



**The Corporation of the County of Northumberland**  
**Special County Council Meeting**  
**Minutes**

**November 6, 2024, 1:30 p.m.**  
**Council Chambers**  
**555 Courthouse Road, Cobourg, ON K9A 5J6**  
**Hybrid Meeting (In-Person and Virtual)**

Members Present:     Warden Brian Ostrander  
                             Deputy Warden Olena Hankivsky  
                             Councillor Lucas Cleveland  
                             Councillor Robert Crate  
                             Councillor Scott Jibb  
                             Councillor John Logel  
                             Councillor Mandy Martin

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**1. Notices**

**1.a Accessible Format**

If you require this information in an alternate format, please contact the Accessibility Coordinator at [accessibility@northumberland.ca](mailto:accessibility@northumberland.ca) or 1-800-354-7050 ext 2327.

**1.b Meeting Format**

This Special Council Meeting was held using a hybrid meeting model. The public were invited to attend in-person in Council Chambers, view the meeting via the live stream, or join online or by phone using Zoom Conference Technology.

**2. Call to Order**

Warden Brian Ostrander called the meeting to order at 1:32 p.m.

**2.a Territorial Land Acknowledgement**

**3. Approval of the Agenda**

**3.a Agenda dated November 6, 2024**

**Council Resolution 2024-11-06-809**

**Moved by** Councillor Scott Jibb

**Seconded by** Councillor John Logel

"**That** the Special County Council Agenda for Wednesday, November 6, 2024 be approved."

**Carried**

**4. Declaration of Interest**

N/A

**5. Presentations**

N/A

**6. Adoption of Minutes**

N/A

**7. Business arising from the Minutes**

N/A

**8. Communications**

N/A

**9. Determination of Items Requiring Separate Discussion**

N/A

**10. Adoption of Items Not Requiring Separate Discussion**

N/A

**11. Consideration of Items Requiring Separate Discussion**

N/A

**12. Closed Session**

**Council Resolution 2024-11-06-810**

**Moved by** Councillor Scott Jibb

**Seconded by** Councillor Robert Crate

"**That** this Council proceed with the next portion of the meeting being closed to the public at 1:33 p.m.; and

**Further That** the meeting is closed to the public as permitted under the Municipal Act Sections 239. (2.a), (2.e), (2.f), and (2.k), in order to address matters pertaining to the security of the property of the municipality, litigation or potential litigation, including matters before administrative tribunals, affecting the municipality, advice that is subject to solicitor-client privilege, including communications necessary for that purpose, and confidential negotiations (310 Division Street, Cobourg), and that Jennifer Moore, Glenn Dees, Darrell Mast, Rebecca Carman, Denise Marshall, Kate Campbell, Matthew Nitsch, Bill Smith, Maddison Mather and Cheryl Sanders remain present.”

**Carried**

**13. Motion to Rise and Results from Closed Session**

**Council Resolution 2024-11-06-811**

**Moved by** Deputy Warden Olena Hankivsky

**Seconded by** Councillor Robert Crate

**"That** this Council rise at 2:22 p.m.; and

**Further That** the confidential resolution moved in Closed Session regarding matters pertaining to the security of the property of the municipality, litigation or potential litigation, including matters before administrative tribunals, affecting the municipality, advice that is subject to solicitor-client privilege, including communications necessary for that purpose, and confidential negotiations (310 Division Street, Cobourg) is hereby referred to this open session of Council for adoption."

**Carried**

***Closed Session Business – Public Updates***

- *Redacted version of the Closed Session report attached to the Open Session meeting minutes*

**14. New Business**

**14.a '310 Division Street, Cobourg Emergency Care Establishment Application and Shelter Services Update'**

**Council Resolution 2024-11-06-812**

**Moved by** Deputy Warden Olena Hankivsky

**Seconded by** Councillor Mandy Martin

**“Whereas** County Council directed County staff at the Special County Council meeting of October 29, 2024 to contact Cobourg staff to look at ways to comply with the Town of Cobourg’s By-law No. 018-2024, being a

By-law 'to License, Regulate and Govern Emergency Care Establishments in the Town of Cobourg', requesting resolution within 5 business days;

**Now Therefore Be It Resolved That** County Council direct staff to take necessary steps to comply with the Town of Cobourg's By-law No. 018-2024, being a By-law 'to License, Regulate and Govern Emergency Care Establishments in the Town of Cobourg', subject to conditional exemptions approved by the Town of Cobourg on October 7, 2024; and

**Further Be It Resolved That** the County Council direct staff to withdraw the request for an Administrative Review on the County's requests for exemption under the Town of Cobourg's By-law No. 018-2024, being a By-law 'to License, Regulate and Govern Emergency Care Establishments in the Town of Cobourg'; and

**Further Be It Resolved That** County Council direct staff to take the following steps to mitigate risks associated with compliance with the Town of Cobourg's By-law No. 018-2024, being a By-law 'to License, Regulate and Govern Emergency Care Establishments in the Town of Cobourg', including:

- Explore obtaining a joint general liability insurance policy with the Town of Cobourg to insure against the Town and County's risks with respect to the operations of the proposed shelter at 310 Division Street, for which the County would agree to be responsible for the full premium; and
- Update the County's indemnification by-law, being 'A By-law to Provide for the Indemnity and Defense of Councillors and Employees of the County of Northumberland against Liability Incurred while Acting on Behalf of the County of Northumberland', to ensure the full indemnification of Northumberland County Councilors, Officers and employees for personal liability and administrative penalties under the by-law; and

**Further Be It Resolved That** County Council direct staff to collect data from the operation of the shelter and authorize staff to submit a revised Emergency Care Establishments exemption request to the Town of Cobourg if warranted based on the collection of data; and

**Further Be It Resolved That** County Council authorize up to \$587,700 for costs associated with compliance and approve utilizing the County general reserve to fund any costs for 2024 and that the 2025 budget be updated to include financing requirements for the operation of the 310 Division Street

shelter in compliance with the Town of Cobourg's By-law No. 018-2024, being a By-law 'to License, Regulate and Govern Emergency Care Establishments in the Town of Cobourg' from the levy."

