

The Pendulum Swings Back: Ontario Announces Changes to Planning and Development System

Marisa Keating, Signe Leisk

May 6, 2019

On May 2, 2019, Municipal Housing and Affairs Minister Steve Clark announced the province's plan to tackle the housing crisis in Ontario, as outlined in *More Homes, More Choice: Ontario's Housing Supply Action Plan*. This was immediately followed by the release of Bill 108, *More Homes, More Choice Act, 2019*, which introduced significant changes to planning and development legislation in Ontario. The proposed changes are aimed at increasing the housing supply by cutting the red tape, reducing costs and making it easier to build different types of housing. To address the current backlog of appeals before the Local Planning Appeal Tribunal (the Tribunal), the Ontario government has also committed \$1.4 million dollars to hire more adjudicators.

Key Legislative Changes

The key legislative changes to the development application and appeal process include:

Planning Act

- Permitting two residential units in detached, semi-detached or rowhouses, as well as one residential unit in an ancillary building structure;
- Applying inclusionary zoning policies to areas that are generally high growth, including major transit station areas and areas where a community planning permit system has been required by the Minister of Municipal Affairs and Housing;
- Reducing decision timelines for:
 - o Official Plans from 210 to 120 days;
 - o Zoning By-laws from 150 to 90 days;
 - o Plans of Subdivision from 180 to 120 days;
- Repealing amendments previously introduced through Bill 139 (the *Building Better Communities and Conserving Watersheds Act, 2017*), which restricted the grounds of appeal in many instances to inconsistency with a provincial policy statement and non-conformity with a provincial or official plan;
- Repealing Bill 139 amendments which imposed a double appeal process, limiting the Tribunal's ability to make a final decision on a first appeal and requiring it to provide municipalities with an opportunity to make a new decision before it could issue a final decision on a second appeal. Bill 108 reverts back to the single appeal process providing the Tribunal with the authority to render a final decision at the first instance;

Cassels

- Repealing the two part test for some appeals, which were limited to consistency and conformity with provincial plans and policies, to allow the Tribunal to make its decision based on the best planning outcome;
- Restricting third party appeal rights for plans of subdivision and non-decisions of official plans or official plan amendments;
- Repealing and replacing the existing Section 37 density and bonusing provisions with a new community benefits charge system. This new authority will allow municipalities to charge for community benefits, such as libraries and daycare facilities, but not facilities or services set out in the *Development Charges Act, 1997*. Contributions will be based upon the value of the land at building permit, subject to a maximum percentage to be set by regulation;
- Deeming parkland by-laws of no force and effect if a community benefits charge by-law is in force and repealing a municipality's ability to require an alternative rate. Plans of subdivision that are approved with a condition of parkland conveyance are not subject to a community benefits charge by-law if the approval is on or after the day Section 37, as re-enacted, comes into force;
- Enabling the Minister to require that municipalities establish a development permit system that applies to a specific area, such as major transit station areas and provincially significant employment zones, and remove appeals associated with its implementing planning documents; and
- Broadening regulation making authority to include transition regulations that would permit existing appeals to be replaced with a new notice of appeal under the amended *Planning Act*.

Local Planning Appeal Tribunal Act

- Repealing the highly controversial provisions of Bill 139 which limited a party's ability to introduce evidence and call or examine witnesses. These restrictions had resulted in a stated case to the Divisional Court, heard April 24 and 25, 2019, and will largely render moot the highly anticipated decision in *Canadian National Railway Company v Toronto (City)*, 2018;
- Providing for mandatory mediation or other dispute resolution processes in specified circumstances;
- Repealing provisions relating to the Tribunal's ability to state a case in writing for the opinion of the Divisional Court on a question of law;
- Allowing the Tribunal to limit any examination or cross-examination of a witness in specific circumstances; and
- Limiting the submissions by non-parties to a proceeding before the Tribunal to written submissions only, but providing the Tribunal with the authority to examine such parties.

Development Charges Act, 1997

- Providing exemptions for second dwelling units in new residential buildings, and the ability to exempt other classes of dwelling units as may be prescribed;
- Providing for additional services to be included in a development charge by-law as may be prescribed;

Cassels

- Eliminating the 10% reduction on capital costs and the 10 year limit on estimating an increase in the need for service;
- Providing transition periods for municipalities to coordinate development charge by-laws with the passage of community benefit by-laws under the new s. 37 of the *Planning Act*;
- Allowing for the payment of development charges in installments over 6 years for:
 - o Rental housing development;
 - o Institutional development;
 - o Industrial development;
 - o Commercial development;
 - o Non-profit housing development; and
- Requiring the amount of the charge to be calculated on the date of submission of a planning application.

Education Act

- Providing for notice to the Minister of an intention to expropriation land;
- Allowing education development charge revenue to be applied to alternative projects, subject to the Minister's approval. An 'alternative project' includes a project, lease or other prescribed measure that would address the need for pupil accommodation and reduce the cost of acquiring land;
- A board may allocate education development charge revenue towards an alternative project if the Minister is provided with plans related to the project, and the Minister approves the allocation, subject to prescribed criteria; and
- To allow for a board to enter into an agreement with an owner of land to provide a lease, real property or other prescribed benefit to be used by the board for pupil accommodation in return for not imposing education development charges, subject to the approval of the Minister.

Ontario Heritage Act

- Providing for 'prescribed principles', which shall be considered by a council when exercising its authority under Part IV or V of the Act;
- Providing for notice to property owners when a property is included in a heritage register;
- Granting the ability for a property owner to object to the inclusion of a property on the register, which objection shall be considered by council;
- Imposing a 90 day limitation on the designation of a property after a prescribed event has occurred;
- Appeals of a notice of intention to designate, amendments to a designating by-law, repealing by-laws and applications to alter a heritage property, are to the Tribunal for a binding decision, whereas objections were previously made to the Conservation Review Board for a non-binding decision;
- Deeming applications for alteration or demolition to be approved should the municipality fail to make a decision within the specified time period;
- Providing additional procedures and time periods for the submission and consideration of complete

- applications to alter a designated property; and
- Clarification that applications to demolish include the demolition or removal of any of the property's heritage attributes.

Other Changes

Changes to the *Cannabis Control Act, 2017*, *Conservation Authorities Act*, *Endangered Species Act, 2007*, *Environmental Assessment Act*, *Environmental Protection Act*, *Labour Relations Act, 1995*, *Occupational Health and Safety Act* and the *Workplace Safety and Insurance Act, 1997* are also proposed by Bill 108.

Transition and Next Steps

- Regulation making powers have been expanded to address transition matters, with a draft transition regulation to be released in the coming weeks; and
- Additional consultation is also being sought on the *Planning Act*, *Development Charges Act, 1997*, and *Ontario Heritage Act*, which have been posted to the Environmental Registry of Ontario for a 30 day comment period.

For more information on the changes proposed by Bill 108, please contact any member of our Municipal, Planning and Environmental Group.

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