

**Attachment 9:**

**Table 1 provided in MSIFNs letter dated 30 August 2024, with Township comments**

Table 1. Detailed commentary - Mississaugas of Scugog Island First Nation - Submission to the Township of Scugog Council: Opposition to the Proposed Ministerial Zoning Order (MZO) for Development Along the Western Edge of Lake Scugog

| Reference  | Issue   | Request   | Township Staff Response  |
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| <p>First Nation Consultation and Accommodation</p> | <p>The proponent’s MZO package provides no evidence that all Williams Treaties First Nations treaty rights holders have been consulted by the Township of Scugog and/or Durham Region and/or Ontario (Planning Authorities) concerning the project and its impacts, including impacts on the Lake Scugog Watershed and downstream to the Scugog River, Sturgeon Lake, and beyond.</p> <p>The recently released Provincial Planning Statement (2024) contains direction on early engagement and the recognition of Aboriginal and treaty rights that the mentioned Planning Authorities are not in compliance with, including the following:</p> <p><i>6.1.2. The Provincial Planning Statement <b>shall be implemented</b> in a manner that is <b>consistent</b> with the <b>recognition and affirmation of existing Aboriginal and treaty rights in section 35 of the Constitution Act, 1982.</b></i></p> <p><i>6.2.2. Planning authorities <b>shall undertake early engagement with Indigenous communities</b> and coordinate on land use planning matters to</i></p> | <p>Please provide evidence of early engagement by responsible municipal and Crown authorities with respect to consultation and accommodation with all potentially impacted First Nation treaty rights-holders, including the Mississaugas of Scugog Island First Nation, Alderville First Nation, Beausoleil First Nation, the Chippewas of Georgina Island First Nation, Curve Lake First Nation, Hiawatha First Nation, and Rama First Nation.</p> <p>Please provide evidence of early engagement, consultation, and accommodation with respect to the specific aspects of the communal sewage system management and risks, wastewater discharge, Species at Risk (SAR), and sensitive environmental issues with respect to the proposal and MZO application.</p> | <p>The process chosen by the developer has resulted in no formal planning application being received for the subject lands as a result of a MZO request process. While the Duty to Consult rests with the Province, Township staff recommends that the Township undertake meaningful consultation with MSIFN and other Indigenous communities prior to any decision of Township Council, consistent with Section 6 of the PPS.</p> <p>Under the Province’s recent Zoning Order Framework (ZOF), the expectation of the</p> |

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|           | <p><i>facilitate knowledge-sharing, support consideration of Indigenous interests in land use decision-making and support the identification of potential impacts of decisions on the exercise of Aboriginal or treaty rights.</i></p> |         | <p>Minister is that the developer describes engagement with Indigenous Communities. It is not clear from the Developer's MZO Brief if other Indigenous Communities have been consulted. How the Minister determines if the Duty to Consult has been met is not referenced in the ZOF, particularly with the concerns raised in this letter and the Township staff report.</p> <p>Township staff share similar concerns with the level of engagement, private communal servicing, and natural heritage impacts. The September 16, 2024 Staff Report resolutions include reference to addressing the concerns</p> |

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|  |  |  | of MSIFN.   |
| Cultural Heritage Landscapes and Archaeology | <p>As mentioned above, Planning Authorities are required to engage early and consult with Indigenous communities. This includes engagement on Cultural Heritage issues, with guidance provided by the following:</p> <p><i>4.6.5. Planning authorities <b>shall engage early with Indigenous communities and ensure their interests are considered</b> when identifying, protecting and managing archaeological resources, built heritage resources and cultural heritage landscapes.</i></p> <p>Cultural Heritage Landscapes include “aboriginal landscapes<sup>1</sup>”, or more appropriately, Indigenous Cultural Landscapes. MSIFN lives in relationship with the lands and waters of Lake Scugog and its watershed, yet MSIFN has not been engaged or consulted on the potential for Indigenous Cultural Landscapes to be impacted by this proposal.</p> <p>MSIFN considers the Lake Scugog watershed to be an Indigenous Cultural Landscape. In consideration of the multi- generational importance of this Indigenous Cultural Landscape</p> | <p>As discussed above, please provide evidence of early engagement, consultation, and accommodation with respect to the identification, protection, and management of archeological resources and cultural heritage landscapes.</p> <p>Given that MSIFN has not been consulted on this item, please do not proceed with the support of an MZO before meaningful consultation and accommodation occurs, especially given the potential for impacts to Aboriginal and treaty rights.</p> | <p>Refer to response above.</p> <p>Town staff are not supportive of the MZO request and are recommending that Council defer Township support until issues and MSIFN concerns have been addressed.</p> <p>A Cultural Heritage Landscape Assessment has been added to the list of documentation required for a complete application in Table 2 of the staff report.</p> <p>Both the Township and MSIFN can request that the scope of the Environmental Impact Study (EIS) include</p> |