**Carried**

**15. Enactment By-Laws**

N/A

**16. Proclamations**

N/A

**17. Media Questions**

**18. Confirming By-law**

**18.a A By-law to confirm the proceedings of a meeting of County Council held on November 6, 2024**

**Council Resolution 2024-11-06-813**

**Moved by** Councillor Robert Crate

**Seconded by** Councillor Scott Jibb

"**That** By-law 40-2024 being a By-law to confirm the proceedings of a Special meeting of County Council held on November 6, 2024 be introduced, be deemed to be read a first, second and third time, be passed, signed and sealed."

**Carried**

**19. Adjournment**

**Council Resolution 2024-11-06-814**

**Moved by** Deputy Warden Olena Hankivsky

**Seconded by** Councillor Mandy Martin

"**That** Council adjourn at 2:28 p.m."

**Carried**

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Brian Ostrander, Warden

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Maddison Mather, Clerk

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## Closed Session Report CS 2024-151

**Report Title:** 310 Division Street, Cobourg Emergency Care Establishment By-law Update

**Prepared by:** Glenn Dees  
Director Health and Human Services  
Community and Social Services  
  
Darrell Mast  
Municipal Solicitor  
Legal Services

**Approved by:** Jennifer Moore, CAO

**Council Meeting Date:** November 6, 2024

**Report Not Considered by**

**Standing Committee Because:**

- ☐ Time-sensitive Issue (information received too late for Committee consideration)
- ☒ Urgent Matter (issue arose after this month's Committee meeting)
- ☐ Other

**Strategic Plan Priorities:** ☐ Innovate for Service Excellence  
☐ Ignite Economic Opportunity  
☒ Foster a Thriving Community  
☐ Propel Sustainable Growth  
☐ Champion a Vibrant Future

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### Recommendation

Municipal Act Section 239. (2.1) - advice that is subject to solicitor-client privilege, including communications necessary for that purpose and MFIPPA s.8 - Substance of Closed Session Council deliberations

[REDACTED]

[REDACTED]

## Purpose

The Purpose of this report is to highlight for County Council results of a meeting held with Cobourg staff on November 1<sup>st</sup> to discuss a possible resolution to meet requirements of the Town of Cobourg (the Town) Emergency Care Establishments (ECE) By-law to allow for the opening of the 310 Division Street Shelter.

## Background

310 Division Street, Cobourg is in the process of being retrofitted to serve as transitional housing, adult emergency shelter, and a warming/cooling hub to support vulnerable individuals within Northumberland. Currently, the County has received an occupancy permit for phase 1 representative of the ground floor of the project which provides space for a 24/7 warming/cooling hub. The warming/cooling hub can accommodate 25 individuals as permissible under an ECE licence application should it be approved by the Town with possibility to expand to up to 40, contingent on staffing ratios. Repair and retrofitting is ongoing for the remainder of the building under phase 2 of the project which will provide 35 shelter spaces and 10 transitional housing spaces further supporting individuals on their journey to life stabilization. The balance of the construction activities is contemplated to be completed mid-December becoming operational if an ECE licence has been issued by the Town.

310 Division Street was acquired by the County on December 8, 2023. The Province has provided funding of \$2.47M as announced on March 11, 2024 to expedite implementation for expanding much needed homelessness capacity and services at 310 Division St. with these funds being utilized towards project costs for renovations and retrofitting.

At the request of the Town, negotiations began in February 2024 on drafting of an agreement for providing shelter services. Cobourg Council passed a resolution dated February 28<sup>th</sup> to continue to negotiate terms of an agreement on 310 Division Street with the County.

Also, on February 28, 2024, the Town of Cobourg passed By-law No. 018-2024, being a By-law 'to License, Regulate and Govern Emergency Care Establishments in the Town of Cobourg' (the "ECE By-law"), which took effect on March 28, 2024. The ECE By-law generally requires emergency shelters to obtain a licence from the Town of Cobourg to operate and would apply to the proposed shelter at 310 Division Street. County and Town staff had been negotiating an agreement over the management of sheltering services to be provided at 310 Division Street up until the end of July, 2024 when Town Council elected to not enter into an agreement but rather to solely require formal licensing for provision of sheltering services via an application issued under the ECE By-law. To this end, County staff have been working with the Town as directed by Council towards approval of a licence for the facility. The County had requested in agreement negotiations that the ECE By-law be repealed in respect to 310 Division Street.

The initial ECE application was submitted August 16<sup>th</sup>. While there are no limits indicated in the application instructions pertaining to exemption requests, the Town responded on September 23<sup>rd</sup> that the application would not be reviewed based on the extent of exemption requests and the failure to submit on the Town's standard form (from which exemptions had been requested). Subsequent to this, the County resubmitted an application and exemption requests on October 1<sup>st</sup> with the Town Director responding on October 7<sup>th</sup>. The second request for exemptions attempted to minimize the number of requested exemptions including by providing duplicate information that would also be provided in the application of the shelter service provider (who will require a separate licence), providing additional information not available in the initial application due to timing of ongoing construction and approvals.

As presented to Council on October 16<sup>th</sup>, the resubmitted ECE application on October 1<sup>st</sup> reduced the number of exemption requests to four as noted below along with the findings of the Town Director's review (see attached Town of Cobourg ECE Exemption Request Decision Letter):



By-law Reference	County Rationale for Exemption	Town Decision
<p>Section 6.1 (d) (iii) –requires the provision of mobile security to address “circumstances involving shelter residents in the surrounding 500-metre radius”.</p>	<p>Exemption was sought in relation to mobile security. (onsite security 24.7 will be provided).</p> <p>The County nor private security contracted by the County has a mandate or legal authority to respond to issues off its property.</p>	<p>“Granted with Condition” Requires intervention with known shelter residents within sightlines of the property 500 metre radius response required for an incident directly related to ECE activities.</p>
<p>Section 6.1 (d) (iv) – lot maintenance plan including responsibility for the waste and debris from the activities of the ECE or its shelter occupants within a 500m radius of the site.</p>	<p>The County and Transition House outlined the waste management plan for onsite activities at 310 Division Street.</p> <p>The County cannot be responsible for waste and debris within 500m radius of site.</p>	<p>“Granted” Notes that the 500 metre radius requirement “is directly related to activity for which letter, waste and debris can be proven to be directly related to ECE activities.</p>
<p>Section 6.1. (i). A statement by applicant attesting to the accuracy of application including: compliance with various legislation as required by Town of Cobourg.</p>	<p>County provided a slightly modified form with the following changes: Clarifying it is a statement not an agreement Present tense shifted to future tense (upon full operational status). Limit indemnity of the Town to activities solely resp. of the Town. Added that the County did receive zoning compliance prior to purchase.</p>	<p>“Denied” By-law allows the Director or Manager to refuse to accept an application unless it is submitted on forms approved by the Director or Manager.</p>
<p>Section 4.3. – an agent trustee or representative of persons operating an ECE will be personally liable for compliance – failure to do so is an offence. S. 24.2 – each director or officer of a corporation who knowingly concurs in contravention of By-law is guilty of an offence for each day it continues.</p>	<p>As a municipal corporation – the County cannot dissolve or become insolvent and therefore the intent of the by-law that the entity most responsible under any licence is maintained with respect to the County without recourse to personal liability.</p>	<p>“Denied” The County’s submissions rely upon proposed statements of law rather than factual information and reasons for an exemption request.</p> <p>Providing an exemption would not maintain the general intent and purpose of the by-law.</p>

