

## The Ontario Government Announces Further Changes to Increase Housing Supply

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On April 6, 2023, the Minister of Municipal Affairs and Housing (the Minister) introduced Bill 97, the *Helping Homebuyers, Protecting Tenants Act, 2023*, the latest step in the province's housing supply action plan. The amendments, along with a new policy framework are intended to support implementation of the province's action plan to meet the target of constructing 1.5 million new homes by 2031. Bill 97 is intended to strengthen homebuyer protections, support tenants, and streamline the rules around land use planning through amendments to seven statutes.

The province is also proposing a new instrument: the Provincial Planning Statement 2023 (2023 PPS), a singular, province-wide policy document which will replace both the Provincial Policy Statement 2020 (2020 PPS) and A Place to Grow: Growth Plan for the Greater Golden Horseshoe.

The Minister is currently accepting comments on Bill 97 through the Environmental Registry of Ontario (ERO) until May 6, 2023. The link to the Bill 97 ERO posting can be found [here](#). Comments on the 2023 PPS can be made until June 5, 2023. The link to the 2023 PPS ERO posting can be found [here](#).

## THE NEW 2023 PROVINCIAL POLICY STATEMENT

The 2023 PPS will fundamentally change how growth planning is done throughout Ontario. The 2023 PPS is intended to simplify existing policy, as well as refocus policies in order to achieve the province's housing goals. The key changes to the 2023 PPS include:

### Rural Areas

The 2023 PPS introduces changes that will impact Rural Areas and Lands. These changes include permitting lot creation and multi-lot residential development where site conditions are suitable as it relates to sewage and water services.

### Growth Targets and Strategic Growth Areas

One of the major changes that will be introduced through the 2023 PPS is the requirement for municipalities to do their own growth forecasting beyond 2051. Due to the repeal of the Growth Plan, municipalities will no

longer be required to plan for a specific target. The 2023 PPS will continue to support intensification, but without identifying specific numeric targets.

Since the province expects that municipalities will continue to use the 2051 targets as a minimum, the 2023 PPS will maintain the population and employment growth horizons to 2051.

When it comes time for municipalities to update their official plans, municipalities will be required to designate enough land for at least 25 years for infrastructure, employment areas and strategic growth areas. Strategic growth areas have been incorporated into the 2023 PPS and must be identified in official plans. The purpose of strategic growth areas is to support the achievement of complete communities, a range and mix of housing options, intensification, and more mixed-use development.

The new 2023 PPS identifies “large and fast-growing municipalities,” which *must* identify strategic growth areas in their official plans with minimum density targets. These large and fast-growing municipalities are identified in Schedule 1 of the 2023 PPS. All other planning authorities *may* identify these areas in their official plans, but this is not mandatory.

These strategic growth areas must include major transit areas. Large and fast-growing municipalities *shall* also delineate the boundaries of major transit station areas on higher order transit corridors in their official plans with minimum density targets. All other planning authorities *may* plan for major transit station areas that are not on a higher order transit corridor by delineating boundaries and establishing minimum density targets.

## **Built Boundary**

The concept of a delineated built-up area that was contained in the Growth Plan will be revoked and will not be carried forward into the 2023 PPS.

## **Employment Areas and Provincially Significant Employment Zones**

The 2023 PPS overhauls the employment land protection policies in Ontario. The definition of “employment area” is proposed to be scoped to only those uses that cannot locate in mixed-use areas and require protection against conversion (such as heavy industrial, manufacturing, large scale warehousing, etc.). Institutional, commercial, and residential uses as well as retail or office uses unless associated with a primary employment use are expressly excluded from the definition of employment area. With this change comes policies that direct the protection and preservation of industrial, manufacturing and warehousing uses and encourage intensification of employment uses and compact, mixed-use development that incorporates compatible employment uses.

Industrial, manufacturing, and small-scale warehousing uses that could be located adjacent to sensitive land

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uses without adverse effects are also encouraged in strategic growth areas and other mixed-use areas where frequent transit service is available, outside of employment areas. To support the development of “complete communities,” residential, employment, public service facilities and other institutional uses are permitted on lands for employment outside of employment areas, so long as the transition of uses to prevent adverse effects is considered.

Planning authorities are directed to plan for, protect and preserve employment areas for current and future uses and ensure that the necessary infrastructure is provided to support current and projected needs.