<sup>1</sup> <https://www.heritagetrust.on.ca/pages/tools/tools-for-conservation/cultural-heritage-landscapes-an-introduction>

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|           | <p>to MSIFN, MSIFN has pledged \$1.5 million to the Lake Scugog Enhancement Project (LSEP). The Project purpose is to improve the recreational function of Port Perry Bay, create a healthy wetland habitat and improve water quality.</p> <p>The overall objectives of the LSEP project are to address the following issues that dovetail with this Indigenous Cultural Landscape:</p> <ul style="list-style-type: none"> <li>● Reduced depth of water;</li> <li>● Accumulation of sediment and organic matter;</li> <li>● Non-native aquatic vegetation;</li> <li>● Water quality in the bay;</li> <li>● Shoreline habitats and fisheries; and</li> <li>● Aesthetics and tourism-based activities.</li> </ul> <p>The LSEP Project offers the following opportunities:</p> <ul style="list-style-type: none"> <li>● To increase the navigable depth;</li> <li>● To increase boating access and other recreational uses such as paddling and angling;</li> <li>● To enhance stormwater treatment;</li> </ul> |         | <p>reference to the LSEP and consider and support the objectives and opportunities of the LSEP. Table 2 of the staff report has been updated to note that the updated EIS needs to address matters identified in this letter.</p> |

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|  | <ul style="list-style-type: none"> <li>● To reduce invasive macrophyte biomass;</li> <li>● To increase tourism; and</li> <li>● To increase fisheries productivity in Lake Scugog.</li> </ul>  |   |   |
| <p>Archaeology - Stage 1 to 3 Archaeological Assessments</p> | <p>The proponent reports that Archaeological Assessments Ltd. conducted Stage 1 to 3 archaeological resource assessments of the Subject Site. The proponent further reports that background research determined there had been no previous assessments carried out on the Subject Site, and given its location adjacent to the creek and Lake Scugog suggested it had a high potential for containing archaeological remains.</p> <p>The proponent reports that The Stage 2 field assessment identified five archaeological sites corresponding with indeterminate pre-contact native campsites. Stage 3 test excavations were carried out in October 2003. The proponent states that results of the Stage 3 assessment indicated that none of the five sites are significant archaeological resources, nor do any of the identified sites require any additional archaeological investigations and are no longer a planning concern.</p> <p>The Archaeological Assessments Ltd. provides no evidence of consultation with Indigenous rights-</p> | <p>Please provide a description of the Indigenous engagement and a copy of any documentation arising from the Indigenous engagement process with respect to the Archaeological Assessments Ltd. Stage 1 to 3 archaeological resource assessments, including identifying the Indigenous communities engaged, dates, comments received, and the professional archaeologist's disposition of those comments.</p> | <p>The additional information request regarding Indigenous engagement as part of the Archeological Assessments has been added to Table 2 of the staff report to ensure a complete submission.</p> |

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|           | <p>holders.</p> <p>Ontario's Standards and Guidelines for Engaging Aboriginal Communities in Archaeology<br/> (<a href="https://www.ontario.ca/document/engaging-aboriginal-communities-archaeology-draft-technical-bulletin-consultant/1">https://www.ontario.ca/document/engaging-aboriginal-communities-archaeology-draft-technical-bulletin-consultant/1</a> ) state:</p> <ul style="list-style-type: none"> <li>• <i>“If your archaeological project is in Ontario, you must engage Aboriginal communities at the following stages:</i></li> </ul> <p><i>- in Stage 3, when you are assessing the cultural heritage value or interest of an Aboriginal archaeological site that is known to have or appears to have sacred or spiritual importance, or is associated with traditional land uses or geographic features of cultural heritage interest, or is the subject of Aboriginal oral histories. (Standards and Guidelines for Consultant Archaeologists, Section 3.4)”</i></p> <ul style="list-style-type: none"> <li>• <i>“When you have engaged Aboriginal communities as part of an archaeological project, you must provide a description of the engagement and a copy of any documentation arising from the process to the Ministry. Submit this information as part of the supplementary documentation included in the Project Report Package.</i></li> </ul> |         |                         |