At the October 16<sup>th</sup> Council meeting, Council directed staff to proceed with a formal administrative hearing to review the exemption decisions. The County has been notified that the hearing will take place on November 25<sup>th</sup>, which is the earliest hearing date that could be accommodated.

At a special meeting of Council on October 29<sup>th</sup>, Council was made aware of several orders issued to the existing shelter at 10 Chapel Street (Transition House) that would reduce occupancy. Based on this, the current occupancy for Transition House has been reduced from 22 to 10. Recognizing the need to accommodate displaced individuals in an already strained shelter system, County Council approved \$40K in additional monies for motel spaces.

Within 48 hours of County Council's direction to expand shelter system capacity through the use of additional motel rooms, County and Transition House staff secured 8 additional motel rooms, and within 24 hours of this, finalized a staffing model to ensure professional emergency shelter and outreach staff were in place to rotate to these locations providing check-ins and supports. With these measures in place, staff immediately began assessing client need through the formal intake process, and placing people in either the shelter or motel rooms based on the most appropriate allocation. While motel accommodations are not the preferred model for emergency shelter, our hope is that this will be a temporary solution and we will be able to welcome all clients to the new shelter location at 310 Division Street in the near future.

Council also directed County staff on October 29<sup>th</sup> to request a meeting with Town staff to try to find solutions to comply with requirements as they currently stand under the ECE By-law application process requesting resolution within 5 business days.

The County CAO submitted a request to the Town CAO on October 30<sup>th</sup> for a meeting. On October 31<sup>st</sup> a response was received from the Town CAO (see attached). As proposed in the letter, a meeting was held on November 1<sup>st</sup> specifically for a licensing review with Licensing and Municipal Law Enforcement staff and the Town Solicitor to comply with any outstanding comments on the licensing application submission and with the decision of the exemption requests by the Town's Director. The response indicated that the exemption request decisions are final at the staff level and would, therefore, not be open to discussion.

Several items were noted as requirements under the application review for compliance with the following documentation having been submitted as requested:

- Updated Crime Prevention Through Environmental Design (CPTED)
- Revised Exterior Site Plan
- Revised Code of Conduct
- Pet Policy
- Revised Lot Maintenance Plan
- Floor Plans

The application is currently under review with responses to questions and the submission of additional information as requested by Town By-law Enforcement Services with an expectation of the review being completed this week. Further information may be required at the Town's discretion as part of the review process. Regardless, an ECE licence cannot be issued under the application without compliance to the Town's Director's review of by-law exemption requests or dependent on findings of the upcoming administrative hearing review or submission of revised exemption requests that may be accepted by the Director.

## Consultations

Consultations were held by County staff during a meeting with Town of Cobourg Municipal By-Law Enforcement Staff, legal counsel for the Town and Deputy Warden Hankivsky on the afternoon of Friday November 1, 2024.

The County requested comments and recommendations from its insurer with respect to potential coverage for increased liability imposed by the ECE By-law, including the requirement to indemnify the Town of Cobourg and name it as an additional insured, and the potential for personal liability of councilors, officers and employees of the County.

## Legislative Authority / Risk Considerations

The County is the Designated Service Manager for Housing and Homelessness under the Housing Services Act, 2011. Service Managers are responsible for the creation and implementation of 10-year Housing and Homelessness Plans and the administration of the HPP funding allocations from the province on an annual basis. Risk of not being able to provide homelessness support services as required and anticipated with an increasing need.

Risk of loss in provincial funding investment from the Ministry of Municipal Affairs and Housing (MMAH) for an additional \$2.47M through a contribution agreement to increase Homelessness Prevention Program (HPP) funding allocation specifically for capital works of the 310 Division Street Shelter Modernization Project if funding requirements are not met.

Compliance with the ECE By-law will likely introduce new exposure to liability on the County. As part of the application process, the Town of Cobourg has required that the County sign a declaration stating that it will fully indemnify and defend the Town against all claims and damages related to the operation of the shelter, which appears to include claims, etc., for which the Town is otherwise solely responsible. An exemption to reduce the additional liability to the County based on this requirement was refused, subject to the County's administrative review request. The Town has also required that it be listed as additional insured on the County's general liability policy with respect to 310 Division Street, which increases the risk of claims. The requirement of the ECE By-law that the County be responsible for matters relating to the provision of the shelter within 500 metres of the shelter itself may further expand the County's potential liability.

The ECE By-law introduces an obligation that representatives, agents and trustees of the County take personal responsibility for the County's compliance with the ECE By-law, and creates an offence for failure to do so. Furthermore, Directors and Officers who concur in any breach by the County may be personally charged with an offence or be personally liable to administrative penalties. An exemption to these sections for the County was refused, subject to the County's administrative review request.

Municipal Act Section 208 (2.1) – advice that is subject to solicitor-client privilege, including communications necessary for that purpose

## Discussion / Options

County staff met with Town staff on November 1<sup>st</sup> as was directed by County Council. Discussion on application of the by-law was primarily in general terms recognizing that operationally each instance of an item requiring action under the by-law can be very unique.



This is particularly the case in instances of actions of shelter residents within a 500-metre radius of the shelter pertaining to security or waste. The expectation of the Town is that the County would assist with good neighbour practices and to intervene as appropriate. This would be for activities that can be directly associated with ECE residents. Activities of individuals unrelated to the shelter would not be the responsibility of the County. Appropriate responses may include engaging shelter clients on/off property advising on expectations as outlined in by-laws, etc. and for contacting emergency services as warranted.

