

Municipality of Lakeshore – Report to Council

Growth & Sustainability

Community Planning



To: Mayor & Members of Council

From: Aaron Hair, MCIP, RPP – Division Lead – Community Planning

Date: November 4, 2022

Subject: Bill 23 (More Homes Built Faster Act) Proposed Planning Framework Changes

Recommendation

This report is for information only.

Background

On October 25, 2022, the Government of Ontario released the More Homes Built Faster: Ontario's Housing Supply Action Plan 2022-2023. Bill 23 introduces sweeping changes to the land use planning regime in Ontario, with immediate amendments to the Planning Act, Development Charges Act, Conservation Authorities Act, Ontario Land Tribunal Act, and the Ontario Heritage Act, as well as proposals and direction for making further changes to natural heritage policies, the integration of the Provincial Policy Statement with a Place to Grow: Growth Plan for the Greater Golden Horseshoe, and the development of standardized tools for zoning.

The stated intent of the Bill is to reduce red-tape, streamline the development process and facilitate the development of more homes by shifting planning responsibilities from certain public institutions and levels of government to others, and removing some regulations.

The time available to comment on the proposed changes was very limited. Therefore, the Mayor sent comments to the province in advance of this report to Council, in order to meet the comment deadline. The letters are attached, Attachments 1 – 4.

There are several white-papers and law articles that speak to the proposed changes in detail (including Attachment 5), but below is a summary of the changes.

Please note that Bill 23 received Royal Assent on November 28, 2022, and came into effect after this report was prepared.

Additional Residential Units (ARU's)

Allows up to three units per lot (i.e., up to three units in the primary building, or up to two in primary building and one in ancillary building or structure). These changes would apply to any parcel of urban residential land in settlement areas with full municipal water and sewage services.

Planning Appeals

The proposed changes would limit third-party appeals for official plan/amendments, zoning by-law/amendments, consents and minor variances.

Upper-Tier & Lower-Tier Municipal Planning Responsibilities

The proposed changes would remove planning responsibilities in the following upper-tier municipalities: the County of Simcoe, and the Regional Municipalities of Halton, Peel, York, Durham, Niagara and Waterloo. The proposed changes related to removal of planning responsibilities from certain upper-tier municipalities would come into force on a day to be named by proclamation.

Role of Conservation Authorities

The proposed changes would limit conservation authority (CA) appeals of land use planning decisions under the Planning Act. CAs would continue to be able to appeal matters that affect land that they own or where they are the applicant. When acting as a public body, CAs would only be able to appeal with respect to matters related to natural hazard policies in provincial policy statements.

Zoning Around Transit

The proposed changes would require municipalities to amend their zoning by-laws to conform with official plan policies that establish minimum densities and heights around transit within one year of the official plan policies coming into effect (upon approval by the Minister).

Site Plan Control

The proposed changes would remove all aspects of site plan control for residential development proposals up to 10 units, except for land lease communities.

Maximum Alternative Parkland Dedication Requirements

The maximum alternative parkland dedication rate for land conveyed of 1 hectare for each 300 dwelling units would be changed to 1 hectare for each 600 net residential units and for payments in lieu, the current rate of 1 hectare for each 500 dwelling units would be changed to 1 hectare for each 1000 net residential units. No more than 15 per cent of the amount of land subject to the development proposal (or equivalent value) could be required for parks or other recreational purposes for sites greater than 5 hectares and no more than 10 per cent for sites 5 hectares or less.

Plans of Subdivision

The proposed changes would remove the requirement for a public meeting to be held for draft plan of subdivision applications. The existing public notice requirements for plan of subdivision applications would be maintained.

Heritage Planning

Under proposed changes, all properties included in the heritage register on or after the day the changes come into force, including properties that were previously listed, may remain listed on the register for a maximum of two years without Council providing notice of intent to designate the property.

The following are additional proposed changes;

- Information included on the heritage register shall be publicly available on the municipality's website.
- The council of the municipality is not required to consult with its municipal heritage committee, if one has been established, before removing a property from the register.
- If the Council wishes to remove a property from the register, the council of the municipality may not include the property again in the register for a period of five years after the following date:
 - if the council of the municipality does not give a notice of intention to designate the property, on the second anniversary of More Homes Built Faster Act, 2022 comes into force.
- If a property is removed from the register, Council may not include the property again for a period of 5 years, commencing either the day the event occurs (withdrawal of notice of intention or repeal of by-laws); the day the property is included on the register (properties included after Bill 23 is proclaimed); or, the day Bill 23 is proclaimed (properties on the register now).
- These new provisions will reduce the number of properties included on heritage registers, by limiting the register to properties that are designated, or in the process of seeking designation.
- Municipalities will not be permitted to issue a notice of intention to designate a property under Part IV of the Ontario Heritage Act unless the property is already on the heritage register when the current 90-day requirement for Planning Act applications is triggered
- Bill 23 would require that a property meet additional criteria, as prescribed in regulation, to be designated as a heritage property. Currently, Council only must believe that the property is of cultural heritage value or interest.

