Cassels

Bold Steps Towards More Housing: Ontario Introduces the More Homes for Everyone Act, 2022

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The much anticipated *More Homes for Everyone Act, 2022* (the Act) released for first reading on March 30, 2022, has already generated considerable debate and has been critiqued by some as not going far enough to bring much needed relief for housing supply and affordability in Ontario. The Act includes significant changes to Ontario's planning framework at a time in which many upper-tier and single-tier municipalities are in the process of comprehensive reviews of their official plans.

In summary, changes to the *Planning Act* and *City of Toronto* Act, *2006,* include:

1. The Minister of Municipal Affairs and Housing can refer Official Plans and Official Plan Amendments subject to its approval to the Ontario Land Tribunal (Tribunal) for a recommendation or a decision, thereby providing opportunities for persons to participate in a hearing as parties;
2. As of January 1, 2023, municipalities will be required to refund full or partial application fees for rezoning and site plan applications, if they do not make a decision or issue an approval within the time to make a decision set out in the *Planning Act*;
3. Municipalities may request that the Minister exercise the powers of a municipality respecting zoning by-laws or provided under a development permit by-law. These Orders are in addition to the current Minister's Zoning Order (MZO) powers and similarly do not need to be consistent with or conform to provincial policies and plans or applicable official plans;
4. Transit Oriented Communities will have capped parkland dedication and cash-in-lieu rates;
5. As of July 1, 2022, municipalities will have 60 days to make a decision on site plan approval applications, up from the current 30 days;
6. As of July 1, 2022, the complete application process currently applicable to most types of planning applications will be extended to site plan approval applications;
7. The Minister can suspend the time it needs to make a decision on Official Plans and Official Plan Amendments subject to its approval; and
8. A municipality may deem approvals of draft plans of subdivision not to have lapsed, subject to certain conditions.

Significant Impact on Ongoing MCRs

As advised in some of our previous Cassels Comments, many upper-tier and single-tier municipalities are

currently undergoing municipal comprehensive reviews (MCR) to ensure their official plans conform to provincial policy, particularly *A Place to Grow: Growth Plan for the Greater Golden Horseshoe* (the Growth Plan). These MCRs will address matters such as settlement area expansions, inclusionary zoning, protected major transit station areas, and employment land conversions. These MCRs must be completed by July 1, 2022. Where a MCR identifies changes needed to conform to provincial policies and plans, the subject municipality will need to adopt new official plans or plan amendments.

The Minister of Municipal Affairs and Housing (the Minister) is the approval authority for these official plan amendments. With a busy 2022 ahead, the Minister has made two significant changes that will impact the MCR process:

1. Minister may make referrals to the Tribunal, creating an opening to seek party status

The Minister is empowered to refer any official plan or plan amendment subject to its approval to the Tribunal for a recommendation or a decision.

When a matter is referred to the Tribunal by the Minister, the Tribunal must provide notice to the municipality that adopted the plan and to any person or public body who made oral or written decisions.

These changes are significant, as they provide an opportunity for any person who has made submissions to a municipal council to seek to participate in a hearing at the Tribunal. Party status will permit persons to bring evidence and make submissions on any issues raised by the Minister on referral. This includes matters where appeal rights otherwise do not exist under the *Planning Act,* such as policies and plans concerning inclusionary zoning, protected major transit station areas and employment land conversions.

2. Suspension of time period for Minister to make a decision

Where it is the approval authority, the Minister is now able to suspend the time needed to make a decision on official plans and plan amendments. The Minister would traditionally have 120 days to make a decision, or else risk an appeal for a failure to make a decision by the municipality that adopted the plan.

Changes to Site Plan Approval Process in Ontario

The time for municipalities to make decisions on site plan approval applications has been extended to 60 days, from the current 30 days. This change will apply to applications submitted on or after July 1, 2022. Additionally, as with applications for official plan amendments, zoning by-law amendments and draft plan of subdivision approval, municipalities must now provide a notice respecting the completeness of an application within 30 days of receipt, and disputes respecting completeness may be brought before the Tribunal.