The Town indicated that fines which can be applied to any or each Director or Officer of the County under the ECE By-law would be applied as assessed by Municipal By-law Services in events of non-compliance and would most often occur only where an order is issued and not effectively resolved. Daily fines are not less than \$500 and not more than \$100,000 upon conviction. Fines assessed to the extent of \$100,000 would be for grievous offences. As an alternative to fines, administrative monetary penalties may be issued to each person who contravenes the by-law in the amount of \$250 per day or \$500 without a licence. The town has indicated that assessment of any instances of non-compliance would be fact/evidence based, and has stated that it will be enforced reasonably and in good faith. Specifically, the Town's legal counsel and by-law staff indicated that with respect to the requirement to intervene with respect to matters off-site within 500 metres of 310 division street would only be applied where shelter staff had actual knowledge of an ongoing incident, or potentially where the facts and circumstances of a given incident demonstrated a clear connection with the provision of shelter services by the County.

While the extent of personal liability to Councilors, officers, representatives, agents and trustees of the County under the by-law remains somewhat unclear, the town's legal counsel and by-law staff generally indicated that personal liability would only be imposed where it was appropriate in the facts of a given case. They could not provide certainty on who specifically might be covered by these sections (e.g. "who is a representative or agent of the County" may be dictated by the facts and circumstances of a given case), but there was some assurance that the Town would use this authority judiciously.

County staff has addressed the issues of increased personal liability of individual councilors and employees, as well as the increased risk associated with the indemnity required by the Town as a condition of a licence application with its insurers and can report the following:

- The County's General Liability policy excludes any fines, penalties, punitive or exemplary damages.
- The County's directors and officers liability insurer cannot discuss potential claims, but has referred us to the existing policy. A review of the policy shows the following:
  - There is some coverage for wrongful acts, which include administrative and regulatory penalties, in the policy. This coverage extends to all insured persons under the policy.
  - Municipal Act Section 239. (2.f) - advice that is subject to solicitor-client privilege, including communications necessary for that purpose

- The coverage is subject to the County's deductible, which will in many cases exceed individual penalties.
- Coverage is subject to an aggregate limit of [redacted] and coverage with respect to defence of individual claims may be subject to individual aggregate limits.
- With respect to the indemnification of the Town of Cobourg, the insurer has responded that if a more fairly balanced indemnity cannot be negotiated, their recommended alternative would be for the Town and County to jointly purchase a stand-alone policy for this specific risk, for which the County could cover the full cost of the premium (estimated between \$10,000.00 and \$20,000.00 annually). It is noted that such a policy would require cooperation from the Town in the application process (e.g. responding to the insurer questions with respect to Town operations) and would be subject to a deductible, standard exclusions, and aggregate coverage limits.

[redacted] the steps recommended above could mitigate the risks associated with full compliance with the ECE By-law. Additionally, the County could consider:

- Undertaking a review of its current policy limits and deductibles to ensure that coverage remains sufficient, or undertake to do so in the future with the benefit of actual experience and data from the operation of the shelter.
- Undertake a review of the County's current Indemnification By-law to ensure that it adequately considers the potential liability of councilors and staff introduced through the ECE By-law.
- [redacted]

[redacted]

[redacted] compliance with the ECE By-law would need to be in conjunction with ensuring non-violation of human rights and privacy of those clients seeking services at 310 Division Street such that there is fair and equitable treatment for all within the community. Continued collaboration with the Town for ensuring shelter residents adhere to community standards while also meeting their individual rights is of paramount importance.

[redacted]

Municipal Act Section 239. (2.f) - advice that is subject to solicitor-client privilege, including communications necessary for that purpose

[REDACTED]

[REDACTED]

[REDACTED]

Municipal Act Section 239. (2.f) - advice that is subject to solicitor-client privilege, including communications necessary for that purpose

[REDACTED]

Town staff and legal counsel further indicated that if the current exemption requests are resolved or withdrawn, and the County's application revised accordingly (e.g. to comply with the approved form of the statement, if no exemption is granted) they would be in a position to issue a licence relatively quickly. It was noted that any licence issued may include additional conditions, which they were not in a position to comment on other than to say they believed any such conditions would be reasonable.

Municipal Act Section 239. (2.f) - advice that is subject to solicitor-client privilege, including communications necessary for that purpose

[REDACTED], an option presented to County Council on October 29<sup>th</sup> was that an emergency could be declared enacting the County Emergency Management Plan and ability to open an emergency evacuation shelter. This was suggested recognizing the County currently does not have a warming hub open in Cobourg.

Municipal Act Section 239. (2.f) - advice that is subject to solicitor-client privilege, including communications necessary for that purpose

[REDACTED] Council could request a change to be made by the Minister of Municipal Affairs and Housing to change regulations governing a municipalities ability to license.

Given the uncertainty on extent of requirements to ensure compliance under the ECE By-law, should Council decide to accept the Town's exemption decisions as they stand, staff are proposing to increase the budget for sheltering services specific to by-law compliance requirements. This would be for a period of up to one-year aligned with the term of the licence. Data would be collected during this time to allow for data-driven decision making during the first year of operations based on need and anticipated outcomes. Proposed items for Council consideration are as follows:

- Municipal Act Section 239. (2.a) - the security of the property of the municipality or local board

[REDACTED]

- Staff are proposing an immediate contingency fund for the first year of licensing to allow for any unforeseen by-law compliance requirements.
- Staff are proposing utilization of a property management firm for dispatch and waste/litter management in accordance with the ECE By-law.
- Staff are also proposing Council consideration for a contract County employee to act as a liaison between Transition House, the County and the Town for managing and ensuring by-law compliance. The role would ensure proactive monitoring, education and the timely management of issues as they arise. In the interest of ensuring the opening of 310 Division Street as soon as possible, the shelter opening would not be contingent on having this position filled. The need for continuation of the role would be assessed after one year based on data analysis.
- Staff further propose to explore obtaining the joint policy of insurance to obtain coverage for the specific risks related to the indemnification of the Town, as recommended by the County's insurer, with the Town of Cobourg, on the basis that the County would bear the full cost of the premium.

