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## What Was Old is New Again: Proposed Changes Under the Cutting Red Tape to Build More Homes Act, 2024

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### Introduction

On April 10, 2024, the Ontario government (the Province) introduced Bill 185: *Cutting Red Tape to Build More Homes Act, 2024* (Bill 185), which simultaneously reintroduces and repeals prior changes to the planning and development regime in Ontario. The proposed legislation includes various amendments to 15 Acts, including the *Planning Act*, the *Development Charges Act, 1997*, the *Municipal Act, 2001*, and the *City of Toronto Act, 2006*, among others. This Cassels Comment provides a brief overview of these proposed legislative changes as it relates to planning and development.

### Highlights of the Proposed Legislative Changes

Bill 185 introduced a series of amendments to Ontario's planning system. These amendments include the following matters (click on the links below to be taken to our analysis on each matter):

1. [Limits on Third-Party Appeals](#)
2. [Dismissal of Existing Third-Party Appeals](#)
3. [Repeal of Application Fee Refund Requirements](#)
4. [Repeal of Mandatory Pre-Application Consultations](#)
5. [Studies Returned as Eligible Capital Costs for Development Charges](#)
6. [Repeal of Statutory Phase-In of Development Charge Rates](#)
7. [Increased Regulation-Making Power Regarding Accessory Units](#)
8. [Changes to Upper-tier Municipalities Without Planning Responsibilities](#)
9. [New Limits on Minimum Parking Requirements](#)
10. [Removal of the Community Infrastructure and Housing Accelerator \(CIHA\) Tool](#)
11. [Exemptions for Undertakings of Post-Secondary Institutions](#)
12. [The Creation of a "Use It or Lose It" Framework](#)
13. [Permitted Appeals of Settlement Area Boundary Expansions](#)

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## 1. Limits on Third-Party Appeals

### Proposed Amendments

The *Planning Act* currently permits a person to appeal the adoption of official plans, official plan amendments, zoning by-laws, or zoning by-law amendments if the person made oral submissions at a public meeting or written submissions to the municipality prior to adoption. Under the proposed amendments, originally introduced in Bill 23 but deleted prior to adoption following significant opposition and concern that removal of appeal rights will ultimately increase red tape, increase costs and delay the delivery of housing, only a “specified person” or a public body will be able to appeal the adoption of those instruments. Generally, the *Planning Act* currently limits a “specified person” to an enumerated list of public and private bodies that operate electric and natural gas utilities, railways, and telecommunication infrastructure.

### What Does This Mean for You?

Unless you are a specified person or public body, you will be unable to appeal any official plan, official plan amendment, zoning by-law, or zoning by-law amendment adopted by a municipality, regardless of whether you made oral submissions at a public meeting or written submissions to the municipality. The removal of appeal rights applies to both private applications and municipally initiated instruments. It is anticipated that additional privately initiated applications will be required to respond to unappealable municipal decisions.

## 2. Dismissal of Existing Third-Party Appeals

### Proposed Amendments

### What Does This

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If enacted as proposed, existing appeals by non-exempt persons made before Bill 185 comes into force will be statutorily dismissed *unless* the appeal falls within one of two statutory exceptions:

- First, an appeal may proceed if a hearing on the merits had been scheduled before April 10, 2024.
- Second, an appeal may proceed if an exempt person or public body filed a notice of appeal in respect of the same decision.

## Mean for You?

Unless an exception applies, appeals may automatically be dismissed by the Ontario Land Tribunal upon Bill 185 coming into force.

## 3. Repeal of Application Fee Refund Requirements

### Proposed Amendments

Bill 185 repeals the *Planning Act's* application fee refund requirements. Bill 109 previously introduced requirements for municipalities to refund application fees of applications made on or after July 1, 2023, on an increasing scale to applicants who did not receive a decision on a zoning by-law amendment application, concurrent official plan amendment / zoning by-law amendment application or a site plan application within the statutory timelines for approval authorities to make a decision. The proposed amendments repeal the fee refund regime, which has been controversial from the start, and largely unsupported by both municipalities and the development industry alike.

### What Does This Mean for You?

Municipalities no longer need to refund application fees for failing to render a decision.

