Great Lakes Guardian Council. Add requirements that the Guardians Council's meetings will be advertised publicly in advance, and that agendas, meeting minutes, decisions, draft and approved Proposals for Initiatives and reports will be made available publicly upon completion, and that the meetings will be open and available to the public to attend in person, or to participate in or monitor in real time, on the Internet.

Needs Stronger Performance Standards

The Province intends to develop performance standards in order to measure, track and issue Progress Reports to the Legislature and the public every three years, and refine the measures over time. The proposed *Act* would rely on the following performance indicators and standards from the 2012 Great Lakes Strategy.

1. Increase public awareness and engagement on Great Lakes issues, as demonstrated by the number of community projects undertaken;
2. Drinking water meets a high standard of safety, as demonstrated by municipal residential drinking water systems meeting provincial drinking water standards;
3. Reduced levels of harmful pollutants in the ecosystem, as demonstrated by declining fish tissue contaminant levels and fish consumption advisories, as well as localized improvements in priority areas where efforts are focused to address problems;

4. Measuring phosphorus trends and reducing the frequency and severity of algae blooms in priority areas;
5. Beaches are available for public use for more of the season, as demonstrated by reduced beach postings;
6. Continued progress on cleaning up Areas of Concern, as demonstrated by restoring impaired beneficial uses;
7. Habitats, including wetlands, and native species are identified, protected, conserved and restored, supported by policies and programs to identify and take action on priority habitat, and by enhanced information;
8. The threat of aquatic invasive species to Great Lakes ecosystems have been reduced, supported by actions to reduce impacts of existing invaders and to prevent and respond to new arrivals;
9. Greater public access to monitoring results and scientific information, as demonstrated by increased number of publicly available Great Lakes studies and reports; and,
10. Ongoing implementation of Adaptation Actions in the Province's "Climate Ready: Ontario's Adaptation Strategy and Action Plan (2011-2014)", as demonstrated by progress updates contained in regular Climate Change Progress Reports.

Gap: Many of the performance indicators and standards are vague and not sufficiently rigorous or quantitative. Further, measurement of these indicators is not sufficiently funded by federal, provincial and regional governments to gather the information required to meaningfully report progress toward achieving the proposed principles.

For example, recreational water quality monitoring at beaches should be advanced such that genetic markers are used to identify human versus non-human *E. coli* bacteria in nearshore water samples, so as to identify its sources (e.g., human, waterfowl, dog, cat, raccoon, waterfowl or otherwise) and to pinpoint the actions required locally to reduce *E. coli* levels so as to reduce the frequency of beach postings. There is opportunity for the Province to insert stronger performance indicators into Bill 66 prior to further readings in the Legislature and receipt of Royal Assent.

Recommendation: Prior to further readings of Bill 66 in the Legislature, add more rigorous, explicit, quantitative performance standards based on the findings of the best available science to strengthen the proposed *Act* and the Great Lakes Strategy.

For example, consider updating water quality testing protocols for beach monitoring to use genetic markers to identify the type of *E. coli* in nearshore water samples, so as to identify its source (e.g., human, waterfowl, dog, cat, raccoon, waterfowl or otherwise) and pinpoint remedial actions required to reduce *E. coli* levels so as to reduce the frequency of beach postings. Provide supportive Provincial funds and equipment required by scientists to undertake and complete this important work.

Sets Overarching Principles

Actions and decisions to be taken under the proposed *Act* would be guided by a series of principles:

1. An ecosystem approach that recognizes the Lakes' intrinsic value and interdependence of land, air, water and living organisms, including humans, by using the best available science, considering cumulative impacts, encouraging conservation of resources and promoting watershed and sub-watershed approaches;.
2. A precautionary approach, by exercising caution to protect the environment when there is uncertainty about environmental risks;
3. An adaptive management approach, by continuously improving and adapting policies and management approaches by monitoring impacts, assessing effectiveness and adjusting actions while considering new science, Traditional Ecological Knowledge, innovative design, practices and technologies, and the need to adapt to a changing climate;
4. Collaboration between government, interested parties and organizations;
5. Government accountability to the public for actions taken to achieve its purposes, promote increased transparency by setting clear goals, reporting regularly on progress and sharing information; and,
6. Recognition of First Nations and Metis communities that have an historic relationship with the Basin.

The proposed principles should be supported.

Preparing Geographically-Focused Initiatives

There seem to be three scenarios through which a Proposed Geographically-Focused Initiative (GFI) could be prepared:

1. A public body or public bodies (municipalities and/or conservation authorities) could voluntarily prepare a Proposed GFI, consisting of:
 - a description of the proposed area to which it would apply, the environmental conditions of the area, the proposed issues to be addressed;
 - the proposed objectives, principles and priorities that guided its development;
 - the proposed types of policies that would be set out to achieve the objectives;
 - the proposed consultation process to be undertaken to develop the GFI, including the persons and public bodies to be consulted a plan for engaging potentially affected First Nations and Metis communities;
 - the proposed priorities that should guide implementation;

- the proposed specific methods to be used to assess whether objectives are being achieved;
 - a proposed strategy for financing its implementation; and,
 - the proposed date on which the Initiative would take effect.
2. The Minister could direct a public body or public bodies to develop a Proposed GFI that, in addition to the above, specifies the parties responsible for its development and other matters identified by the public bodies.
 3. Any person could request the Minister to direct public bodies to develop a Proposed GFI, subject to the person providing rationale for the GFI and any information requested to enable the Minister to assess the request.