**Municipal Act Section 239. (2.f) - advice that is subject to solicitor-client privilege, including communications necessary for that purpose**

Implementation of these proposals should allow for a sufficient 'safety net' to mitigate risks for the initial year as a pilot until sufficient data and outcomes can be gathered for a more comprehensive assessment. Although these costs do not constitute direct service delivery benefits to clients, they will alleviate some risks for compliance to the ECE By-law if Council directs staff to meet the exemption request requirements as they currently stand.

### **Financial Impact**

Estimated costs of ECE By-law compliance as proposed for Council consideration under the first 1-year licence period are highlighted below should Council direct staff to meet the Town's exemption requirements. This is assuming a full year before modifications would be made; however, adjustments could be brought forward to Council sooner as assessment of data and compliance requirements become more known.

<b>Estimated ECE By-law Compliance Costs 1-Year Pilot</b>		
Additional 24/7 security coverage	300,000	Vehicle for offsite requirements may increase cost
Property Management	67,700	On-call property management and dispatch assuming 2 calls per week
Contingency	100,000	Unforeseen compliance costs
Contract Compliance Coordinator	100,000	Estimated placeholder inclusive of benefits



Additional General Liability Insurance (Joint Policy with Town of Cobourg)	20,000	Estimated annual premium for additional General Liability insurance policy held jointly with the Town of Cobourg, as recommended by insurer.
Total	587,700	

Staff recommend utilization of the County General Reserve to fund any costs for 2024 and that the 2025 Budget be updated to include financing requirements for ECE By-law compliance from the levy.

**Municipal Act Section 239. (2.a) - the security of the property of the municipality or local board**

The current budget allotted for sheltering services is \$1.1M inclusive of warming room (\$390K) and motel overflow (\$115K). Council approved an additional \$40K for motels based on reduced occupancy for sheltering at 10 Chapel Street.

### **Member Municipality Impacts**

County staff have been working with Town staff towards issuance of an ECE licence in consideration of needs for all community stakeholders.

### **Conclusion / Outcomes**

Council directs staff on action to take for ECE By-law application.

### **Attachments**

1. Closed Session Report 2024-151 ATTACH 1 - Town of Cobourg ECE Exemption Request Decision Letter
2. Closed Session Report 2024-151 ATTACH 2 - Town of Cobourg CAO Response Letter





## Emergency Care Establishment Exemption Request DECISION

**Applicant: Northumberland County**

**Location: 310 Division Street, Cobourg**

### **Exemption Request:**

The Town of Cobourg is in receipt of your Emergency Care Establishment Licensing Application and Exemption Request(s) for specific provisions under the Emergency Care Establishment Licensing By-law No.018-2024 (ECE) By-law.

The decisions below identify the exemptions requested with the decision noted, and where necessary specific conditions and any supporting information included.

### **Exemption Request #1:**

#### **Reason for Exemption Request:**

*The County is requesting an exemption from this section insofar as it requires the provision of mobile security to address "circumstances involving shelter residents in the surrounding 500-meter radius." Neither the County, nor any private security contracted by the County, has a mandate or legal authority to respond to issues off its property, other than the enforcement of County By-laws. The responsibility as a service manager under the Housing Services Act, 2011 to develop and implement strategies and services to support that plan, does not include a broader mandate, responsibility or authority to control, police, or monitor the conduct or activities of individuals who may be accessing those services when they are not at the property or actively engaged accessing those services. In the County's submission the intent of the By-law can be met by the provision of security at the property itself, as well as through education of residents of applicable by-laws, including the Town's nuisance By-law.*

### **Emergency Care Establishment Licensing By-law No.018-2024**

#### **Section 6.1 (d) (iii)**

*d) An operational plan outlining specific measures to comply with Town By-laws and applicable law including but not limited to;*

*iii) The provision of both on-site and mobile security 24 hours/7 days per week to manage issues involving shelter occupants on the property and such circumstances involving shelter occupants in the surrounding 500 meter radius.*

**Director Decision: GRANTED WITH CONDITION**

The ECE Applicant has provided clarification through recommended conditions related to on-site security which is delivered by staff and through existing infrastructure and utilizing other areas of requirements within the ECE By-law. These include the code of conduct, communicating the Town's Nuisance By-law, and addressing issues raised by the community within the Community Liaison Committee.

In keeping with the general intent and purpose of the By-law, the Town is looking for confirmation from the County of Northumberland to confirm that the Owner and Operator will work to assist with good neighbor practices and to intervene and remind known shelter residents within the property vicinity of the various by-laws and rules in place within public spaces within sightlines of the property and become compliant with those by-laws and rules in addition to contacting emergency services when necessary.

Reference to 500-meter radius **is directly related to activity for which a security response is necessary for an incident which can be proven to be directly related to ECE activities**. For clarification an individual's actions unrelated to an ECE activity or its programs and services would not be the responsibility of the ECE.

In addition, the ECE Applicant should add to their contact list for those working within the ECE, the Municipal Law Enforcement Department phone number 905-372-8380 (daytime & afterhours response), who can also report incidents directly to a Municipal Law Enforcement Officer seven (7) days a week and 24/7 to be addressed and responded to as it relates to any municipal enforcement infraction and complaints.

**Action:**

The ECE Applicant shall confirm that the Owner and Operator will work to assist with good neighbor practices and to intervene and remind known shelter residents within the property vicinity of the various by-laws and rules in place within public spaces within sightlines of the property and become compliant with those by-laws and rules in addition to contacting emergency services when necessary. ECE Applicant will only be responsible for the 500-meter radius which is proven to be directly related to ECE activities.

**Exemption Request #2:**

**Reason for Exemption Request:**

*The County requires a partial exemption from this submission requirement. The County and its operator will ensure that there are adequate waste receptacles and garbage facilities on site and submit a lot maintenance plan identifying the locations of such infrastructure. The County will also take steps to ensure that the shelter operator has commercially reasonable*

*policies are in place to limit waste generated at the site from shelter activities, such as avoiding the use of disposable products and packaging wherever possible and encouraging any waste to be deposited on site. The County cannot be responsible for waste and debris from the activities of shelter occupants within a 500m radius of the site and believes the intent of the by-law to reduce and control waste from shelter operations is met by minimizing waste from shelter services and ensuring adequate facilities to dispose of such waste on site.*

### **Emergency Care Establishment Licensing By-law No.018-2024**

#### **Section 6.1 (d) (iv)**

*d) An operational plan outlining specific measures to comply with Town By-laws and applicable law including but not limited to;*

*iv) A lot maintenance plan identifying locations of waste receptacles, garbage facilities and the frequency or maintenance schedule to address litter, waste accumulation and debris arising from the activity of the E.C.E. or its shelter occupants on the property and in the surrounding 500 meter radius;*

#### **Director Decision: GRANTED**

The ECE Applicant has provided clarification on lot maintenance procedures and obligations and oversight on the operator, and that the property owner and tenant must comply with Town's Property Standards, Lot Maintenance and Waste Collection By-laws consistent with general intent and purpose of the By-law.