## 4. Repeal of Mandatory Pre-Application Consultations

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## The Proposed Amendments

The proposed amendments remove the authority for a council or a planning board to pass a by-law imposing mandatory pre-application consultation with the municipality or planning board before submitting development applications. Following the enactment of the refund regime established by Bill 109, many municipalities adopted by-laws or official plan amendments imposing mandatory pre-consultation and extensive pre-consultation processes. Under the Province's proposed changes, councils and planning boards will not have the statutory authority under the *Planning Act* to require pre-application consultation. Applicants will continue to have the ability to request consultation.

## What Does This Mean for You?

Municipalities will no longer have statutory authority to require that applicants consult with them prior to submitting an application or otherwise participate in additional pre-application processes. Applicants may still wish to request such consultation on a voluntary basis.

## 5. Studies Returned as Eligible Capital Costs for Development Charges

### Proposed Amendments

Bill 185 proposes to reverse prior amendments to the *Development Charges Act, 1997*, to once by-laws are expected again include the costs of specific capital studies for the purposes of developing a development charge by-law and, thereby, determining the development charges that a municipality may impose.

### What Does This Mean for You?

Development charge by-laws are expected to be amended to include these recently excluded costs.

## 6. Repeal of Statutory Phase-In of Development Charge Rates

### Proposed Amendments

Bill 185 proposes to repeal the statutory five-year phase-in of development charges, except in specific circumstances – namely, where a

### What Does This Mean for You?

Mandatory phase-in of development charges will be

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particular development is already subject to the removed and development charges freeze under the Act. development charges increased, subject to any transition provisions determined by the municipality.

## 7. Increased Regulation-Making Power Regarding Accessory Units

### Proposed Amendments

Bill 185 proposes to expand the Minister's regulation-making powers in respect of additional residential units. Under the current *Planning Act*, the Minister has the power to make regulations to establish requirements and standards for second or third residential units in a detached house, semi-detached house, or rowhouse and with respect to ancillary units. Bill 185's amendments provide authority to establish requirements and standards with respect to any additional residential units in a detached house, semi-detached house or rowhouse, ancillary units, the parcel of land on which an additional residential unit is located, and a building or structure within which a residential unit is located.

### What Does This Mean for You?

The Province expects that its proposed new regulation-making authority will permit the Minister to remove more barriers to building small multi-unit residential units, such as basement suites, encouraging more missing middle housing.

## 8. Changes to Upper-tier Municipalities Without Planning Responsibilities

### Proposed Amendments

Bill 185 proposes to deem the Regional Municipalities of Peel, Halton, and York as upper-tier municipalities without planning responsibilities on the later of the day Bill 185 receives Royal Assent and July 1, 2024. The

### What Does This Mean for You?

The Province has adopted a staggered approach to removing the planning responsibilities from

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*Planning Act* differentiates between upper-tier municipalities with planning responsibilities and municipalities. Both those without planning responsibilities. The Act further identifies that the Regional Municipalities of Durham, Niagara, Peel, Simcoe, and Waterloo will also lose planning responsibilities. Bill 185 confirms that this will occur by proclamation by the Lieutenant Governor. Consistent with these changes, Bill 185 amends the *Hazel McCallion Act (Peel Dissolution), 2023*, renamed the *Hazel McCallion Act (Peel Restructuring)*, to repeal the prior proposed dissolution of the Region of Peel.

its regional municipalities. Both upper-tier and lower-tier municipalities will need to continue to respond to this staggered removal of statutory powers, which the Province asserts will provide flexibility to the transfer of powers to local area municipalities. In Environmental Registry of Ontario (ERO) posting no. [019-8369](#), the Province further stated that it intends to move forward with the changes for the Regional Municipalities of Durham, Niagara, Peel, Simcoe, and Waterloo by the end of 2024.

## 9. New Limits on Minimum Parking Requirements

### Proposed Amendments

Bill 185 proposes to limit the ability of official plans and zoning by-laws to contain policies and provisions respectively that require an owner to provide or maintain parking facilities within protected major transit station areas, major transit station areas, and other

### What Does This Mean for You?

While these amendments will not have significant impact in the City of Toronto, which generally removed

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prescribed lands.

minimum parking requirements for new developments in 2022, this item will represent a substantial shift elsewhere in the GTA. The Province anticipates that the removal of minimum parking requirements for specific developments will expedite the development of housing, particularly in areas with existing or planned higher-order transit stations.