Comments

Additional Residential Units (ARU's)

Currently, the Planning Act requires official plans and zoning by-laws to permit two additional-residential units (ARUs) in single-detached, semi-detached and rowhouse/townhouse dwellings, with one ARU permitted within the primary dwelling and one ARU permitted in an ancillary building.

Bill 23 amends the Planning Act as it relates to official plans, zoning by-laws and appeal rights regarding ARUs with the intent of permitting up to three residential units on a parcel of urban residential land. This may be in the form of:

- two residential units within the principal building plus one in an ancillary building; or
- three residential units in a principal building provided there is no residential unit in an ancillary building.

Additionally, municipalities may not require more than one parking spot per residential unit, nor may they prescribe a minimum size per unit.

Based on the definition of “urban parcel of residential land”, introduced by Bill 23, the above-noted provisions appear to apply only within settlement areas with municipal sewer and water services.

Other changes under Bill 23 exempt ARUs from development charges and parkland dedication rates, including for ARUs included within new residential buildings.

With the proposed changes, it is unclear whether Accessory Residential Units, are to be permitted outside of the settlement area(s) such as on Agricultural properties.

These proposed changes will have a significant impact on existing and future development areas related to municipal infrastructure and the demand on municipal services.

Water & Wastewater Demand - ARUs

Typically, sanitary infrastructure in residential areas is designed based on Lakeshore's Development Manual standard of 3 people per unit. This is relatively in line with surrounding municipalities and with industry standards. Lakeshore's existing sanitary conveyance system cannot support intensification of this nature in most areas. If support is required, capital projects to upgrade and construct additional infrastructure to meet the demand will need to be undertaken.

Because ARUs are not considered development, any costs attributed to additional operational demands, infrastructure upgrades and mitigation measures to address capacity challenges will likely be borne by others i.e., through development charges, Lakeshore's tax base, water and wastewater rate increases, provincial funding, other sources.

As servicing review and approvals are not required for the allowance of ARUs, the level of risks will increase related to maintaining compliance with ministry requirements, operating within certificate of approvals, and meeting environmental regulations as sanitary conveyance capacity may not be available to accommodate ARU requests in certain settlement areas.

Further, Lakeshore is currently experiencing Inflow & Infiltration (I & I) rates greater than designed leaving little to no available capacity in the existing sanitary system for unplanned development.

Previously approved developments/future opportunities for growth will likely be impacted and even restricted as ARUs will create additional servicing demands beyond what was allocated during servicing of the area.

Water & Wastewater Masterplans would require more frequent upgrades to be able to responsibly provide municipal servicing to accommodate ARUs. Further, originally planned treatment facilities will no longer be able to accommodate the previously anticipated demands of the settlement area boundaries.

It may be challenging to identify areas with capacity constraints until concerns arise by residents or field staff i.e. sewer surcharging, basement flooding, effluent spills, water pressure decreases, etc. This will cause more reliance on frequent flow monitoring of sewage in the sanitary system to adequately operate the sanitary system at an acceptable level of service.

Consideration should be given to how capacity allocation is managed, including the creation of standard criteria to review based on responsible engineering practices.

Stormwater Management - ARUs

It is also anticipated that this may impact existing (and future) SWM facilities. Lakeshore relies on support and guidance from the local conservation authorities with respect to establishing design and maintenance standards for stormwater management.

Permitting ARUs in detached dwelling units from the home could increase the overall lot coverage of the parcel, which in new developments, will result in larger stormwater facilities. Lakeshore would be required to undertake stormwater capital projects (to enhance existing facilities and upgrade infrastructure) to accommodate the increase in stormwater run-off and maintain the facilities in perpetuity.

Traffic Impact and Parking Allocation

The requirement for only one parking spot per residential unit could cause a significant influx of cars required to park on the street. Lakeshore currently allows parking on one side of residential streets, providing very limited street parking availability.

During peak times of day (am and pm), traffic volumes are expected to increase in areas where multiple ARUs are approved.

At the time of writing Administration has not consulted with the local school boards to determine if the existing school sites within Lakeshore can accommodate additional student populations.

