Cassels

Planning Regime Shake-Up: What the Proposed Changes in the More Homes Built Faster Act Mean for You

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Update: Find our most recent article on Bill 23 here.

On October 25, 2022, the Province of Ontario (the Province) introduced Bill 23, the *More Homes Built Faster Act, 2022* (Bill 23). Bill 23 is the next installment in the Province's Housing Supply Action Plan, which encourages the creation of 1.5 million homes over the next 10 years. On November 4, 2022, the Province announced further changes to the Greenbelt Plan and Oak Ridges Moraine Conservation Plan, seeking consultation on the removal and addition of various lands to the greenbelt, among other things. Feedback is requested on dozens of potential changes through the Environmental Bill of Rights Registry (ERO). Seen by some as the largest overhaul of Ontario's planning regime in decades, the Act will amend numerous statutes impacting as of right zoning for additional residential units, appeal rights, parkland dedication, development charges, community benefit charges, inclusionary zoning, heritage and more. More changes are expected to come following the end of the consultations on the ERO.

Top of mind for landowners, municipalities, and interested parties, is the impact of these changes, if adopted as proposed, on existing and future development applications and appeals.

This summary is not meant to be an exhaustive review, but highlights some of the key changes that would result from the proposed Bill 23 to the following:

Planning Act,
Ontario Heritage Act,
Development Charges Act 1997,
Ontario Land Tribunal Act, and
City of Toronto Act, 2006 and *Municipal Act*, 2001.

A complete copy of the proposed legislation can be found here.

Additional regulatory changes are currently being consulted on by the Province, including changes regarding Inclusionary Zoning, consolidating the Provincial Policy Statement, 2020 and A Place to Grow: Growth Plan for the Greater Golden Horseshoe, rental replacement and clarifying powers of municipalities

under the *Ontario Heritage Act*.

Planning Act

Changes to Appeal Rights

While we understand that the Province's intention was to remove third-party appeals of applications in an effort to streamline the development approvals process, the proposed legislation has much broader implications, and will likely result in further restrictions on housing supply. If passed, Bill 23 effectively eliminates the appeal rights of any person, not only of approved applications, but also municipally initiated official plans, official plan amendments (secondary plans, area-specific plans, etc.), zoning by-laws and zoning by-law amendments, which is both a surprising and significant change. Third party appeals of consents and minor variance applications have also been removed.

This means that, in the case of an application, only the applicant, municipality, certain public bodies and the Minister of Municipal Affairs and Housing (the Ministry) will be permitted to appeal municipal decisions to the Tribunal. In the case of a municipally initiated plan or by-law, only the Ministry and certain public bodies will be permitted to appeal. If passed, persons will no longer be able to raise objections to municipally initiated plans or by-laws at first instance and will be required to wait two years before submitting applications to amend an adopted plan or by-law, pursuant to existing provisions of the *Planning Act.*

These particular amendments will have retroactive effect upon Royal Assent. Once in force, any existing appeal will only be permitted to continue if a hearing on the merits has been scheduled before October 25, 2022, or additional appeals in respect of the same decision were filed by the persons or public bodies referenced above.

We should note that the amendments have not eliminated the ability to request party status before the Tribunal. In the case of applications, many appeals before the Tribunal are as a result of non-decision, and the elimination of third-party appeals will have no impact on these proceedings. In light of the foregoing, we expect that going forward, applicants will strategically consider whether to appeal for non-decision. We may also see an increase in refusals of applications, thereby allowing interested third parties to continue to participate in the Tribunal process.

Significant limitations to the appeal rights of Conservation Authorities are also proposed to commence on January 1, 2023. When acting as a public body, Conservation Authorities will not be permitted to appeal all types of development applications, unless their appeal relates to natural hazard policies under a provincial policy statement, other than hazardous forest types for wildland fire.

Conservation Authorities may also not be added as parties to adoptions of official plans and official plan

amendments or any appeals respecting plans of subdivision. Conservation Authorities, however, can continue to maintain existing and ongoing appeals commenced prior to the *More Homes Built Faster Act, 2022* receiving Royal Assent.