## 10. Removal of the Community Infrastructure and Housing Accelerator (CIHA) Tool

### Proposed Amendments

The proposed legislation repeals the CIHA tool from the *Planning Act*. The *Planning Act* currently sets out the process governing municipal requests for zoning orders.

### What Does This Mean for You?

This change represents a consolidation of prior authority and is not expected to result in any significant change. The authority for the issuance of Ministerial Zoning Orders remains, with the ability for municipalities to request an order

included as one of two potential pathways. An expanded guide to requests for zoning orders has been established and can be found [here](#).

## 11. Exemptions for Undertakings of Post-Secondary Institutions

### Proposed Amendments

Bill 185 includes a broad statutory exemption from the *Planning Act* and parts of the *City of Toronto Act, 2006*, for any undertaking of a publicly assisted post-secondary institution.

The proposed legislation does not identify what constitutes an undertaking for the purposes of this exemption, which will be subject to prescribed limits.

### What Does This Mean for You?

Provincial announcements indicate that the exemption will only apply to student housing projects on lands owned by the post-secondary institution.

## 12. The Creation of a “Use It or Lose It” Framework

### Proposed Amendments

Pursuant to Bill 185, draft plan of subdivision approvals granted on or before March 27, 1995 will lapse unless conditions satisfied within three years. For all new plan of subdivision/condominium approvals, a municipality will provide that the approval lapses at a certain date, to be established by regulation. For site plan approvals, the amendments permit an “authorized person”—subject to future regulations—to provide for the lapsing of approvals of the site

### What Does This Mean for You?

While many landowners will not be impacted by the statutory lapsing of approvals, there is potential for more aggressive use it or lose it provisions to be adopted.



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plans and drawings unless a building permit has been issued. Where there is no prescribed time period, the time specified by the authorized person shall not be less than three years. The proposed “use it or lose it” regime are part of related amendments to the *Municipal Act, 2001*, and the *City of Toronto Act, 2006*, to create a new municipal servicing management tool. The proposed amendments will authorize municipalities to adopt policies by by-law to provide for the allocation of water supply and sewage capacity, including setting (1) timeframes and conditions for the allocation/withdrawal of servicing capacity and (2) conditions for how a development could regain its withdrawn servicing allocation.

## 13. Permitted Appeals of Settlement Area Boundary Expansions

### Proposed Amendments

Bill 185 proposes to permit appeals of official plan or zoning by-law amendment applications that propose to alter all or part of the boundary of a “area of settlement” unless the land to be included is land in the Greenbelt Area.

### What Does This Mean for You?

The amendments will allow applicants to appeal a municipality’s refusal or failure to make a decision on a privately requested official plan or zoning by-law amendment application that proposes to alter the boundary of an “area of settlement” outside of the Greenbelt Area.

### Next Steps

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All of the proposed changes are subject to public consultation through the ERO **until May 10, 2024**. The Ontario Legislature is in session up to and including June 13, 2024. We anticipate that Bill 185, which may be subject to further change, will be adopted prior to the legislature breaking for the season. Most changes proposed will be deemed to come into force once Bill 185 receives Royal Assent.

We encourage interested persons to submit their comments through the ERO, as detailed below:

- ERO posting no. [019-8369](#) outlines the proposed changes to the *Planning Act*, *City of Toronto Act, 2006*, and *Municipal Act, 2001*.
- ERO posting [019-8366](#) outlines the regulatory changes to the *Planning Act* to allow for the accelerated province-wide implementation of additional residential units.
- ERO posting no. [019-8370](#) outlines the modernization of public notice requirements, including providing municipalities the ability to provide notice on a municipal website if no print newspaper is available.
- ERO posting no. [019-8371](#) outlines the proposed changes to the *Development Charges Act, 1997*, including the repeal of the statutory five-year phase-in of development charges and the reinstatement of studies as an eligible capital cost for development charges.
- ERO posting no. [019-8462](#) outlines the proposed updated Provincial Planning Statement. A further Cassels Comment will be issued respecting the new draft 2024 Provincial Policy Statement.

***The authors of this article gratefully acknowledge the contributions of our Land Use Planner intern, Matt Reiner.***

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