Any of these scenarios could have implications to the Town, financially and from a staff resource perspective. For example, if a GFI were prepared for an area encompassing part of Ajax and/or watersheds draining through and from Ajax to Lake Ontario without the Town's involvement, or if the Minister directed the Town to develop an unplanned GFI. Financial impacts could be mitigated if the Town were to receive sufficient, sustained funding support.

Evaluating GFIs

Only highlights of a proposed evaluation process have been provided in the proposed Act (e.g., appointment of hearing officers, establishing rules of procedure, issuing a decision within 60 days of a hearing and written recommendations to the Minister).

As a result, it is not clear: whether all GFIs would proceed, or have the potential to proceed to, a hearing; if the Province intends to rely on existing hearing officers and well-known rules of procedure (e.g. the Ontario Municipal Board or Environmental Review Tribunal); or whether municipalities preparing or commenting on GFIs would require legal counsel and expert consultants to participate in the proposed evaluation process.

The Minister could either refer a GFI to the Lieutenant Governor in Council or not, and any party charged with the authority could either approve it, with or without amendments, or not approve it.

Should the Minister approve a Proposed GFI, the submitting public bodies would then be required to, by a specified date, develop a Draft GFI in accordance with the approved Proposed GFI and submit it to the Minister. In addition to the information provided in a Proposed GFI, a Draft GFI must also describe: the environmental conditions of the area and issues and activities to be addressed; the principles and priorities that guided its development; the priorities that should guide its implementation; the benefits and costs arising from its implementation to the public bodies responsible for its implementation; and how it would benefit the Basin's ecological health.

Upon receipt of a Draft GFI, the Minister could direct that it be amended and resubmitted within a specific time, appoint a hearing officer to conduct one or more hearings, or refer, or not refer, the Draft GFI to the Lieutenant Governor in Council.

Before referring a Draft GFI to the Lieutenant Governor in Council, the Minister would give the Draft GFI to the clerk of each municipality located wholly or partially in the affected area, invite each municipality to make submissions or pass a resolution on the Draft GFI within a time specified by the Minister. The Minister would consider any written municipal submissions or resolutions and decide to refer it or not to refer it.

Gap: It is not clear why a Draft GFI would be required after a Proposed GFI had been approved. The proposed process seems to defer consultation with a potentially affected but uninvolved municipality until after considerable time and resources have been spent developing and obtaining approval of a Proposed GFI. This could prove to be a barrier if there happened to be a “hold out” municipality or conservation authority. The proposed consultation process is minimal but could be expanded to be more vigorous.

Recommendations: Strengthen the list of contents of a Proposed GFI to be submitted to the Minister by requiring the inclusion of supporting Council resolutions from all municipalities wholly or partially within the proposed area to which the GFI would apply. Consider requiring that municipalities potentially affected by but uninvolved in preparing a Proposed GFI are given the opportunity to submit comments or pass a resolution respecting any Proposed GFI, to avoid creating the above-noted barrier.

Includes Policy Direction in GFIs

In the proposed *Act*, a hierarchy of policies from the *Lake Simcoe Protection Act* seems to have been incorporated at the end, but not enough explanation has been provided to users in the proposed *Act* or the Great Lakes Strategy not familiar with the *Lake Simcoe Protection Act* and the Lake Simcoe Protection Plan.

Gap: The proposed policy hierarchy and terminology are not clearly or fully explained in Bill 66 or the Great Lakes Strategy on which it relies, which may lead to confusion when interpreted in conjunction with traditional planning terminology. Also, Schedule 1 Policies refer only to key natural heritage features and key hydrologic functions, which are identified by the Province in the Greenbelt Plan. It is unclear whether regionally and locally significant natural heritage features and functions could be included. This potential restriction can be resolved by deleting the word “key” in proposed Schedule 1 of the proposed *Act*.

As an example, the Town’s Official Plan is an ecosystem-based, structural plan with a strong Greenlands System policy and mapping framework. The Greenlands System encompasses not only “key” natural heritage features and functions, such as provincially significant wetlands, wetland complexes, coastal wetlands and ANSIs, but also the Lake Ontario shoreline and a host of regionally and locally significant features and functions highly valued by this community.

If a GFI were to be prepared that would encompass or potentially impact on any portion of Ajax or its Greenlands System, the Town should be involved in its development.

Recommendations: Strengthen the proposed *Act* and Great Lakes Strategy by including a more complete explanation of the proposed policy hierarchy and terminology. In the proposed Schedule 1 Policies, delete the word “key”, to ensure ensuing Initiatives can be designed to protect provincially, regionally and locally significant natural heritage features and functions.

Implications to Planning and Development

The proposed policies that may be set out in a GFI could affect Council decisions under the *Planning Act* and the *Condominium Act*, and Ontario Municipal Board decisions, pertaining to the area subject to an approved GFI. Such decisions would be required to conform with “designated” policies and have regard to policies “not designated” but set out in the GFI. However, this would not apply to a policy statement issued under Section 3 of the *Planning Act* or a Minister’s Zoning Order under Section 47 of the *Planning Act*.

An approved GFI would prevail in the case of conflict between a GFI’s designated policy and a policy in an official plan, zoning by-law or a policy statement issued by the Province under Section 3 of the *Planning Act*. Should there be conflict between a GFI’s designated policy and a provision in one of the following plans or policies, the provision that provides the greatest protection to the Basin’s ecological health would prevail:

- a policy statement issued under Section 3 of the *Planning Act*;
- the Greenbelt Plan and any amendments;
- the Niagara Escarpment Plan and any amendments;
- the Oak Ridges Moraine Conservation Plan and any amendments; and
- a Growth Plan established under the *Places to Grow Act*.