No Public Meeting Required for Draft Plans of Subdivision

Municipalities will no longer be required to hold public meetings for draft plans of subdivision; however, they will still need to provide Notices of decision to all entitled persons and public bodies. This change will apply to all applications that have not had a public meeting prior to Bill 23 receiving Royal Assent.

Two-year Suspension of Amendments Will Not Apply to Aggregate Operations

In 2017, the Province enacted a two-year suspension period, largely prohibiting applications for amendments to official plans, secondary plans and zoning by-laws for two years. The Province is now proposing to exempt amendments made for the purposes of making, establishing or operating a pit or quarry. Such amendments will be permitted upon Bill 23 receiving Royal Assent.

Land Lease Communities Exempt From Subdivision and Part-Lot Control if Site Plan Control Approval Obtained

Land Lease communities are proposed to be exempt from subdivision and part-lot control provided they obtain site plan control approval and the lease of land is for a period of between 21 and 49 years. This change will take effect upon Bill 23 receiving Royal Assent.

Parkland Dedication Changes

Rates of Dedication and Overall Cap

The proposed amendments introduce a parkland dedication cap for land proposed for residential development. The rate of dedication will remain at 5% of the land, but this rate of dedication will then be multiplied by the ratio of residential units that are not affordable, attainable or otherwise exempted, against the total number of residential units forming part of the development or redevelopment. The net result will be the ultimate amount of dedication required. Non-profit housing and up to three residential units in a house will not be subject to parkland dedication under a parkland dedication by-law.

The alternative dedication rate is proposed to be decreased from 1 ha / 300 dwelling units to 1 ha / 600 dwelling units. This change will apply to development or redevelopment where no building permit has been issued and for residential subdivision applications without draft plan approval at the time Bill 23 comes into force.

A reduction to the alternative rate for cash in lieu is also being proposed: 1 ha / 1000 net residential units, down from 1 ha / 500 dwelling units. Once in force, this will apply where building permits are not yet issued in the case of conveyance under a parkland dedication by-law, and to plans of subdivision where draft plan approval has not yet been obtained.

Caps on overall parkland dedication previously only applicable to Transit Oriented Community Lands will now apply to both draft plan of subdivision and site plan applications, making the cap of 10% of the land or value of the land (site size equal to or less than 5 ha) and 15% of the land or value of the land (site size greater than 5 ha) apply broadly wherever a building permit has not yet been issued (site plan) or draft plan approval has not yet been obtained.

Dedication of Encumbered Lands

Under the new legislation, circumstances where the Minister of Infrastructure may now identify land as encumbered and yet still permissible for dedication has been broadened. Further, the owner of land may, any time before a building permit is issued for a site plan application, identify (in accordance with any prescribed requirements) a part of the land the owner proposes to convey as parkland, including encumbered lands. If the municipality refuses to accept the identified land, the municipality shall provide notice to the owner, and the owner may, within 20 days, appeal the municipality's refusal to the Tribunal.

Timing of Dedication

For parkland dedication pursuant to a parkland dedication by-law, the timing for determination of parkland dedication is also proposed to change generally to the day a site plan or zoning by-law amendment application is made, so long as the first building permit is obtained within two years of approval. This change will apply to applications made after Royal Assent.

Spending and Allocation of Parkland Funds

Beginning in 2023 and in each calendar year thereafter, municipalities are required to spend or allocate at least 60% of the monies that are in the special account for parks at the beginning of each year.

Site Plan Application Changes

The proposed amendments will exempt developments of up to 10 residential units from site plan control. In addition, matters relating to exterior design, including sustainable design, will be removed from the scope of site plan approval. This will limit urban design review and the imposition of green standards, for example. Applicants should be aware that the provisions related to exterior design will continue to apply to site plan applications submitted before Royal Assent. Only applications submitted after Royal Assent will benefit from this proposed change.