Planning authorities are further directed to designate, protect, and plan for all employment areas in settlement areas by:

- Planning for employment area uses over the long-term that require those locations including manufacturing, research, and development in connection with manufacturing, warehousing and goods movement, and associated retail and office uses and ancillary facilities;
- Prohibiting residential uses, commercial uses, public service facilities and other institutional uses;
- Prohibiting retail and office uses that are not associated with the primary employment use;
- Prohibiting other sensitive land uses that are not ancillary to the primary employment use; and
- Including an appropriate transition to adjacent non-employment areas to ensure land use compatibility.

Significantly, the 2023 PPS permits the conversion of employment lands at any time, removing the requirement for a municipal comprehensive review, subject to it being demonstrated that:

a) there is an identified need for the removal and the land is not required for employment area uses over the long term;

b) the proposed uses would not negatively impact the overall viability of the employment area by:

1) avoiding, or where avoidance is not possible, minimizing and mitigating potential impacts to existing or planned employment area uses in accordance with (land use compatibility) policy 3.5; and

2) maintaining access to major goods movement facilities and corridors;

c) existing or planned infrastructure and public service facilities are available to accommodate the proposed uses.

Notably the requirement to consider forecasted employment growth has been removed.

As existing municipal official plans currently allow a range of uses in employment areas (such as a mix of

office, retail, industrial, warehousing, and other uses), the province has directed that time-sensitive official plan updates will be required to ensure compatibility with the new “employment area” definition of the 2023 PPS. If municipal official plans have not been updated by the date that the proposed 2023 PPS takes effect, areas that do not meet the new “employment area” definition would not be subject to requirements for conversion to non-employment uses. Further, the concept of Provincially Significant Employment Zones (PSEZs) is proposed to be revoked. Currently, PSEZs are protected from conversion to non-employment uses except where it has been demonstrated to be appropriate in the context of a municipal comprehensive review. The province is seeking feedback on the need to identify select PSEZs or portions of PSEZs for the sole purpose of protecting lands exclusively for employment uses through an alternative approach (e.g., a Minister’s Zoning Order pursuant to section 47 of the *Planning Act*).

## **Natural Heritage**

The 2023 PPS contains no natural heritage policies with the province continuing to consult on same. Proposed policies will be posted on a separate posting on the ERO at a later date.

## **General Policies Relating to School Boards**

Policies have been introduced through the 2023 PPS which provide that planning authorities, in consultation with school boards, should consider and encourage innovative approaches in the design of schools and associated childcare facilities, such as schools integrated in high-rise developments, in strategic growth areas, and other areas with a compact built form.

## **Municipal Comprehensive Reviews and Settlement Area Expansions**

The concept of municipal comprehensive reviews of official plans will not be carried forward into the 2023 PPS. Municipalities can now consider the creation of new settlement areas and settlement area expansions without demonstrating the need for expansion. The proposed policies to be satisfied before permitting settlement area additions or settlement area expansions requires consideration of matters such as the adequacy of servicing, phasing, and agricultural issues. While there is no limitation on the ability of landowners to apply for an expansion, the *Planning Act*, continues to limit the ability of applicants to appeal refusals or non-decisions of these applications.

The 2023 PPS also includes policies encouraging general intensification and redevelopment to support the achievement of complete communities, including by planning for a range and mix of housing options.

## **Cultural Heritage and Archaeology**

Proposed changes to definitions and proposed policy modifications related to cultural heritage and archaeology will have implications for heritage conservation. The definition of “protected heritage property”

has been clarified and expanded to include property with known archaeological resources in accordance with Part VI of the *Ontario Heritage Act*, while the definition of “built heritage resources” no longer references listed or designated properties. The definition of “heritage attributes” now aligns with the *Ontario Heritage Act* and no longer includes references to natural elements such as vegetation or visual references such as vistas. Notably, while the 2023 PPS requires that protected heritage property shall be conserved, this does not include property that has only been listed on a heritage registry.

The 2023 PPS proposes changes that will require that planning authorities engage early with Indigenous communities and ensure that their interests are considered when identifying, protecting, and managing archaeological resources, built heritage resources and cultural heritage landscapes. Previously, planning authorities were only required to consider their interests.