Within an area subject to an approved GFI, a municipality may not undertake any public work, improvement of a structural nature or other undertaking or pass a By-law for any purpose that conflicts with the GFI’s designated policy. Any comments, submissions and advice from a municipality related to the following decisions must conform with designated policies in the GFI and have regard to policies that are not designated policies:

- i) decisions under the *Planning Act* or *Condominium Act* related to the area of a GFI;
- ii) decisions to issue, create or amend a prescribed instrument related to the area of a GFI; and
- iii) Any other matter specified in the GFI.

A Council with jurisdiction in an area to which a GFI applies must amend its Official Plan to conform with designated policies set out in the GFI, either no later than the date Council is required to revise an Official Plan in accordance with Section 26 (1) of the *Planning Act*, if the Minister does not direct Council to make the amendments on or before a specified date, or a date set by the Minister if Council is directed by the Minister to make amendments on or before a specified date.

If, in the Minister’s opinion, an official plan having jurisdiction in an area to where a GFI applies does not conform with a designated policy set out in the GFI, the Minister may advise the municipality of the non-conformity, and request the municipality to submit a Proposal within a specified time for resolving the non-conformity.

If a Council failed to submit a proposal to resolve non-conformity within a specified time, or a proposal was submitted but the non-conformity could not be resolved, the Minister could, by order, with the Minister of Municipal Affairs and Housing, amend an Official Plan to resolve the non-conformity, and notify the affected Council in writing. Such a Ministerial order would have the same effect as an Official Plan Amendment (OPA) adopted by Council and, if the OPA were

not exempt from approval, the same effect as if approved by the appropriate Approval Authority (i.e., in Ajax's case, Durham Region or the Ontario Municipal Board). The order would be final and not subject to appeal.

As written, the *Act* proposes that the following policies could also be included in a GFI, but would not have any legal effect:

- Policies supporting co-ordination of environmental and resource management programs, land use planning programs and land development programs of Provincial ministries; and,
- Policies regarding stewardship programs, pilot programs, programs that specify and promote best management practices, outreach and education programs, research and specifying actions to be taken to implement an Initiative or achieve its objectives.

The following documents would be considered to be policies under the *Environmental Bill of Rights Act*: the Great Lakes Strategy; any Targets established; any Plan prepared setting out the actions that may be taken to achieve Targets; any approved Proposal for a GFI; and any approved GFI.

Notably, any person could request the Minister to establish a Target, subject to the person providing rationale for the Target and information requested by the Minister to assist in assessing the request.

An approved GFI would not, itself, be assessed under the *Environmental Assessment Act*.

Reviewing the Great Lakes Strategy

Any person or public body responsible for reviewing or amending Ontario's Great Lakes Strategy, preparing a Plan setting out the actions that may be taken to achieve Targets, developing or amending a Proposed GFI or developing or amending an approved GFI would be required to consider the purposes of the *Act* and the Great Lakes Strategy's principles when carrying out that responsibility. MOECC staff confirmed that a review of the Strategy is scheduled for 2015, but had not commenced as of the writing of this staff report.

Considering Related Great Lakes Agreements

Any person or public body must consider agreements in effect and to which the Provincial government or Federal governments are a party related to the protection or restoration of the ecological health of the Basin, including the following agreements or agreements that replace them:

- The Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement of 2005 dated December 13, 2005 and signed by the Premiers of Ontario and Quebec and the Governors of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin.
- The aforementioned 5-year COA 2014, including any amendments made before or after the proposed *Act* comes into force. Annex 1 (Nutrients) of the COA mentions urgent need for a co-ordinated, strategic response to nutrient management issues, in particular Lake Erie. Referring to the resurgence of algal blooms in nearshore areas of Lakes Erie, Ontario and

Huron since the 1990's due to urbanization and agricultural practices in adjoining watersheds, algae is recognized as a problem requiring new solutions.

- The Great Lakes Water Quality Agreement (GLWQA) between Canada and the U.S., signed on November 22, 1978, including any amendments made before or after the proposed *Act* comes into force.

For many years, in accordance with the Town's Official Plan policy, Council and staff have been advocating for the Federal and Provincial governments to establish targets for Lake Ontario regarding nutrients and chemicals to protect and restore nearshore water and ecological health.

The GLWQA was amended in 2012, at which time the Federal government committed to developing programs, technologies and measures to better understand the Basin's ecosystem, and to restore and protect water quality in consultation with municipalities and the public. Annex 4 of the GLWQA set commitments, objectives, actions and timelines for addressing nutrients and other pollutants. One of its objectives is to "reduce occurrence of toxic and nuisance algal blooms that degrade drinking water quality, impair fish spawning, and adversely impact commercial and recreational fishing, swimming, tourism and overall enjoyment of the Lakes".

The Great Lakes Executive Committee (GLEC) is the binational decision-making team responsible for implementing Federal commitments in the 2012 GLWQA and shared Federal and Provincial commitments in COA 2014. The GLEC has focused on Lake Erie's algae issue since 2012, but will be turning its attention to Lake Ontario in the short term.

Recommendation: That the Federal and Provincial governments, through the GLEC and the MOECC, work with the Town to establish priority actions for Lake Ontario that will effectively curtail nutrient and chemical discharges to nearshore water at Ajax.

FINANCIAL IMPLICATIONS:

There are no financial implications to commenting on this proposed legislation.

COMMUNICATION ISSUES:

None.

CONCLUSIONS:

The performance measures in the 2012 Great Lakes Strategy, which are reflected in the proposed *Act*, should be strengthened as recommended before Bill 66 receives second reading.

The proposed *Great Lakes Protection Act* has potential implications to planning and development in the Town, in watersheds draining through Ajax and adjacent municipalities to Lake Ontario, and on nearshore water quality and the aquatic environment in Lake Ontario along the Town's waterfront.