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|           | <p data-bbox="577 292 786 320"><i>(Section 7.6.2)</i></p> <p data-bbox="465 344 1126 411">Ontario's Standards and Guidelines for Engaging Aboriginal Communities in Archaeology also state:</p> <p data-bbox="479 435 1133 580"><i>“Engaging Aboriginal communities at the following additional stages constitutes wise practice, which you are encouraged to follow. You should engage Aboriginal communities:</i></p> <ul data-bbox="528 608 1137 1369" style="list-style-type: none"> <li data-bbox="528 608 1137 911">• <i>In Stage 1, when conducting the Background Study, in order to identify information sources in local Aboriginal communities (for example, for information on traditional use areas, sacred sites, and other sites) when available and relevant to the property). (Standards and Guidelines for Consultant Archaeologists Section 1.1)</i></li> <li data-bbox="528 935 1137 1198">• <i>In Stage 1, when evaluating archaeological potential and making recommendations to exempt areas meeting the criteria for low archaeological potential from further assessment, in order to ensure there are no unaddressed Aboriginal cultural heritage interests. (Section 1.4)</i></li> <li data-bbox="528 1222 1137 1369">• <i>In Stage 2, when assessing a property and determining archaeological sites that require Stage 3 fieldwork, in order to determine interest (general and site-</i></li> </ul> |         |                         |



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|                                | <p><i>specific) in the Aboriginal archaeological sites and ensure that there are no unaddressed Aboriginal archaeological interests connected with the land surveyed or sites identified. (Section 2.2)</i></p> <ul style="list-style-type: none"> <li><i>In Stage 3, when making recommendations regarding the excavation or preservation of Aboriginal archaeological sites of cultural heritage value or interest (other than those identified in the standards), in order to review the recommendations with the relevant, interested Aboriginal communities. (Section 3.5)”</i></li> </ul>              |   |   |
| Private Communal Sewage System | <p>The developer has proposed an un-planned and uncoordinated private communal sewage system, which comes with immense risks to the Township of Scugog and its ratepayers, the Mississaugas of Scugog Island First Nation, and the Lake Scugog Watershed.</p> <p>The malfunctioning of sewage services is a public health and environmental threat that requires immediate action. The Ontario Ministry of the Environment, Conservation and Parks (MECP) advises that municipalities should have oversight of communal sewage systems. While the Durham Region Official Plan allows for private utility</p> | <p>Please provide the Municipality of Scugog Township’s and/or Durham Region’s agreements to provide long-term oversight, maintenance, and upkeep of the proposed communal sewage system.</p> <p>Both the Township of Scugog and Durham Region should comment on MECP’s guide for land use planning authorities on how to decide when a municipality should take responsibility for on-site communal drinking water and sewage systems:</p> | <p>Township staff do not support a private communal system without a Responsibility Agreement with the Region of Durham. Since servicing remains a Regional responsibility, the Township will defer to the Region’s decision regarding a Responsibility</p> |

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|           | <p>wastewater sewage systems, there is no agreement in place with the Regional Municipality of Durham or the Municipality of Scugog Township for long- term oversight, maintenance and upkeep of the proposed communal sewage system. The MZO package provided by the proponent is silent on any approach to communal sewage system agreements with responsible municipal authorities, and as such there is no credible way for the Minister to approve the desired site density without serious risks to public health, the environment and municipal ratepayers who would be forced to cover the costs of any communal sewage system failures.</p> <p>The proponent states that <i>“Wastewater services will be provided through a private communal sewage system and will not require any additional servicing capacity from the municipal wastewater system.”</i> The proponent also states that the <i>“Proposed Development requires a private communal sewage treatment facility, requiring MECP approval and a responsibility agreement with the Region.”</i></p> <p>The proponent does not explain how a responsible municipal authority such as Durham Region or the Township of Scugog will assure a high level of protection of the environment and public health,</p> | <p>D-5- 2 Application of Municipal Responsibility for Communal Water and Sewage Services - <a href="https://www.ontario.ca/page/d-5-2-application-municipal-responsibility-communal-water-and-sewage-services#section-0">https://www.ontario.ca/page/d-5-2-application-municipal-responsibility-communal-water-and-sewage-services#section-0</a> - with respect to the:</p> <ol style="list-style-type: none"> <li>1) Desire on the part of each municipal government to provide oversight, maintenance, and upkeep of the proposed communal sewage system through agreements with the proponent.</li> <li>2) Requirements for entering into such agreements with the proponent, including consultation with impacted First Nations.</li> <li>3) Details on the contractual arrangements required between the responsible municipal authority and the proponent with respect to the responsible public authority providing regular operational monitoring and maintenance of communal</li> </ol> | <p>Agreement and their consideration of Provincial guidelines.</p> <p>Township staff share similar concerns about long-term feasibility and reliance on a single precedent in the Region (in a different context) to justify the required Responsibility Agreement.</p> <p>In the absence of more detailed serving information and details of any Responsibility Agreement, Township staff is unable to confirm if the development is consistent with Section 2 of the Planning Act, Section 4 of the PPS, and the Provincial D-Series guidelines. Township staff is not recommending endorsement of the</p> |