The reference to the 500-meter radius **is directly related to activity for which litter, waste and debris can be proven to be directly related to ECE activities.** For clarification an individual's actions unrelated to an ECE activity or its programs and services would not be the responsibility of the ECE licensee.

#### **Action:**

No action needed, other than understanding of the Towns' By-laws on Lot maintenance. The ECE Applicant will only be responsible for the 500-meter radius which is directly related to activity for which litter, waste and debris can be proven to be directly related to ECE activities.

### **Exemption Request #3:**

#### **Reason for Exemption Request:**

*The County requires exemptions from section 6.1 (i) and proposes to submit an alternative sworn statement to the one included in the application form.*

*As the proposed shelter at 310 Division Street is not yet operational and design and renovations to the building are ongoing, the County cannot confirm that it currently meets the requirements of the applicable laws listed in subsection 6.1(d)(ii), but can confirm that it intends to meet these requirements upon occupancy and commencing shelter operations. Changes to the standard statement are also required due to the various required exemptions outlined in this schedule.*

*The Town or its agents will have final approval of the design and renovations of the building, including under the Building Code Act, 1992, which will satisfy the intent of the By-law.*

#### **Emergency Care Establishment Licensing By-law No.018-2024**

##### **Section 6.1 (i)**

*i) A statement by the applicant attesting to the accuracy, truthfulness and completeness of the application and other items, including but not limited to, that:*

*ii) the E.C.E. is in compliance with various legislation as required by the Town of Cobourg, including the Building Code Act, 1992, S.O. 1992, c. 23 or any regulations made under it, including the Building Code O. Reg. 332/12; all Town of Cobourg municipal by-laws, including Property Standards Bylaw 18-99, as amended, and Zoning By-law 085-2003, as amended; and the Fire Protection and Prevention Act, 1997, S.O. 1997, c. 4, or any regulations made under it, including the Fire Code, O. Reg. 213/07;*

##### **Director Decision: DENIED**

Pursuant to 6.1 of the ECE By-law No. 018-2024, the Director or Manager may refuse to accept an application for an E.C.E. Operator license unless the application is submitted on forms approved by the Director or Manager. The Town requires that the Applicant use the forms approved by the Director or Manager which formulates part of the Application Package when applying for an ECE License. By completing the Declaration (Attestation) on page 4 and 5 of the application is keeping with the general intent and purpose of the By-law confirming compliance with the requirements of the Emergency Care Establishment Licensing By-law.

#### **Action:**

The ECE Applicant shall complete and submit the Town's Declaration (Attestation) Form as the required form that has been approved by the Director or Manager.

#### **Exemption Request #4:**

##### **Reason for Exemption Request:**

*As a municipal government, the County understands that there are circumstances where a municipal by-law must be able to "pierce the corporate veil" to ensure individual responsibility and accountability cannot be avoided through corporate dissolution or insolvency. Such authorities must, of course, be used sparingly and only where it would not be possible or appropriate to hold the responsible corporation liable.*

*The County requires an exemption from this section due to its nature as a municipal corporation. The County is not prone to dissolution or insolvency, and therefore the intent of the by-law that the entity most responsibility under any licence is maintained with respect to the County without recourse to personal liability.*

*It is also noted that subsection 448(1) of the Municipal Act, 2001 applies with respect to the Councilors, officers, and agents of the County, and provides that no proceeding may be commenced against such an individual for any act done in good faith performance of a duty or authority.*

#### **Emergency Care Establishment Licensing By-law No.018-2024**

##### **Section 4.3, 24.2**

*4.3 An agent, trustee or representative of persons operating an E.C.E. in the Town for which a licence is required shall also be personally liable for the compliance of his principal, beneficiary or persons he represents in connection with this bylaw. Failure by such a person to comply with this section constitutes an offence.*

*24.2 Each director or officer of a corporation who knowingly concurs in the contravention of this By-law by the corporation is guilty of an offence for each day or part of a day that the contravention occurs or continues*

##### **Director Decision: DENIED**

The County's submission for its Exemption Request #4 effectively requests two exemptions. The first Exemption Request is for an exemption from section 4.3 of the E.C.E. By-law and the second Exemption Request is for an exemption from section 24.2 of the E.C.E. By-law. Both submissions rely upon proposed statements of law from the County rather than upon factual information and reasons for an exemption request. The decision in response to each exemption request is as follows.



### The Section 24.2 Exemption Request

Section 24.2 of the E.C.E. By-law reads as follows:

**24.2** *Each director or officer of a corporation who knowingly concurs in the contravention of this By-law by the corporation is guilty of an offence for each day or part of a day that the contravention occurs or continues.*

In support of this Exemption Request, the County refers to subsection 448(1) of the *Municipal Act, 2001*. The Town of Cobourg is fully aware of the immunity provisions set out in subsection 448(1) of the *Municipal Act, 2001*. For ease of reference, section 448 of the *Municipal Act, 2001*, reads as follows:

#### ***Immunity***

**448 (1)** *No proceeding for damages or otherwise shall be commenced against a member of council or an officer, employee or agent of a municipality or a person acting under the instructions of the officer, employee or agent for any act done in good faith in the performance or intended performance of a duty or authority under this Act or a by-law passed under it or for any alleged neglect or default in the performance in good faith of the duty or authority.*

#### ***Liability for torts***

**(2)** *Subsection (1) does not relieve a municipality of liability to which it would otherwise be subject in respect of a tort committed by a member of council or an officer, employee or agent of the municipality or a person acting under the instructions of the officer, employee or agent.*

That is, immunity is provided under this section “for any act done in good faith in the performance or intended performance of a duty or authority under this Act or a by-law passed under it”. The E.C.E. By-law was passed under the *Municipal Act, 2001*.