Generally, a municipality's involvement in the proposed evaluation process for a GFI would appear to require considerable time, substantial funding support, and possibly the services of outside legal counsel and consulting experts.

Modest Provincial funding offered through the Great Lakes Guardian Fund has enabled small-scale initiatives to be developed, which under the Strategy will be reported by the Province as "progress" toward achieving the proposed *Act's* objectives. The proposed *Act* and Strategy could result in different GFIs being applied to different stretches of the Lake Ontario shoreline and nearshore, not the comprehensive targets needed to ensure actual, measurable progress is made.

Taken together, the proposed *Great Lakes Protection Act*, 2012 Great Lakes Strategy and level of supportive Provincial funding do not appear to provide the avenue by which escalating algae growth in nearshore Lake Ontario at Ajax will be resolved in the foreseeable future. Therefore, the Town should continue to take action through other avenues.

However, Council should request a seat on the Great Lakes Guardians Council, as the Town has valuable experience to share with the broader Basin community related to determining priorities, developing and undertaking scoped, effective scientific study and modeling using actual measured data to identify sources of pollution and their cumulative impacts, for the purpose of restoring lost beneficial uses and ecological health in nearshore Lake Ontario.

Barbara Hodgins, M.C.I.P., R.P.P.
Senior Policy Planner

Gary Muller, M.C.I.P., R.P.P.
Manager of Planning

Paul Allore, M.C.I.P., R.P.P.
Director of Planning & Development Services

THE CORPORATION OF THE TOWN OF AJAX

IN THE MATTER OF COMPLAINTS by Paul Mitchell against Councillor Renrick Ashby, dated October 21, 2014, and March 26, 2015, under section 223.4 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, and By-law 90-2013 of the Corporation of the Town of Ajax, being a By-law to establish a Code of Conduct for Members of Council.

REPORT OF THE INTEGRITY COMMISSIONER

April 1, 2015

H. G. Elston
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The Admiral Building, One First Street, Suite 224
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THE CORPORATION OF THE TOWN OF AJAX

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REPORT OF THE INTEGRITY COMMISSIONER

THE CODE

1. On October 15, 2013, the Town of Ajax (the “**Town**”) passed By-Law Number 90-2013, establishing a Code of Conduct for Members of Council (the “**Code**”). Section 1 of the Code sets out its purpose:

The Code of Conduct for Council (hereinafter the “Code”) serves as a guide to Members of Council (the “Members”) in the individual conduct of their official duties, helping to ensure that the Members share a common basis for acceptable conduct. It also serves to protect the public interest and encourage high ethical standards among the Members. The Code represents general standards; it supplements, but does not replace Members’ roles, responsibilities, actions, and behaviours required by various statutes, by-laws and policies. The Code does not replace personal values or ethics held by individual Members.

2. The key principles that underlie the Code are as follows:

- a. Members shall serve and be seen to serve their constituents in a conscientious and diligent manner;*
- b. Members shall perform their functions with integrity, accountability, and transparency, avoiding the improper use of the influence of their office, and conflicts of interest, both real and apparent;*
- c. Members shall perform their duties of office in a manner that promotes public confidence and will bear close public scrutiny;*
- d. Members shall seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Ontario Legislature, and Town Council.*

3. The Code’s purpose and principles make it clear that it is meant to serve as a guide to Members of Council in the individual conduct of their official duties, as they serve their constituents and perform their functions and duties. As well, it is an instruction to Members that they serve the public interest by upholding Federal, Provincial and Municipal laws and policies.

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4. Section 16 of the Code speaks to compliance, enforcement and penalties. Subsection (b) of section 16 repeats the reminder to Members that there are rules and penalties beyond the Code. Subsection 16(b) states:

Members are accountable to the public through the election process. Between elections, they may become disqualified and lose their seat if convicted of an offence under the Criminal Code of Canada, for failing to declare a conflict of personal interest under the Municipal Conflict of Interest Act, or for being convicted of a corrupt practice under the Municipal Elections Act.

5. Simply put, then, the Code is to be applied to Members in the pursuit of their duties as Members of Council. In all other walks of life they are to be governed by their own values, all the while serving the broader public interest by obeying the law.

6. The necessary implication of this structure is that Members' conduct in the pursuit of their duties as Members of Council will be subject to review and sanction by Council. Conduct outside their official duties will be governed by each Member's own personal value system, as well as the laws of Ontario and Canada. Of course, the distinction between a Member's public and private life is often difficult to establish, and, in some instances, traits displayed in a private capacity are of such a nature that they may be deemed to impact on the Member's public role.

7. The Code also imposes limits on the timeliness of complaints and the currency of the conduct complained of. Such limits are common to both the civil and criminal law and are an important consideration in the assessment of these complaints.

8. Regarding time limits, subsection 16(e) states:

Any individual, including members of the public, town employees, and Members who have reasonable grounds to believe that a Member has breached a provision of the Code, may proceed with a complaint. Complaints must be submitted within six weeks of the matter becoming known to the individual and no more than six months after the alleged violation occurring. No action will be taken on a complaint received beyond these deadlines.

SUMMARY OF FINDINGS

9. This report details my investigation and findings with respect to the complaints by Paul Mitchell about the conduct of Councillor Renrick Ashby. I have reviewed and considered all the documents and submissions associated with Mitchell's complaints, interviewed Mr. Mitchell and Councillor Ashby, and considered further written submissions from Mitchell.

10. For the reasons that follow, I find that, although I believe that on some matters Councillor Ashby has contravened the Code, the allegations of behaviour where I find a breach to have occurred were not made within the timelines set out in section 16(e) and, therefore, must be dismissed. On the other hand, as I will explain, on the allegations that may have been made in time, I am unable to find a breach.