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|           | <p>nor how responsible municipal authorities and their ratepayers will be responsible for the costs of such protections, or the costs of system failure.</p> <p>The proponent points to a single example of Durham Region entering into a long-term maintenance and upkeep agreement in 2007 for a private wastewater treatment system for what MSIFN understands is the “Estates of Wyndance”, a “exclusive” gated single family home community of 125 units on an 18 hole golf course, with typical lot sizes of 50’ x 200’. With 125 units, the Estates of Wyndance is about 80% smaller by unit number than the proponent’s proposal for 600 units.</p> <p>The proponent does not explain how an MZO for approximately 600 units of new density can be supported, without MECP approval for the significant and complex communal wastewater system.</p> <p>The PPS requires that the planning for infrastructure be coordinated with land use planning and growth management in order to ensure that infrastructure is financially viable over its life cycle and is available to meet current and projected needs.</p> | <p>services and identifying maintenance needs before malfunctions can take place.</p> <p>4) Details on the contractual arrangements required between the responsible municipal authority and the proponent with respect to assuring a high level of protection of the environment and public health.</p> <p>5) Details on the technical management oversight and maintenance program that the responsible municipal authority will assume to assure a high level of protection of the environment and public health.</p> <p>MECP should comment on how an MZO for approximately 600 units of new density can be supported without an agreement in place with a responsible municipal authority such as Durham Region or the Township of Scugog to ensure a high level of protection of the environment and public health, and agreement mechanisms for the responsible</p> | <p>MZO until servicing matters are addressed.</p> |

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|   |   | <p>municipal authority to be responsible for the costs of such protections, or the costs of system failure.</p> <p>Please comment on how the Township has attended to the PPS requirement that the planning for the proposed wastewater infrastructure is being coordinated with land use planning and growth management in order to ensure that the infrastructure is financially viable over its life cycle and is available to meet current and projected needs.</p> |   |
| <p>Cumulative Impacts on Lake Scugog and MSIFN Rights</p> | <p>The mentioned lack of oversight of the communal wastewater system is of utmost concern to MSIFN. We are also concerned about the potential for this proposal to introduce nutrients to Lake Scugog through stormwater runoff through the creation of roads, parking lots, and other impervious surfaces will increase stormwater runoff, carrying pollutants like oil, heavy metals, excess nutrients, and chemicals into Lake Scugog.</p> <p>This runoff will degrade water quality, harm aquatic life, and contribute to the ongoing decline of the lake's health.</p> | <p>Please provide rigorous evidence that this proposal will not exacerbate cumulative negative impacts on Lake Scugog, including nutrient loading.</p> <p>As a Planning Authority, the Township must not support this MZO given the negative impacts of this proposal on the exercise of Aboriginal and treaty rights.</p>  | <p>Cumulative impacts should be considered by the updated EIS. The Township, KRCA, and MSIFN can provide input in the EIS terms of reference. Table 2 of the staff report has been updated to note that the updated EIS needs to address matters identified in this letter.</p> |

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|           | <p>MSIFN members rely on the health of Lake Scugog for the practice of our constitutionally protected rights, including fishing. MSIFN’s pledge of \$1.5 million for the Lake Scugog Enhancement Project is evidence of the value we place on the Lake and its functions. Our constitutionally protected practices are threatened by the proposal as, for example, additional nutrient loading can exacerbate the growth of invasive species and toxic algae (cyanobacteria) blooms<sup>2</sup>, which can lead to the death of fish. These impacts on the already impacted Lake Scugog could have generational impacts on the ability of our members to practice rights in one of the few areas that remain available to us, exacerbating the overall cumulative impacts of development on our rights and practices.</p> <p>Legal precedent for the consideration of cumulative impacts in project approvals exists through <i>Yahey v. British Columbia</i> (2019), where the BC Supreme Court determined that the development permitted by the Province led to an infringement of Blueberry River First Nation’s Treaty Rights. This decision is relevant to the previously mentioned Planning Authorities, including the Township, who are directed to</p> |         |                         |