Additional Residential Units

If passed, the legislation aims to ‘cut the red tape’ associated with additional residential units within new and existing houses, as well as accessory buildings. Upon Royal Assent, up to three residential units per lot will be permitted “as of right.” Minimum floor areas for each residential unit within the primary or accessory building cannot be imposed and no more than one additional parking space can be required. In addition, new units built under this new framework will be exempt from development charges, community benefits charges and parkland requirements.

Removing Upper-Tier Approval Authority

Upon proclamation, which may occur on a date to be determined any time following Royal Assent, planning responsibilities will be removed from certain upper-tier municipalities including Simcoe, Halton, Peel, York, Durham, Niagara, and Waterloo for lower-tier official plans and amendments, as well as for subdivisions and consents. Once in force, existing upper-tier official plans would be deemed to form part of the applicable lower-tier official plan, until the lower-tier official plan is updated. The elimination of upper-tier approval authority will require significant changes to the Provincial Policy Statement, 2020 (the PPS) and A Place to Grow: Growth Plan for the Greater Golden Horseshoe (the Growth Plan).

Proposed Consolidation of PPS and the Growth Plan

In a proposed change related to Bill 23, the Minister has proposed to consolidate the PPS and Growth Plan into a single province-wide planning policy instrument. The core elements of this new proposed planning policy instrument would include policies on residential land supply, attainable housing supply and mix, growth management, environment and natural resources, community infrastructure, and streamlining the planning framework.

The Minister is currently consulting on those proposed changes through the ERO and is currently accepting written submissions on the following:

1. What are your thoughts on the proposed core elements to be included in a streamlined province-wide land use planning policy instrument?
2. What land use planning policies should the government use to increase the supply of housing and support a diversity of housing types?
3. How should the government further streamline land use planning policy to increase the supply of housing?
4. What policy concepts from the Provincial Policy Statement and A Place to Grow are helpful for ensuring there is a sufficient supply and mix of housing and should be included in the new policy document?
5. What policy concepts in the Provincial Policy Statement and A Place to Grow should be streamlined

or not included in the new policy document?

Written submissions are due no later than December 30, 2022.

Time-limited Incentive for Zoning Protected Major Transit Station Areas

There are currently limited appeal rights of zoning by-law amendments enacted to implement approved official plan amendments establishing Protected Major Transit Station Areas (PMTSA). This will continue, provided the zoning by-law amendments are adopted within one year of the subject official plan amendments coming into force. If municipalities fail to adopt a zoning by-law amendment respecting a PMTSA within one year of the subject official plan amendments coming into force, any subsequent zoning by-law amendment may be appealed to the Ontario Land Tribunal.

Proposed Cap to Inclusionary Zoning

The Minister is currently consulting on proposed changes to Inclusionary Zoning. Proposed changes include a proposed limit to the amount of inclusionary zoning units to be provided of 5% of the total number of units or 5% of the total gross floor area of all residential units (not including common areas). The proposed amendments would also establish a maximum affordability period of 25 years. The proposed amendments would also prescribe the approach to determining the lowest price/rent that can be required for inclusionary zoning units, set at 80% of the average resale purchase price of ownerships units or 80% of the average market rent for rental units.

The Minister is accepting written comments on these proposed amendments through the ERO until December 9, 2022.

Community Benefit Charges Exemption for Affordable Housing

Inclusionary Zoning Units, Affordable Housing Units and Attainable Residential Units (as defined in the *Development Charges Act,* see below) that are provided as part of a development will be discounted from the amount of charge payable. This discount will not come into force on Royal Assent, but on a day to be proclaimed.

Minister to be Provided Broader Authority to Amend Official Plans Without Applications for Approval

The Minister is proposed to be empowered to amend an official plan at any time if the Minister is of the opinion that the plan is likely to adversely affect a matter of Provincial interest. Previously, the Minister could only amend an official plan if an inconsistency with a Provincial Policy Statement was found and the municipality failed to amend its official plan within a specified time. This power would come into force on a day to be proclaimed.