Based on that, please take note that section 425(1) and (3) of the *Municipal Act, 2001*, reads as follows:

#### ***Authority to create offences***

**425 (1)** *A municipality may pass by-laws providing that a person who contravenes a by-law of the municipality passed under this Act is guilty of an offence.*

### ***Directors and officers***

*(3) A by-law under this section may provide that a director or officer of a corporation who knowingly concurs in the contravention of a by-law by the corporation is guilty of an offence.*

Accordingly, section 24.2 of the E.C.E. By-law is consistent with and in conformity to section 425 of the *Municipal Act, 2001*, and its scope will be interpreted by the Town of Cobourg in accordance with governing principles.

Section 20.1 of the E.C.E. By-Law permits the Director to “exempt any person from all or any part of the Emergency Care Establishment By-law where the Director is satisfied that the granting of the exemption would maintain the general intent and purpose of the By-law”. This Director is not satisfied that the granting of an exemption to section 24.2 of the E.C.E. By-law to the Applicant would maintain the general intent and purpose of the By-law because section 24.2 was passed in accordance with the language set out in section 425 of the *Municipal Act, 2001*, under which the E.C.E. By-law was expressly passed. Therefore, this Exemption Request is not granted.

### **The Section 4.3 Exemption Request**

Section 4.3 of the E.C.E. By-law reads as follows:

*4.3 An agent, trustee or representative of persons operating an E.C.E. in the Town for which a licence is required shall also be personally liable for the compliance of his principal, beneficiary or persons he represents in connection with this bylaw. Failure by such a person to comply with this section constitutes an offence.*

As stated above, Section 20.1 of the E.C.E. By-Law permits the Director to “exempt any person from all or any part of the Emergency Care Establishment By-law where the Director is satisfied that the granting of the exemption would maintain the general intent and purpose of the By-law”.

The County makes this Exemption Request based on a legal position that the E.C.E. By-law should not “pierce the corporate veil”. The E.C.E. By-law makes no reference to piercing the corporate veil in section 4.3 of the E.C.E. By-law.

The general intent and purpose of the Town of Cobourg’s E.C.E. By-law (including section 4.3) is to be consistent and compliant with governing legislation, including the *Municipal Act, 2001*, and the *Provincial Offences Act*, RSO 1990, c P.33, and consistent and compliant with governing common law, including the Supreme Court of Canada’s decision rendered in the case of [R. v. Sault Ste. Marie](#), 1978 CanLII 11 (SCC), [1978] 2 SCR 1299.



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**Legislative Services Division**

Brent Larmer

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Accordingly, an Exemption Request based on the scope of the concept of “piercing the corporate veil” does not satisfy this Director that such an exemption requested on that basis would maintain the general intent and purpose of the by-law and, therefore, this Exemption Request is not granted.

**Action:**

No action required, exemption request denied, and the County must comply as with the general intent and purpose of the by-law as written.

**Summary:**

In summary, out of the four (4) exemption requests submitted, one (1) exemption request has been granted, one (1) request granted with condition, and two (2) exemption requests denied. All exemption decisions have been described and actions of the ECE Applicant noted.

**Option for Hearing Officer Appeal:**

With respect to the By-law, the ECE By-law provides that where a person is denied an exemption by the Director or is dissatisfied with any condition imposed by the Director in relation to an exemption, the person may request a review by the Hearings Officer of the Director’s denial or condition.

The person’s right to request a review expires on the tenth (10<sup>th</sup>) day after notice of the Director’s decision is given to the person at which time the Director’s decision is final and not subject to review.

Sincerely,

A handwritten signature in black ink, appearing to read "Brent Larmer".

Brent Larmer

Municipal Clerk/Director of Legislative Services

Legislative Services Division, Town of Cobourg





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October 31st, 2024

Jennifer Moore,  
Chief Administrative Officer  
Northumberland County  
[moorej@northumberland.ca](mailto:moorej@northumberland.ca)

**Re: Response to Memo from the CAO Re- Transition House, 310 Division Street,  
Cobourg**

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This letter is a follow up on the correspondence received from the County of Northumberland dated October 30<sup>th</sup>, 2024, regarding, 'Follow Up to County Council meeting – ECE bylaw' and the Council direction pertaining to requests made in that correspondence.

Cobourg Council approved By-law No.018-2024, being a By-law to license, regulate and Govern Emergency Care Establishments in the Town of Cobourg on February 28<sup>th</sup> 2024, and this By-law took effect on March 28<sup>th</sup> 2024. This By-law forms the response and operational direction of Staff from 'Council' who is responsible for setting policy and approving specific by-laws under their authority for staff to follow and enforce. Further, the Town's Emergency Care Establishment Licencing By-law No.018-2024, applies to the entire jurisdiction of the community and not one single location, and needs to be administered and enforced across the municipal jurisdiction fairly and equitably to all.

The Town of Cobourg has reviewed your three (3) requests as noted within your correspondence and provides the following responses:

1. *County request. "I am inquiring about the Town's interest in providing the services required for bylaw compliance on a contract basis. Primarily, these services would include the use of bylaw enforcement staff to meet the offsite security response requirements (Note that I have already confirmed that Cobourg Police are not able to take on this work) as well as Public Works, or other staff, to meet the offsite waste collection requirements. If the Town is able to provide contracted services, please provide a description of the services the Town can provide as well as the cost breakdown down of services and the total annual cost. Please advise who this request should be directed to at the Town."*



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- 1) Town response. This request unfortunately cannot be considered and would not be keeping with the general intent and purpose of the by-law requesting the Town to assist the County in your responsibility to meet your obligations under the various provisions within the ECE Licensing By-law. This request would be a direct conflict as the Town would be performing work as the enforcement agency to items under the by-law in which the County and the Operator would need to adhere to and comply with.

The Manager of Municipal Law Enforcement has provided detailed information to County representatives on how they can comply and scenarios for specific circumstances that may be common to the 500-radius responsibility within the by-law.