Refunds of Application Fees for Zoning By-law Amendment and Site Plan Approval Applications

As of January 1, 2023, municipalities will be required to provide full or partial refunds of application fees, if they do not adhere to the timelines to make a decision set out in the *Planning Act* and *City of Toronto Act* for zoning by-law amendments as well as site plan approval applications.

Municipalities will be penalized, on an increased scale based on the lateness of their decision or approval of an application, as follows:

Type of Application	Time to make a decision	If approved within mandated time period	When 50% of application fees to be refunded	When 75% of application fees to be refunded	When 100% application fees to be refunded
Zoning By-law Amendment submitted with an Official Plan Amendment	120 days	No refund	No decision by Council by day 121-180	No decision by Council by day 181 - 240	No decision by Council by day 241+
Zoning By-law Amendment Only	90 days	No refund	No decision by Council by day 91-150	No decision by Council by day 151-210	No decision by Council by day 211+
Site Plan Application	60 days	No refund	Application not approved by day 61 - 90	Application not approved by day 91 – 120	Application not approved by 121+

While the goal is to encourage faster review and approval of applications, with these changes there is a risk that municipalities will make more frequent decisions to refuse applications within the statutory timeframe. Should an application for zoning by-law amendment be refused within the time to make a decision, no refund of application fees is owed. To obtain approval of a refused zoning by-law amendment application, an applicant will either need to: 1) submit a new, revised submission to the municipality together with additional fees, or 2) appeal the application to the Tribunal.

It is anticipated that these changes may also result in more extensive pre-application requirements for a complete application.

Minister's Order at Request of Municipality

The last few years have seen an increase in the number of municipally requested MZO's to deliver on

municipal priorities in a timely manner. In an effort to increase transparency, a previously informal process is being made formal. With notice and public, a municipality may pass a resolution requesting that the Minister exercise the powers of a municipality to pass a zoning by-law or use a power that may be exercised through a development permit by-law. When a Minister is requested to make an order by a municipality, the Minister may modify and/or impose conditions on the order and may require an agreement with the land owner to be registered on title. Such orders, and any required licence, permit, approval, permission or other matter, do not need to be consistent with the *Provincial Policy Statement* or conform to provincial plans (including the *Growth Plan*) or the applicable official plans, however no request may be made within a Greenbelt Area.

The Minister's powers under this section are in addition to the existing power for a Minister to adopt and MZO pursuant to section 47 of the *Planning Act.*

Parkland Dedication Requirements Capped for Transit-Oriented Communities

The Act will cap parkland dedication and/or cash-in-lieu requirements for lands designated as part of a Transit-Oriented Community under the *Transit-Oriented Communities Act, 2020* (being lands designated by order in council as required to support a transit-oriented community project), as follows:

Lands to be developed	**Parkland dedication and/or cash-in-lieu cap**
0-5 hectares	10% of the land value
Greater than 5 hectares	15% of the land value

Any by-law that requires a Transit Oriented Community to convey more than the above rates is automatically deemed to have been amended to require no more than the above rates.

The Act also allows the Minister of Infrastructure to identify land as encumbered (and require the conveyance of same) for the purposes of parkland dedication.

Subdivision Amendments

A municipality may extend the time for subdivision approval if extended prior to lapsing, or deem approvals of draft plans of subdivision not to have lapsed, subject to certain conditions.

What to Expect Next

Concurrently with first reading of the Act, several new postings were made to the Environmental Registry of Ontario and Regulatory Registry seeking consultation on possible next steps for the Ministry. These matters include:

- Opportunities to increase missing middle housing and gentle density, including supports for multigenerational housing
- Community Infrastructure and Housing Accelerator – Proposed Guideline
- Seeking Feedback on Housing Needs in Rural and Northern Municipalities
- Seeking Feedback on Access to Provincial Financing for Not-for-Profit Housing Providers

Some of these above items for consultation may result in future additional changes that many were hoping to see in the Act, including changes to allow a greater mix of housing within “yellow belt” areas of municipalities.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.