Ontario Heritage Act

In addition to amendments made with respect to provincial heritage properties to encourage the use of provincial lands for various priorities such as transit, housing, health and long-term care, changes have also been made to the municipal heritage process.

The primary amendment relates to municipally listed, but not designated, properties. Municipalities regularly identify properties that may have heritage value and include them within their heritage registry in advance of proceeding with the process to formally designate a property. Listing a property ensures that it cannot be demolished without approval, but also allows a municipality to act quickly to protect a potential heritage property from demolition in advance of conducting a more fulsome review in support of designation. While the act of listing a property provides a municipality with a quick and less costly process, many properties remain on the registry for years, if not decades, without any formal designation until a development application is submitted. The proposed amendments will require that any property that has been on a municipal heritage registry be designated or removed within two years and cannot be re-included for at least five years. While the intention for the amendment is to remove undue restrictions on development, it is anticipated that these changes will encourage an increase in designations, potentially defeating the purpose of the amendments.

Additional amendments provide opportunity for the Province to prescribe by regulation criteria for identifying heritage conservation districts and amending or repealing heritage conservation by-laws.

Consultation on Changes to the *Ontario Heritage Act*

The Minister of Citizenship and Multiculturalism is also consulting on proposed changes to the *Ontario Heritage Act*. These changes include proposing to impose more stringent requirements on listing potential heritage properties prior to designation, and on requirements to designate both single properties and heritage conservation districts. In particular, the Minister of Citizenship and Multiculturalism is proposing to only allow municipalities to designate heritage resources, when such resources form part of development proposals, if they are already listed as a potential heritage resource and only within 90 days of a complete application being received for an Official Plan Amendment, zoning by-law amendment or draft plan of subdivision approval. The Minister of Citizenship and Multiculturalism is also proposing to require properties first be listed on the heritage register prior to designation.

Other changes include permitting the Minister of Citizenship and Multiculturalism to review, confirm and revise, the determination of cultural heritage value or interest by a ministry or prescribed public body respecting a provincial heritage property. The Minister of Citizenship and Multiculturalism is also proposing to provide the Lieutenant Governor-in-Council with powers to, by order, exempt the Province or certain public bodies from strict compliance with heritage requirements should the exempt advance transit, housing

long-term care or other priorities.

The Minister is currently accepting written submissions on the proposed changes through the ERO. The deadline for any submissions is November 24, 2022.

Development Charges Act

A number of changes are proposed to the *Development Charges Act, 1997.* These changes include increases to the available exemptions for small scale residential units and rental housing developments, as well as new exclusions of certain items from development charge by-laws. All amendments to the *Development Charges Act* are proposed to come into effect upon Royal Assent and will therefore have immediate impact, except as noted below.

Rental Housing Development

The creation of one additional unit or a 1% increase in units, whichever is greater, in a Rental Housing Development, being developed with four or more rental residential units, will be exempt from development charges.

Where no building permit has been issued, additional reductions in charges payable have also been added to encourage two- and three-bedroom rental units. Three or more bedrooms will see charges reduced by 25%, two-bedroom units will see charges reduced by 20%, and all other units not included above or otherwise exempt, will be reduced by 15%.

Additional exemptions have been provided for the addition of residential units in existing houses, or the addition of residential units in new houses.

Development charges can no longer be charged for the cost of Housing Services. Existing development charge by-laws will be deemed to be amended to conform to these changes, ensuring that the reduction in development charges can be realized in advance of adoption of a new development charge by-law.

Affordable/Attainable Housing

New definitions of affordable and attainable residential units has been added to the *Development Charges Act*, both of which will be exempt from the payment of development charges upon proclamation. An affordable rental or ownership residential unit is set at 80% of market rents, or 80% of average purchase price, as the case may be, both to be secured for a minimum of 25 years. While ‘attainable housing’ is a form of housing gaining prevalence in housing supply discussions, this represents the first statutory attempt to develop a standard definition. What will be considered attainable housing will be further prescribed

through regulation.