11. Although the Code does say that, in the event of an out-of-time complaint, no action is to be taken, I felt that an out-of-hand dismissal, while technically correct, would do a disservice to the complainant, the respondent, and the Town. It also required a level of investigation to determine when, in fact, certain events occurred and when Mr. Mitchell became aware of them. Accordingly, at the risk of challenge to the process I have adopted, I respectfully present a full review of all matters complained of.

THE PARTIES

12. I interviewed Councillor Ashby on February 4, 2015, at his offices at the Scarborough Civic Centre. Mr. Ashby is a Senior Planner with Community Planning Scarborough District. He was first elected as Ward 2 Councillor in Ajax in a 2008 by-election and was re-elected in the municipal elections of 2010 and 2014. Councillor Ashby was open about the difficulties he has faced, but was adamant that the business and legal troubles he faces were not in any way related to his role or duties as a Councillor.

13. Councillor Ashby believes that, but for his position as a Member of Council, no one would be concerned about his conduct. With respect, that is, of course, the point.

14. I interviewed Mr. Mitchell at the Town's offices, on January 21, 2014. I found him to be prepared, pleasant and cooperative, although clearly frustrated by what he sees as Councillor Ashby's improper conduct.

15. In the 2014 municipal election, Mr. Mitchell ran as a candidate in Ajax's Ward 2. Although Mr. Mitchell eventually withdrew from the race for the Ward 2 seat, during the course of his campaign he told me that he was "overwhelmed" by the information he was given; information which he claims suggested that Councillor Ashby was using his position to attract all manner of support, including financial.

THE FACTS

16. The facts which give rise to Mr. Mitchell's complaints may be stated as follows:

- a. On June 12, 2012, Councillor Ashby, as President of Nexx Night Club & Lounge Inc. ("**Nexx**") applies to the Alcohol and Gaming Commission of Ontario (the "**AGCO**") for a Liquor Licence Permit for Nexx.
- b. On December 31, 2012, undercover Durham Police Officers charge Nexx and Councillor Ashby with offences under the *Liquour Licence Act* (the "**LLA**") and the Town of Ajax Entertainment Establishment By-law Number 160-2006 (the "**Entertainment Establishment By-law**").
- c. May 2, 2013, Councillor Ashby pleads guilty to one charge under the Entertainment Establishment By-law, is fined \$2,500.00, and given one year to pay.
- d. May 7, 2013, Councillor Ashby pleads guilty to three counts under the LLA, is fined \$2,000.00 for each offence, and is given one year to pay.
- e. Neither the Entertainment Establishment By-law fine nor the LLA fines were paid within the one-year time limit; May 2nd and May 7th, 2014, respectively.
- f. On May 23, 2014, Mr. Mitchell becomes aware of Councillor Ashby's failure to pay the fines, thus starting the clock on the complaint regarding the non-payment of fines.
- g. July 4, 2014: Deadline for Mitchell complaint about non-payment.
- h. The Town notes Ashby in default and demands that the Entertainment Establishment By-law fine be paid by August 31, 2014.
- i. On October 13, 2014, Ashby pays \$4,575.00 to Region of Durham against LLA fine.
- j. Mr. Mitchell attends at Oshawa court and discovers several claims for unpaid loans against Councillor Ashby on October 16, 2014.
- k. On October 17, 2014, Councillor Ashby pays outstanding \$3,000.00 to Region of Durham. The LLA fine, plus surcharges and penalties are now paid in full.
- l. On October 21, 2014, Mitchell makes First Complaint.

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- m. On December 15, 2014, Ashby pays the Town \$3,150.00 and the Town is now paid in full for the Entertainment Establishment By-law fine, surcharge and penalties.
- n. Mitchell makes Second Complaint on March 26, 2015.

THE COMPLAINTS

17. In support of his allegations, Mitchell has submitted two distinct complaints. The first complaint was made by way of a Complaint Form/Affidavit, sworn on October 21, 2014 (the “**First Complaint**”). The second complaint was made by way of two Complaint Forms/Affidavits, both sworn on March 26, 2015 (the “**Second Complaint**”) (together, the “**Complaints**”).

18. The First Complaint attached Exhibits “A” through “O”, which comprised some 83 pages. The Second Complaint comprised some 127 pages, although many of these pages are a duplication of pages from the First Complaint.

19. In summary, Mr. Mitchell complains that Councillor Ashby: engaged in an illegal business; used his office to mislead officers investigating the business; failed to pay Court fines; engaged in activities for financial and personal interests, inconsistent with the impartial discharge of his civic obligations; and failed to disclose potential conflicts under the *Municipal Conflict of Interest Act* R.S.O. 1990, c. M.50, as amended (the “**MCIA**”).

20. Mr. Mitchell has framed his two complaints as violations of Section 7 (Open, Transparent Government), Section 9 (Confidential Information), Section 10 (Conflict of Interest/Pecuniary Interest), Section 12 (Council/Staff Working Relationships), Section 14 (Improper Use of Influence), Section 15 (General Conduct), and Section 16 (Compliance, Enforcement and Penalties) of the Code.