## Implementation and Interpretation

The 2023 PPS proposes a number of changes to the implementation and interpretation policies. The following highlights some of the changes to these policies:

- The 2023 PPS now requires that planning authorities keep their zoning and development permit by-laws up to date with official plans and the 2023 PPS;
- Any decision of a planning authority must be consistent with the 2023 PPS regardless of whether their official plan has been updated to be consistent with the 2023 PPS;
- Clarification that strategic growth areas are not land use designations and their delineation does not confer any new land use designation or alter any existing land use designation;
- Coordination policies have been introduced which require that a coordinated, integrated and comprehensive approach should be used when dealing with planning matters within municipalities, across lower, single and/or upper-tier municipality boundaries and with other orders of government, agencies, boards and Service Managers (under the *Housing Services Act, 2011*). The policies set out requirements for the coordinated approach, such as what matters upper-tier municipalities must consider in combination with lower tier municipalities.

## SUMMARY OF BILL 97 AMENDMENTS TO THE PLANNING ACT

The province is also proposing various amendments to the *Planning Act* through Bill 97. Some of the amendments are small and technical fixes to the *Planning Act*. The more significant amendments are summarized below:

### New Ministerial Powers

Bill 97 proposes to introduce amendments to the *Planning Act* which will provide the Minister with various

new powers, which come into force on Royal Assent. These powers include the ability to:

- Require that landowners and municipalities enter into agreements where a Provincial Land Development Facilitator has been appointed. The order will not permit existing uses to continue until the agreement has been signed. Corresponding changes to the *Ministry of Municipal Affairs and Housing Act* will be made, allowing the Minister to appoint up to four Deputy Provincial Land Development Facilitators to facilitate these agreements.
- To exempt lands which are the subject of Minister Zoning Orders from having to comply with provincial policies and official plans where other approvals have been applied for, similar to the current provisions regarding Community Infrastructure and Housing Accelerator Orders.
- Prescribe circumstances where site plan control could apply for residential developments of up to 10 units, a power also proposed for the *City of Toronto Act, 2006*. Through a separate ERO posting, the Ministry has proposed these to be for parcels of lands where any part is within 300 m of a railway line or 120 m of a shoreline.

## **Employment Areas**

Bill 97 is proposing to amend the definition of an “area of employment.” Consistent with the proposed PPS 2023, an area of employment will be limited to lands designated in an official plan for clusters of business and economic uses, including manufacturing, research and development related to manufacturing, warehousing, and ancillary uses. Institutional and commercial uses are expressly excluded from the definition. This change restricts lands to which employment land removal (conversion) restrictions apply to core employment lands and applications to introduce or expand mixed uses in non-core employment areas would no longer be subject to the restriction on appeals for conversions. However, a proposed ‘transition’ provision has been included which impacts the application of this change, essentially providing that areas of land designated for clusters of businesses and economic uses that include parcels of lands where an existing commercial or institutional use is authorized to continue under an official plan is still an “area of employment”. The purpose of this transition provision and how it is intended to apply remains unclear and contradictory to the stated purpose of these amendments. These amendments are to come into force on a day that is to be named by proclamation of the Lieutenant Governor.

## **Planning Application Fee Refunds**

The promised retroactive delay of refund requirements previously introduced by Bill 109 is included in Bill 97. Amendments would change the effective date for planning application fee refunds where no decision is made within the statutory period from January 1, 2023, to July 1, 2023. For applications that were filed between January 1 and July 1, 2023, if any fee refunds were owed because of a non-decision, the refunds are deemed not to have been required.

## **Interim Control By-law Appeals**

Bill 97 reduces the time period for notice of the passage of an interim control by-law to twenty days from thirty, and will now once again allow any person who received notice of the passing of such by-law to submit an appeal to the Ontario Land Tribunal within fifty days. Prior changes to the *Planning Act* had limited appeals by any person (but for the Minister) to appeals of extension by-laws.

## Other Amendments

In addition to the above changes, Bill 97 proposes amendments to the *Residential Tenancies Act* to strengthen tenant rights against evictions due to renovations, demolitions, and conversions, among others. Further, Bill 97 proposes changes to the *Municipal Act* and the *City of Toronto Act* which will grant the Minister the authority to make regulations which govern powers of a local municipality, such as in relation to the demolition of residential rental properties. These regulations would impose restrictions, limits, and conditions on the power of a local municipality to prohibit and regulate the demolition and conversion of residential rental properties, thereby aiming to ensure that the affordable housing goals are met. Bill 97 also proposes technical amendments to the *Building Code Act, 1992* and the *Development Charges Act, 1997*.

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