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June 5, 2025

SENT BY EMAIL TO: jbeddows@gananoque.ca

John Beddows
Mayor
The Corporation of the Town of Gananoque
30 King St. E., Gananoque ON
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Dear Mayor Beddows:

RE: Strong Mayors Opinion

You have asked us to provide an opinion on whether a decision by Council is eligible for veto pursuant to the strong mayor powers. We understand from your email that the decision by Council was to authorize the execution of an agreement between the Town and a contractor to commence the removal of the King Street pedestrian bridge and that you intend to exercise your power to veto that decision on the basis that the expenditure creates a risk of negatively affecting the Town's ability to fund capital infrastructure activities related to provincial priorities.

In short, our opinion is that this veto would not be a valid use of the Strong Mayor powers as delineated in the *Municipal Act*.

The basis for our opinion is set out below.

Legislative Framework

Section 284.11 of the *Municipal Act* permits a head of council to veto a by-law passed under the *Municipal Act* if the head of council is, "of the opinion that all or part of the by-law could potentially interfere with a prescribed provincial authority."[1] Pursuant to Ontario Regulation

[1] *Municipal Act* s. 284.11(5)

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580/22, prescribed provincial authorities include: building 1.5 million new residential units by December 31, 2031 and constructing and maintaining infrastructure to support housing, including, transit, roads, utilities, and servicing. Accordingly, a head of council is permitted to utilize the veto power if, in his or her *opinion*, all or part of the by-law could *potentially* interfere with the provincial authorities listed above.

The legislation establishes a very low bar for the utilization of the veto powers. The head of council only needs to form the opinion that the by-law could potentially interfere with a provincial authority. This is a subjective test that is open to interpretation, however, in our opinion the decision subject to the veto must have a nexus with a provincial priority.

There does not necessarily need to be a factual basis for the determination that the by-law could interfere with a prescribed provincial authority, as the legislation uses the word *potentially*. Therefore, the determination does not need to be based on a proven or demonstrated interference with a provincial authority.

In terms of technical requirements, to exercise the veto power, the head of council must, on or before the earlier of two days after the day council voted in favour of the by-law, provide written notice to council of the intent to consider vetoing the by-law.[2] The veto, and the reasons for the veto, must also be provided via written veto document on or before 14 days after the day the council voted in favour of by-law.[3]

Pursuant to section 284.14 of the *Act*, a decision or veto exercised legally and in good faith under part VI.1 of the *Act* shall not be quashed or open to review because of the unreasonableness or supposed unreasonableness of the decision or exercise of the veto power.

In other words, the exercise of a veto by a head of council exercised under section 284.11 cannot practically be quashed or open to review, unless it was made illegally, or in bad faith.

Analysis

In this instance, the rationale for the veto as you described it is that the expenditure approved by Council would create a risk of over-allocating capital, which would in turn have the potential to negatively affect the Town's ability to fund alternative projects that might relate to a provincial priority.

In our opinion, this rationale would not stand up to review by a court, as there is not a sufficient nexus between the decision by Council and a provincial priority. The proposed basis for the veto is that if the Town spends its limited capital resources on the bridge

[2] *Ibid* s. 284.11(2)

[3] *Ibid* ss. 284.11(5), 284.11(6) and 284(4)(b)(ii)

project, there would potentially be less capital available for a hypothetical future project that could relate to a provincial priority.

While the Act does set a low bar with respect to the test, this type of reasoning is simply too speculative to hold up to review in our opinion.

To utilize the veto in this manner would not be consistent with the intent of the legislation. The goal and intent of the legislation is to assist with speeding up development timelines and facilitating the promotion and efficient execution of priority projects that will increase housing in the Province of Ontario. The veto powers were meant to facilitate this by allowing heads of council to veto decisions that interfered with priority projects. The intent of the legislation was to permit heads of council to "cut through red tape" with respect to the successful completion of development projects pertaining to the promotion of housing or infrastructure that supports new housing.

Utilizing the veto in the manner proposed, as a tool to prevent projects from going forward on the basis that allocating funds to said projects would potentially prevent funds from being available to support future, as yet unidentified, projects that could advance a provincial priority, is likely to be found by a Court to be inconsistent with the legislation.

Specifically, permitting the veto to be used based on the rationale provided risks effectively making the veto power unfettered. If all that is required to find jurisdiction to veto a decision of Council is that spending money on the council-approved project could otherwise be used for a project related to housing, a head of council could veto virtually any by-law that allocated municipal finances to a project that did not relate to housing. Under this logic, any decision to spend money would "interfere" with a provincial authority and could be open to veto. In our opinion, if this were brought before a court, a Judge is more likely than not to hold that this would undermine the intent of the legislation and be outside the jurisdiction of a strong mayor.

As a result, our opinion is that a veto in this case would not be a legally authorized use of the veto powers.

Additionally, the Supreme Court of Canada has held that the concept of bad faith can encompass not only acts committed deliberately with intent to harm, which corresponds to the classical concept of bad faith, but also acts that are so markedly inconsistent with the relevant legislative context that a court cannot reasonably conclude that they were performed in good faith.[4] Therefore, for the reasons outlined above, the use of the veto power in this instance might also be considered as bad faith, in light of the fact that the veto is markedly inconsistent with the relevant legislative context. As a result, even if the veto was found to

[4] See Entreprises Sibeca Inc. v. Frelighsburg (Municipality), 2004 SCC 61 (CanLII), [2004] 3 SCR 304 at para 26.

be a legal exercise of the Strong Mayor Powers, the veto could be open to be challenged or quashed by a reviewing court on the basis of bad faith.

Conclusion

For the foregoing reasons, we do not recommend utilizing the strong mayor veto powers as proposed. In our opinion this would not be consistent with the intent of the Strong Mayor powers as delineated in the *Municipal Act* and would be subject to challenge.

We trust this opinion will be of assistance. Please do not hesitate to reach out with any questions or concerns.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP

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