Planning Appeals

Bill 23 proposes to significantly curtail the appeal rights currently provided to third parties (i.e. not the applicant or municipality) by the Planning Act with respect to official plans and amendments under Section 17, zoning by-laws and amendments under Section 34, minor variances under Section 45 and consents under Section 53. Bill 23 proposes to amend the Planning Act to limit the right to appeal beyond the municipality, applicant, or Minister to public bodies (“a municipality, a local board, a ministry, department, board, commission, agency or official of a provincial or federal government or a First Nation,” excluding upper-tier municipalities without planning responsibilities, and Conservation Authorities, and “specified persons”, which are newly defined as:

“(a) a corporation operating an electric utility in the local municipality or planning area to which the relevant planning matter would apply,

(b) Ontario Power Generation Inc.,

(c) Hydro One Inc.,

(d) a company operating a natural gas utility in the local municipality or planning area to which the relevant planning matter would apply,

(e) a company operating an oil or natural gas pipeline in the local municipality or planning area to which the relevant planning matter would apply,

(f) a person required to prepare a risk and safety management plan in respect of an operation under Ontario Regulation 211/01 (Propane Storage and Handling) made under the Technical Standards and Safety Act, 2000, if any part of the distance established as the hazard distance applicable to the operation and referenced in the risk and safety management plan is within the area to which the relevant planning matter would apply,

(g) a company operating a railway line any part of which is located within 300 metres of any part of the area to which the relevant planning matter would apply, or

(h) a company operating as a telecommunication infrastructure provider in the area to which the relevant planning matter would apply.”

Although the proposed changes would limit the number of appeals, which would reduce the financial impact of the Municipality to participate at the Ontario Land Tribunal (OLT), it removes the ability of Lakeshore’s residents and business to object to land use changes.

Lakeshore Planning Division is of the opinion that third party appeals should still be permitted for Official Plan & amendments, Zoning By-law & amendments, and Minor Variances.

Upper-Tier & Lower-Tier Municipal Planning Responsibilities

The County of Essex is the Upper-Tier Municipality that is the Planning Authority for several planning functions such as Official Plans (new and amendments), Draft Plan of Subdivisions & Condo's, Part-lot control, etc.

The proposed Planning Act changes will not remove any of the County of Essex responsibilities and will have no effect on the Municipality of Lakeshore, at this time. That being said, the proposed changes do allude to the fact that the Province can remove additional Upper-Tiers from the process in the future, through additional regulations.

Role of Conservation Authorities

Currently, Conservation Authorities oversee natural heritage systems and have the power to purchase and manage lands which they believe serves their core mission. They have the power to enforce regulations on lands within or adjacent to lakes, rivers or stream valleys, hazardous lands, wetlands, and other areas. They are also responsible for reviewing and providing comments on land use approvals within their geographic areas. Their comments are framed by their broad core mission, which is natural conservation, environmental protection and reducing risks from potential floods. Their approach considers natural systems as a whole, based on watersheds, rather than as isolated patches divided by municipal boundaries.

Proposed changes to the role of Conservation Authorities include:

- Limiting the mission of Conservation Authorities to focus only on flood protection and, to some degree, groundwater.
- Consolidating the 36 existing regulations (one for each Conservation Authority) into one single regulation.
- Significantly reduce the role and scope of involvement of Conservation Authorities in planning matters. For instance, Conservation Authorities would no longer be permitted to provide services related to reviewing and commenting on development proposals or other matters, either on behalf of the municipality or on its own authority.
- All mention of consideration for pollution have been removed, meaning that of the remaining decisions that Conservation Authorities can make, they are unable to base it on whether the development may cause pollution.
- Temporarily freezing fees for all development permits and proposals and providing the Minister the power to freeze fees in the future.

In discussions with one of the local Conservation Authority, it is unknown what role the conservation authorities may have in land use planning going forward. If the conservation authorities are unable to provide subject matter expertise when it comes to

natural heritage systems, then the Municipality may have to hire additional staff or consultants to provide this service.

Zoning Around Transit

The change require Municipalities that have Protected Major Transit Station Areas (PMTSAs), to set minimum density in their Official Plan & Zoning By-law within 1 year of Bill 23 coming into effect. Lakeshore does not have any PTMSA's, therefore these changes will not impact us.

Site Plan Control

Section 41 of the Planning Act, which currently establishes the right of a municipality to enact a site plan control area, is amended to exclude projects with 10 or fewer residential units from site plan control. Bill 23 also amends the definition of 'development' in Section 41(1) to exclude projects with 10 or fewer residential units.

Bill 23 also proposes to exclude exterior design of buildings from site plan control, except as it relates to exterior access to a building that will contain affordable housing units.

This proposed change will download the review from site plan control (Community Planning Division) to the building permit review (Building Division) process. The zoning by-law regulations will need to be updated to provide for clear requirements, moving components that would typically be reviewed at site plan to building, such as lighting, paving & grading, environmental scanning.