21. In his Affidavits, Mr. Mitchell details the facts upon which he relies and explains how those facts underlie his allegations that Councillor Ashby has breached several sections of the Code. Mr. Mitchell has done a thorough job of organizing his materials, so that each allegation references a specific Exhibit or Exhibits. For the purposes of this report, I have organized the major events that form the foundation of the Complaints, into three episodes. They are:

1. Councillor Ashby had a direct and leading role in the establishment and operation of Nexx Night Club & Lounge Inc. (“**Nexx**”), an establishment that was found to have illegally kept, offered and sold liquor. In connection with the operation of Nexx, Councillor Ashby was charged, convicted and fined in connection with three *Liquor Licence Act* offences and one offence under the Town of Ajax Entertainment Establishment By-law Number 160-2006 (the “**Entertainment Establishment By-law**”) (the “**Convictions**”);

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2. Councillor Ashby failed to pay the fines, within the one-year time period that the Court imposed (the “**Fine Defaults**”); and
3. Councillor Ashby borrowed significant sums from several individuals, failed to repay the loans under the terms, and is being sued (the “**Civil Litigation**”).

22. In the First Complaint, Mr. Mitchell organizes his submission into 12 paragraphs, each associated with a document or series of documents made an exhibit or exhibits.

EXHIBIT(S)	DESCRIPTION	GROUND(S)	CODE
“A”	Durham Regional Police Media Release of Jan 18, 2013	Misled investigators; engage in illegal business; pursue financial and personal interests inconsistent with obligations; fail to disclose conflicts.	9 a), b), c) and d) 10 a), b) 14 a), b) 16 a), b), c), d), e)
“B”, “C”, “D”, “E”	Metroland Media articles of Jan 18, 23, May 9, 2013 and Oct 7, 2014	Confirms no liquor licenses; police “led on (chase) to find out if there was a licence; offences were serious; misled police, AGCO, Town and City of Toronto, publicly lie about non-payment of fines; engage in illegal business; financial and person interests inconsistent with obligations; fail to disclose conflicts.	9 a), b), c) and d) 10 a), b) 14 a), b) 16 a), b), c), d), e)
“EE”	Ontario Court “Information”, record of plea and fines	Proves default, became a “fugitive”, lied to the public, inconsistent with obligations, failed to disclose a conflict	14 a), b) 16 a), b), c), d), e)
“F”	Mitchell call log: May 23, 30, June 27, Oct 14, 2014	Non-payment confirmed; inconsistent with obligations; fail to disclose potential conflicts;	9 a), b), c) and d) 10 a), b) 14 a), b) 16 a), b), c), d), e)
“G”	Durham Collections Clerk printout showing outstanding fines of \$7,575.00 as of October 9, 2014 (Mitchell note)	Public statements inconsistent with obligations; fail to disclose potential conflicts;	9 a), b), c) and d) 10 a), b) 14 a), b) 16 a), b), c), d), e)

"H"	Email correspondence to Sue Molyneau, Toronto Fraud and Waste Hotline – May to October 2014	Failed to notify Ajax of Toronto investigation; inconsistent with obligations; fail to disclose potential conflicts;	9 a), b), c) and d) 10 a), b) 14 a), b) 16 a), b), c), d), e)
"I"	May 29, 2014 Complaint to Ontario Ombudsman	Request investigation of Ashby's actions and "non-transparent" investigations by local municipalities	-
"J"	Sept 22, 2014 Complaint to Premier Wynne	Ashby charged with no licence; police led on (chase); offences serious; inconsistent with obligations; fail to disclose potential conflicts;	9 a), b), c) and d) 10 a), b) 14 a), b) 16 a), b), c), d), e)
"L"	May 29, 2014 Complaint to Ministry of Municipal Affairs and Housing and Oct 21, 2014 response	Advised to contact local municipality	-
"M"	Superior Court Pleadings (various)	Ashby used his office to solicit money for Nexx; defrauded; financial or personal interests inconsistent with obligations; fail to disclose potential conflicts;	9 a), b), c) and d) 10 a), b) 14 a), b) 16 a), b), c), d), e)
"N"	Superior Court Pleadings (various)	Ashby used his office to solicit money for Nexx; defrauded; endangered lives; financial or personal interests inconsistent with obligations; fail to disclose potential conflicts;	9 a), b), c) and d) 10 a), b) 14 a), b) 16 a), b), c), d), e)
"O"	Update of information sent to Sue Molyneau at City of Toronto	Up-dated information to add to earlier formal complaint; financial or personal interests inconsistent with obligations; fail to disclose potential conflicts;	9 a), b), c) and d) 10 a), b) 14 a), b) 16 a), b), c), d), e)

23. The Second Complaint is comprised of four parts: 1) a Toronto Star article dated March 16, 2014, and an Ajax News Advertiser article dated March 18, 2015 (reprint of Star article of March 16, 2014); 2) a six-page review of the Star article, with commentary and conclusions from Mr. Mitchell as to the appropriateness of Councillor Ashby's actions; 3) a four-page submission setting out Mr. Mitchell's interpretation of sections 7, 10, 12, 14 and 15 of the Code as they apply to Councillor Ashby's actions; and 4) a lengthy email to the Town's Clerk, Martin deRond, dated November 24, 2014, seeking to clarify the First Complaint, referencing the Exhibits associated with that complaint, and posing a series of questions.

ANALYSIS

24. I will now apply the provisions of the Code, to the behaviour that Mr. Mitchell complains of.

Section 7 – Open, Transparent Government

25. Section 7 of the Code is termed "Open, Transparent Government" and provides that:

- a. Members will promote behaviour and actions conducive to an open and fair exchange of ideas;*
- b. Members will be advocates for the public process, and will ensure decisions are made in an open, transparent and democratic manner;*
- c. Members will promote public consultation and involvement in the decision-making process.*

26. In his allegations of breach of section 7, Mr. Mitchell states:

Section 7 does not state that sections of the Code of Conduct applies to only one specific location in the Town of Ajax. It applies to all venues a council member choose (sic) to participate in. By not voluntarily, transparently and honestly answering the questions Councillor Ashby did not promote behaviour and actions conducive to an open and fair exchange of ideas. He did not advocate for the public process and insure (sic) decisions were made in an open and transparent and democratic manner. Clearly he chose not to be truthful and not to promote open and honest public consultation and involvement in the decision-making process. Councillor Ashby chose to "Block", "Ignore", "Misrepresent", "Provide miss information" (sic), "interfere with fair exchange of ideas" and to be "Not to be transparent" ...