Response from Kevin to R. Carmen October 16th, 2024:

*Concerning the exemption request involving security; In keeping with the general intent and purpose of the By-law, the Town requires the County of Northumberland to assist with good neighbor practices and to intervene and remind known shelter residents within the property vicinity of the various by-laws and rules in place within public spaces and within sightlines of the property and become compliant with those by-laws and rules in addition to contacting emergency services when necessary. Reference to a 500-meter radius is directly related to activity for which a security/staff response may be necessary for such situations which can be proven to be directly related to ECE activities. A security/staff response may include engaging the individual(s) off the property, providing education on rules/regulations or contacting Municipal Law Enforcement for assistance and response as it relates to any municipal enforcement infraction and complaints. It is understood that an individual's actions unrelated to an ECE activity or its programs and services would not be the responsibility of the ECE and each circumstance would be considered on a fact/evidence based assessment. The relationship with the County and the Town in these instances is intended to be collaborative, compassionate and solution driven to address issues which are disruptive and inconsistent with community standards.*

*Concerning the exemption request involving waste/litter; The ECE Applicant will only be responsible for the 500-meter radius which is directly related to activity for which litter, waste and debris can be proven to be directly related to ECE activities. Examples of activities such as ECE meal programs, distribution of supplies, provision of goods,*

*assembly of persons while waiting for services etc., that subsequently result in materials/items being discarded and contributes to waste on neighbouring public or private property left by a resident(s) of the shelter. It is understood that an individual's actions unrelated to an ECE activity or its programs and services would not be the responsibility of the ECE and each circumstance would be considered on a fact/evidence based assessment. The relationship with the County and the Town in these instances is intended to be collaborative, compassionate and solution driven to address issues which are disruptive and inconsistent with community standards.*

*Concerning the 500 meter radius and proposal that the Town reduce the regulation to within "sightlines" of the ECE; The by-law contemplates a reasonable buffer zone of 500 meters surrounding an ECE and regulates those aspects involving security, waste and debris arising from activities related to the business or its shelter occupants which may adversely and directly impact surrounding properties and the community. Again, activities unrelated to an ECE's occupants or its programs and services would not be the responsibility of the ECE and each circumstance would be considered on a fact/evidence based assessment. There may be instances where activities are beyond "sightlines" and require consideration for intervention utilizing various approaches. This is in direct harmony with the requirement that an ECE have operational policies, procedures and strategies to facilitate how the shelter engages, communicates and works with the surrounding community to foster a positive relationship and mitigate impacts to and maintain the safety of, neighbouring residents including noise and nuisance mitigation.*

- 2) *County request. "I am requesting a meeting to discuss the outstanding bylaw exemption requests for the purpose of getting a better understanding of the expectations of the Town so that the County can more accurately determine the resources required to come into compliance with the ECE bylaw in order to secure a license and open the shelter. As this bylaw is new, we cannot reference other examples as to how this bylaw will be applied and the necessary steps required to ensure full compliance. We continue to seek guidance, with practical examples, regarding the standards to which the bylaw will be enforced. Please advise if there are any Town staff able to provide the guidance being sought and if so, with whom should I request a meeting."*

*Town response. The Town of Cobourg has provided on several occasions information in writing and verbally with the County Staff on how to meet compliance through their*



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ECE Application and ultimately receiving a Emergency Care Establishment Licence pursuant to the requirements under By-law No. 018-2024. The County of Northumberland following the provisions of the By-law, requested specific exemptions for your application, and pursuant to the authority under the by-law the formal process is for the Director to make an independent decision based on keeping with the general intent and purpose of the by-law. The exemption decisions pursuant to Section 20 of the By-law are final at the staff level. As a result of the decision from the Director the County has selected a formal Hearing to appeal the decision of the Director, which is the next formal process if there are objections to the exemption decisions.

Therefore, if a meeting occurs as suggested, the topic of discussion would be a specific licensing review from Licensing and Municipal Law Enforcement Staff and the Town Solicitor present explaining and answering questions on how the County of Northumberland can comply with any outstanding comments on the licensing application submission and in addition to complying with the decision of the exemption requests by the Director. It should be acknowledged that the County has requested a Hearing under the Town's By-law and the decision on those objections and arguments to the Directors exemption decisions, rest with the Town's Independent Hearing Officer and the hearing process. There is no municipal process that allows for parties to the hearing to discuss authority that is already delegated other persons for a decision outside the formal process as approved by Cobourg Council.

We remain committed to working collaboratively with the County to assist you to understand and navigate the process and obtain your ECE licence. If the County would like to schedule a meeting with Staff, noting your 5 day timeline you provided to us, the Town would have availability to meet this Friday November 1<sup>st</sup>, 2024 at a time that is convenient between both parties to be worked out at a later date depending your agreement to the objectives of the meeting. Please contact Kevin Feagan to arrange a meeting.

- 3) *County request. "I am requesting a meeting to revisit a discussion on a cost sharing agreement, such as a hosting fee, for the financial impacts the Town expects to incur as a result of the shelter operating within the Town. Please advise if the Town is willing to meet and consider a proposal and if so, who should a proposal be addressed to and who should participate in discussions?"*

Town response. The Town would be and has always been open to discuss any cost reimbursement from the County of Northumberland for the financial impacts the Town



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and its ratepayers will incur as a result of the shelter operating within the Town of Cobourg. Any proposal would be welcome for review, and the Town would be interested in receiving any proposal in writing prior to a meeting in order to prepare an adequate and detailed response and to determine who would be best positioned on the Town's side to attend the discussions. All discussions would be separate from the Town's Emergency Care Establishment Licencing By-law No.018-2024, as the by-law applies to the entire jurisdiction of the community and not one single location at noted early within their letter and has its own administrative processes and recoveries if necessary.

The Town of Cobourg believes that ECEs support the delivery of these critical care services and reinforces the intent that those services are delivered in a safe, dignified and sustainable manner for shelter residents and the community. The Town of Cobourg also believes that the needs of ECE residents should take priority and that ECEs should be required to meet stable, specific, identifiable standards of service for their residents. The Town of Cobourg agrees that the County shall increase shelter spaces and open as soon as possible to provide these much-needed services and adhere to the legislative requirements that the County has as the service manager under the *Housing Services Act, 2011*. It has always been the Town's goal to see these additional spaces and service enhancements be made available to those that need them as soon as possible in that safe, sustainable and dignified manner discussed above, and had anticipated that opening occurring in September. With the imminent cold weather approaching, it is our sincere hope that the County will continue to work towards the implementation and compliance of the service standards set out in the ECE By-law so that these services can be made available as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Vaughan".

**Tracey Vaughan**

Chief Administrative Officer, Town of Cobourg