<sup>2</sup> [https://www.kawarthaconservation.com/en/resources/Lake-Management-Plans/LSEMP\\_May2010\\_FINAL.pdf](https://www.kawarthaconservation.com/en/resources/Lake-Management-Plans/LSEMP_May2010_FINAL.pdf)

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|                                  | consider impacts on Aboriginal and treaty rights by the 2024 PPS.  |  |  |
| Provincially Significant Wetland | <p>The proposed lands are adjacent to the Port Perry North Provincially Significant Wetland, while there are additional wetland pockets throughout the site. The evaluation report for this PSW (April 2014, available from the OMNRF) states that adjacent uplands are used by wetland species including nesting waterfowl, turtles, and amphibians. This report recommends that forest cover should be increased in and around the PSW, the currently proposed development is not consistent with this direction.</p> <p>Avenu's conceptual drawing appears to ignore the PSW almost completely, with no regard for impacts on this important feature. The concept shows forested areas overlapping and adjacent to the PSW being converted to "<i>new waterfront sand beach</i>", while a north-west pocket of the PSW appears to overlap with a proposed four-storey building.</p> | <p>Please provide an evidence-based assessment of the proposed development's impacts on the PSW and associated upland habitats. This must include mapping of the proposal alongside the PSW boundaries, buffers, and the assessment of potential SAR habitat (see following comment).</p> <p>The overall development density must not be approved as proposed given potential overlaps with the PSW and SAR habitat. Density must be re-examined in light of actual developable area following an assessment of impacts.</p> | <p>Township staff agree that the PSW boundary does not appear to be respected in the development concept. Establishing the limits of development to ensure that natural heritage features and their required buffers are not impacted has been identified in the staff report as a threshold issue that should be addressed prior to Council endorsement. The updated EIS will need to address this matter.</p> <p>Table 2 of the staff report has been updated to note that the updated EIS needs to address matters identified in this letter.</p> |

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| Species at Risk Habitat | <p>Avenu has not adequately considered the risk of this development on Species at Risk (SAR). Given the presence of a Provincially Significant Wetland, there is a particular risk to wetland species, including turtles, that may use the subject lands for various life stages (e.g., nesting). Per the Natural Heritage Information Centre and assessments of other proposals on Lake Scugog, SAR turtles potentially present in the area include the following. Note that provincial risk status is denoted beside “ESA” (<i>Endangered Species Act</i>), federal risk status beside “SARA” (<i>Species at Risk Act</i>) or “COSEWIC”.</p> <ul style="list-style-type: none"> <li>• Blanding’s turtle (ESA: Threatened, COSEWIC: Endangered)</li> <li>• Midland painted turtle (SARA: Special Concern)</li> <li>• Snapping turtle (ESA/SARA: Special Concern)</li> </ul> <p>Potential impacts of the proposal on these species are numerous, including the destruction and disturbance of nesting habitat. Per the provincial Blanding’s turtle recovery strategy, these turtles nest in relatively open areas in the general vicinity</p> | <p>Given the impacts of this proposal on PSWs and associated SAR, the Township must recognize that the MZO request is premature. By supporting the MZO without prior consideration of impacts on these species, the Township of Scugog would be facilitating potential destruction and degradation of SAR habitat. By choosing to not support the MZO, the Township will be consistent with the Stoney Lake OMB decision and will be acting in respect of MSIFN’s rights and practices.</p> | <p>Refer to response above.</p> |

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|           | <p>of a wetland<sup>3</sup>, such as the open areas that Avenu is proposing for development.</p> <p>Developing these areas is contrary to legislation, and local precedent in the area: in 2017 the former Ontario Municipal Board (OMB, now Ontario Land Tribunal) decided to not allow housing development on Stoney Lake<sup>4</sup> in the Kawarthas due to the location of the development in and around Provincially Significant Wetlands. This site contained habitat for many species, including the Blanding's turtle. The decision also respected the rights of Williams Treaties First Nations, including MSIFN, Alderville, and Curve Lake.</p> |         |                         |

<sup>3</sup> <https://files.ontario.ca/mecp-rs-blandings-turtle-2019-12-05.pdf>

<sup>4</sup> <https://anishinabeknews.ca/2017/10/11/ontario-municipal-board-decision-saves-blandings-turtle-habitat-on-stoney-lake/>