The Province proposes to regularly publish a bulletin identifying average market rents and average market purchase price. A standard form of agreement is also contemplated to assist with securing affordable/attainable residential units.

Non-Profit Housing Development

Non-profit housing developments will be exempt from the payment of any development charges due after the amendments come into force. This will include future installment payments.

Inclusionary Zoning Units

Residential units required pursuant to an inclusionary zoning by-law will also be exempt from any charges payable after the amendments come into force.

Transition

Recently adopted development charge by-laws (passed after June 1, 2022, but before the Act comes into force) and any future development charge by-laws will now have a mandatory five-year transition period. Charges will be capped at 80% for the first year, increasing 5 % per year over the five-year transition. This amendment will provide an immediate 20% discount on development charges.

Other Changes

Various amendments have been made that will apply when municipalities next proceed to establish new development charge by-laws, and will therefore take a number of years before the impact is realized.

Key changes include:

- The prior level of service to be used in developing a development charge by-law has been increased from 10 years to 15 years.
- The cost of studies, including the cost of the development charge background study, has been removed from the allowable capital costs.
- Rather than requiring a new development charge by-law every five years, development charge by-laws will be deemed to expire every 10 years, unless repealed earlier. While in some respects this gives municipalities more breathing space before being required to prepare and enact a new by-law, the industry should also see greater cost certainty as charges will remain stable for a longer period of time.

To further reduce costs, a maximum interest rate a municipality can charge pursuant to the Act for installment payments, and for charges fixed at the time of application but not immediately payable, has now been imposed based upon the average prime rate, adjusted quarterly. This will apply to any charges that are not yet payable before the Act comes into force.

Municipalities will also be required to spend or allocate 60% of money held in its reserve fund every year for water, wastewater, and highways, in order to encourage the necessary infrastructure be in place to facilitate the intended new housing supply and help to reduce interest charge costs.

Ontario Land Tribunal Act

Broader grounds for dismissing an appeal without a hearing are being added, with the addition of the ground that the Tribunal is of the opinion that the party who brought the proceeding has contributed to undue delay of the proceeding. Further, the Tribunal is proposed to have broader powers to dismiss a proceeding if it is of the opinion a party has failed to comply with an order of the Tribunal in the proceeding. Further clarification is added to emphasize that the Tribunal has the power to order an unsuccessful party to pay a successful party's costs. While efforts to streamline appeals before the Tribunal are welcome, these amendments are not anticipated to have a significant impact as most delays are caused by the limited resources of the Tribunal, and not any particular delay caused by a party.

The Lieutenant Governor in Council has the power to make regulations under the *Act*, and now also to require the Tribunal to prioritize the resolution of specified classes of proceedings. The Minister may also make regulations governing the practices and procedures of the Tribunal, subject to those regulations made by the Lieutenant Governor in Council that would prescribe timelines for specified steps in specified classes of proceedings. The failure of the Tribunal to comply with any such timeline is not proposed to invalidate a proceeding or be a ground for an order or decision to be set aside, and the Tribunal shall, on the Minister's request, report to the Minister on such matters.

City of Toronto Act and Municipal Act

Amendments are proposed to empower the Minister of Municipal Affairs and Housing to enact regulations that would limit or impose conditions on municipalities to regulate demolition and conversion of residential rental premises.

Consultation on these regulations is currently ongoing and submissions may be provided through the ERO. To inform the content of these potential regulations, the Province is seeking input on whether and how municipal rental replacement by-laws may be impacting housing supply and renter protections. To that end, the Province is seeking written submissions on the following:

1. What types of requirements should municipalities be able to set around residential rental demolition and conversion?
2. What types of requirements should municipalities not be able to set (e.g., are there requirements that pose a barrier to creating new or renewed housing supply or limit access to housing)?
3. What impact do you think municipal rental replacement by-laws might have on the supply and construction of new housing?
4. What impact do you think municipal rental replacement by-laws might have on renter protections and access to housing?

The Minister will be accepting written submissions prior to November 24, 2022.