27. As I understand this part of his complaint, Mr. Mitchell alleges that Councillor Ashby was not forthcoming when he, Mitchell, asked him about the charges and fines at an all candidate's debate in the summer of 2014. I have been given conflicting versions of the exchange between Mr. Mitchell and Councillor Ashby and, although I accept that Councillor Ashby did not directly answer Mr. Mitchell's question, I do not believe that by not answering the question, Councillor Ashby, can be said to have stifled an open and fair exchange of ideas. The other difficulty with this submissions is that, on that occasion, Councillor Ashby was not part of a decision-making process, such as a council or committee meeting, but was in a political debate. Accordingly, I do not find Councillor Ashby to have breached section 7 of the Code.

Section 10 – Conflict of Interest/Pecuniary Interest

28. Section 10 is the "Conflict of Interest/Pecuniary Interest rule. It provides that:

- a. Members will not engage in any business transactions or have financial or other personal interests which are inconsistent with the impartial discharge of their civic obligations;*
- b. All Members shall be aware of their obligations under the Municipal Conflict of Interest Act and shall disclose any potential conflicts under the Act to Council in accordance with the Act.*

29. Mr. Mitchell expresses his allegation of breach of section 10, as follows:

Councillor Ashby engaged in business transactions, financial transactions, personal interests which were inconsistent with the impartial discharge of his civic obligations Councillor Ashby did not truthfully disclosing (sic) his fines, convictions and defaults to the Town, the public and at the debate he benefitted personally and professionally with misinformation, non transparency (sic) in his re-election. By not being truthful and stating inaccurate information about excepting (sic) full responsibility he intimidated and mislead (sic) people for personal and professional gain.

30. Section 10 seeks to ensure that Members are impartial in their decision-making, that they disclose any direct or indirect pecuniary interest they may have in a matter, and do not participate in the discussion about, vote on, or attempt to influence the vote, on the matter. I have seen no evidence that Councillor Ashby was ever involved in discharging a "civic obligation" relating to Nexx, or in any of his loans, and although he had a clear pecuniary interest in Nexx, he did not participate in, vote on, or try to influence council on any matters related to Nexx. There is no breach of section 10.

Section 12 – Council/Staff Working Relationships

31. Section 12 is called: “Council/Staff Working Relationships”. It provides that:

- a. Members are elected legislators and representatives of their constituents. Staff are ultimately accountable to the Chief Administrative Officer, and are responsible for implementing the decisions of Council, and ensuring the efficient and effective operation of municipal services;*
- b. Members and staff will work cooperatively based on shared values of honesty, trust, mutual respect, and leadership for continuous improvement;*
- c. Members are encouraged to contact staff to answer questions, identify concerns or request services that are normally available to any Ajax resident;*
- d. Where a Member’s request for information or services is outside the employee’s realm of responsibility, approved work plan, or available resources, the employee will inform the Member and their direct supervisor and/or Department Head, for an appropriate and timely response to their request for information or services;*
- e. Members shall be respectful of the fact that staff are charged with making recommendations that reflect their professional expertise and corporate perspective without undue influence from any individual Member or group of Members.*

32. Regarding section 12, Mr. Mitchell claims that:

He did not notify staff or Council or seek council (sic) from staff. He did not work cooperatively based on shared values and honesty, trust, mutual respect and show leadership for improved relationships. By not disclosing his illegal activities concerning Provincial fines and not paying Town fines until after the election he misled the Town and public by using his influence which allowed him to be re-elected. By not being truthful and stating inaccurate information about excepting (sic) full responsibility he intimidated and mislead (sic) people for personal and professional gain.

33. Just as the heading suggests, section 12 of the Code provides guidance as to how Members and staff are to work together. There is nothing in the evidence to suggest that Councillor Ashby had any dealings whatsoever with staff related to the Nexx matter, or the Civil Proceedings. For there to be a breach of section 12, there must first be a decision to be implemented, a question asked, or a request for service that involves staff. To suggest that by not telling staff of difficulties which they could not possibly assist with he failed to work cooperatively or honestly with them misunderstands the purpose of the section. I find no breach of section 12.

Section 14 – Improper Use of Influence

34. Section 14, the rule regarding “Improper Use of Influence” states:

- a. *No Member shall use the influence of her or his office for any purpose other than for the exercise of her or his official duties;*
- b. *Examples of prohibited conduct include the use of one’s status as a Member to improperly influence the decision of another person to the private advantage of oneself, a family member, or associate (business or otherwise); This would include attempts to secure preferential treatment beyond activities in which Members normally engage on behalf of their constituents as part of their official duties. Also prohibited is the holding out of the prospect or promise of future advantage through a Member’s supposed influence within Council in return for present actions or inaction;*
- c. *For the purposes of this section, “private advantage” does not include a matter:*
 - i. *That is of general application;*
 - ii. *That affects a Member or her/his family members or associate as one of a broad class of persons;*
 - iii. *That concerns the remuneration or benefits of a Member as authorized by Council.*

35. It is Mr. Mitchell’s contention that:

Councillor Ashby used his influence as a Councillor with the courts, the Town and the public and candidates at the Ward 2 debate by not directly answering questions truthfully about his default on paying fines. By not answering truthfully and stating inaccurate information about excepting (sic) full responsibility he intimidated and mislead (sic) people for personal and professional gain ... By not disclosing his illegal activities concerning Provincial fines and not paying Town fines until after the election he mislead (sic) the Town and public by using his influence which allowed him to be re-elected.