Maximum Alternative Parkland Dedication Requirements

Bill 23 proposes several changes to both sections 42 and 51.1 of the Planning Act, which allow municipalities to require the dedication of land (or payment of cash in-lieu) for the purpose of public parks as a condition of development/redevelopment or subdivision of land, respectively. The proposed changes generally relate to the reduction of parkland dedication requirements where affordable and attainable housing is provided and the tightening of restrictions on municipalities' ability to acquire parkland. These include:

- Directing that the maximum 5% conveyance rate for non-commercial or non-industrial developments will only apply to the portion of the developments that do not include affordable or attainable residential units.
- The exclusion of non-profit housing developments and additional residential units (ARUs) from parkland dedication rates.
- Adding a new subsection that freezes for two years the amount of land to be conveyed or cash-in-lieu to be paid at the rate specified by the parkland dedication by-law on:
 - the day the site-plan control application was submitted; or
 - the day the zoning by-law amendment application was submitted; or

- the day a building permit was issued for the development, if neither site-plan nor a rezoning is required.
- A reduction in the alternative rate from 1 hectare per 300 dwelling units to 1 hectare per 600 net residential units. “Net residential units” is defined as the number of new residential units minus any residential units that existed on the site prior to development or redevelopment and new affordable and attainable residential units.
- Subsection 42(3.3), which states that the maximum amount of land that can be conveyed or paid in lieu using the alternative rate is capped at 10% of the land or its value for sites under 5 ha, and 15% for sites greater than 5 ha, now applies to the entire municipality, rather than just transit-oriented community lands.

As part of Lakeshore’s Parkland Dedication By-law, Watson & Associates reviewed the Parks & Trails master plan and have determined Lakeshore will require an additional 27.48 hectares of parkland by 2040 to serve the needs of the anticipated population.

It should be noted that these propose changes will require Lakeshore to modify its recently approved Parkland Dedication By-law and will limit the amount of parkland the Municipality will be able to collect moving forward, which is needed to support healthy communities.

Plans of Subdivision

Section 51 of the Planning Act, which regulates approval of plans of subdivision, is amended to remove the requirement to hold a public meeting before approving a draft plan of subdivision. In addition, land lease communities have been added to the subdivision control list in section 50(3).

Lakeshore’s Planning supports this change, a public meeting would have been required as part of the rezoning of the subject land, and if the appropriate zoning is in place to support the proposed subdivision, and the requirements of the Municipality are being complied with than there is no need

Heritage Planning

There are 79 properties on Lakeshore’s heritage registry, within 2 years of changes coming into force will either be removed or become designated property under s.29 of the Heritage Act. If Council wants any of these properties to become designated under the Act, then additional resources will be needed to achieve this.

Impacts to Municipality of Lakeshore

Administration will be bringing forward a subsequent report in early 2023 that details the expected significant cost impacts to the Municipality. The loss of parkland dedication and development charges revenue means that costs formerly born by the developers must now be borne by residents and stakeholders through property tax. Reduced timelines to process applications means that there is an increased staffing requirement to administer development applications.

Others Consulted

Lakeshore has met with representatives of the two local conservation authorities to discuss the potential impacts of the proposed changes. Further discussion will be required when the associated Regulations come into effect.

Financial Impacts

According to the Association of Municipalities of Ontario, their preliminary analysis indicates that the proposed changes could cost the 29 largest municipalities as much as \$1 billion annually between 2023 and 2031. The economic impact on Lakeshore will include a decrease in parkland dedication fees and reduced development charges. As well, there will be increased work to administer deferral or waiving of fees. Specific financial impacts will need to be addressed in future reports to Council.

Ultimately, Bill 23 shifts the cost of growth from developers to citizens and ratepayers. Administration will quantify this through a subsequent report to Council. There is no evidence this Bill provides for a more cost effective or expedited development process.

Attachments

- ERO Number 019-6163 - Proposed Planning Act and City of Toronto Act Changes (Schedules 9 and 1 of Bill 23 - the proposed More Homes Built Faster Act, 2022)
- ERO Number 019-6141 - Legislative and regulatory proposals affecting conservation authorities to support the Housing Supply Action Plan 3.0
- ERO Number 019-6160 - Proposed Updates to the Ontario Wetland Evaluation System
- ERO Number 019-6172 - Proposed Planning Act and Development Charges Act, 1997 Changes: Providing Greater Cost Certainty for Municipal Development-related Charges
- Osler Law Firm Summary

Report Approval Details

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Attachments:	<ul style="list-style-type: none">- ERO Number 019-6163 - Proposed Planning Act and City of Toronto Act Changes.pdf- ERO Number 019-6141 - Legislative and regulatory proposals affecting conservation authorities.pdf- ERO Number 019-6160 - Proposed Updates to the Ontario Wetland Evaluation System.pdf- ERO Number 019-6172 - Proposed Planning Act and Development Charges Act.pdf- Attachment 5 - Osler Summary of Bill 23 More Homes Built Faster Act 2022.pdf
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This report and all of its attachments were approved and signed as outlined below:

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