36. The usual concern about influence is that a Member will use the power of his or her office to extract some benefit from a person by holding out the promise of using the office to either confer some benefit, or visit some harm, on that person, in exchange for the benefit. While Councillor Ashby may have avoided answering questions about his failure to pay the fines at the candidates’ debate, and may have intimidated and misled people, that conduct, even if true, while wrong, did not come about through an improper use of his influence.

37. I have struggled, however, with the question of whether Councillor Ashby did use his status as a Member of Council to secure private loans from the plaintiffs in the lawsuits that Mr. Mitchell has brought to my attention. In this regard, I note that, at least one of the lenders, suggests that he was comfortable lending money to Councillor Ashby because he was a Member of Council. In the end, though, it appears just as likely that Councillor Ashby was offering an opportunity and terms that the lenders found attractive and that it was the possibility of a good return on the investment, as much as his status, that prompted the loan. In any event, some of these cases are still before the courts, with all the facts and circumstances still to be determined.

38. Accordingly, I conclude that there was no improper use of influence by Councillor Ashby or contravention of section 14.

Section 15 – General Conduct

39. The Code provisions on “General Conduct” are found in section 15.

- a. As a representative of the Town, every Member has the duty and responsibility to treat members of the public, one another, and staff appropriately and without abuse, bullying, or intimidation, and to ensure that the municipal work environment is free from discrimination and harassment;*
- b. A Member shall not use indecent, abusive, or insulting words or expressions toward any other Member, any member of staff, or any member of the public. A Member shall not speak in a manner that is discriminatory to any individual based on that person’s race, ancestry, place of origin, creed, gender, sexual orientation, age, colour, marital status, or disability;*
- c. During Council and Standing Committee meetings, Members shall conduct themselves with decorum and in accordance with the Town’s Procedural By-law.*

40. Mr. Mitchell alleges that:

Councillor Ashby did not treat members of the public, Council, candidates and staff appropriately and with respect throughout the entire Nexx Lounge Club investigation, Court proceedings during the debate to date. By not being truthful and stating inaccurate information about excepting (sic) full responsibility he intimidated and mislead (sic) people for personal and professional gain. By not disclosing his illegal activities concerning Provincial fines and not paying Town fines until after the election he mislead (sic) the Town and public by intimidating and using his influence which allowed him to be re-elected.

41. Few would argue that the selling of liquor to the public without a licence, the operation of an Entertainment Establishment without a permit, the failure to pay fines within the time limits imposed by a court of law, and the failure to repay loans borrowed from constituents, can be considered as an “appropriate” treatment of members of the public. I find that, on the facts and leaving aside the timeliness of the Complaints, with respect to the Convictions and the Fine Defaults, Councillor Ashby has breached section 15 of the Code – General Conduct.

42. I would like to separately address the claim that Councillor Ashby’s conduct in the Civil Litigation should be considered a breach of the Code.

43. In support of his claims about the harm that Councillor Ashby has inflicted on others, Mr. Mitchell included the pleadings from several actions commenced against Councillor Ashby for unpaid debts. Mr. Mitchell has made regular visits to the Oshawa Small Claims Court in pursuit of details about Councillor Ashby’s failed financial relationships. I have reviewed these claims and see that, while they are indeed reflective of unpaid loans to Councillor Ashby, there is no suggestion in the pleadings that the loans were extended upon a promise of favour from Councillor Ashby in his capacity as a member of council. I also note that some of the claims appear to be resolved, others are being defended by Councillor Ashby, and I have been presented with no Decisions or Orders made by the Court.

44. I am also mindful of the implied separation that the Code makes between the public and the private, and its emphasis on the continuing application of a Member’s personal values and, of course, the laws of the Town, the Province and Canada. Indeed, Councillor Ashby’s behaviour has resulted in a fairly rigorous application of many such laws. Moreover, given the wide media attention to the Civil Litigation, Councillor Ashby will, I would think, be called to answer for these failed business and financial relations, at the polls.

45. Accordingly, I do not find that Councillor Ashby’s conduct in the affairs subject to the Civil Litigation constitutes a breach of section 15.

Section 16 – Compliance, Enforcement and Penalties

46. As we know, complaints must be submitted within six weeks of the matter becoming known to the individual and no more than six months after the alleged violation occurring. Mr. Mitchell’s First Complaint was made on October 21, 2014, while the Second Complaint was made on March 26, 2015. By simple operation of the calendar, Mr. Mitchell’s complaints with respect to the charges laid against Councillor Ashby in his capacity as President of Nexx, his convictions, and his failure to pay the fines were all known to Mr. Mitchell more than six weeks before submitting the First Complaint. Accordingly, I have no choice but to dismiss the Complaints related to those matters.

CONCLUSIONS AND RECOMMENDATIONS

47. For the reasons outlined above, I find that the part of the Complaints regarding the Convictions and the Fine Defaults, must be dismissed, as having been made outside the six-week window following Mr. Mitchell's discovery of those particular transgressions.

48. If I am wrong in this conclusion, I do find that Councillor Ashby was in breach of the General Conduct provisions of the Code for operating an illegal business, conviction of Town and Provincial offences, and for failing to pay the fines within the time ordered by the Court.

49. The circumstances leading up to the Civil Litigation are a private matter, beyond the scope of the Code and my jurisdiction.

50. In the result, it is my recommendation to Council that, there being no contravention of the Code properly before me, no penalty be imposed on Councillor Ashby.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 1st day of April, 2015.

Harold G. Elston