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Forget everything you thought you knew about planning approvals in Ontario...

OCT 26, 2022 9 MIN READ

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On Tuesday, October 25, 2022, the government of Ontario introduced Bill 23, the *More Homes Built Faster Act, 2022* which proposes sweeping changes to the land use approvals system in the province, with the goal of facilitating the construction of 1.5 million new homes by 2031. The omnibus bill proposes amendments to nine different acts, and proposes a new act to implement the construction of significant sewage infrastructure to service York and Durham regions.

If passed, the changes would (among other things) provide certainty with respect to parkland dedication rates, slow the potential increases to Development Charges (DCs), provide rules around the applicability of Community Benefit Charges (CBCs), eliminate third party appeal rights to the Ontario Land Tribunal (Tribunal), and remove planning responsibilities from the Regions of York, Peel, Durham, Halton, Waterloo and the County of Simcoe.

In addition to the legislation, the province announced that it is proposing to update and integrate the Provincial Policy Statement and A Place to Grow: Growth Plan for the Greater Golden Horseshoe, as well as revoke the Parkway Belt West Plan and the Central Pickering Development Plan.

The legislation is the third step in the government's changes to the *Planning Act* and other related legislation, following on the *More Homes, More Choice Act, 2019,* and the *More Homes for Everyone Act, 2020*. The *Strong Mayors, Building Homes Act* was also passed earlier this year, and those powers may well be rolled out to other municipalities beyond Toronto and Ottawa, when the final regulations are released.

A summary overview of the key changes is set out below, along with links to blackline versions of the affected acts, which highlight the proposed amendments in context.

Overall, the changes will provide greater certainty to developers. It will provide caps on the amount of parkland that must be provided, as well as reducing significant and sudden increases in development charges.

Some of the changes are contained in the legislation that was introduced, while others are contained in proposed changes to regulations and programs.

Issue	Proposed changes

Inclusionary Zoning/Affordable and Attainable Housing	• Exempt affordable housing (generally defined as being priced at no greater than 80% of the average price/rent in the year a unit is rented or sold) and attainable housing and inclusionary zoning units from DC, CBCs and parkland dedication • Introduce a category of "attainable housing" which will be defined in future regulations • An upper limit of 5% of the total number of units in a development that can be required to be affordable as part of inclusionary zoning, and a maximum period of 25 years over which the units would be required to remain affordable (this is a proposed regulation change, not in the legislation itself)
Parkland	• The maximum amount of land that can be conveyed or paid in lieu is capped at 10% of the land or its value for sites under 5 ha, and 15 % for sites greater than 5 ha • Maximum alternative dedication rate reduced to 1 ha/600 units for land and 1 ha/1000 units for cash in lieu • Parkland rates frozen as of the date that a zoning by-law or site plan application is filed. Freeze remains in effect for two years following approval. If no building permits are pulled in that time, the rate in place at the time the building permit is pulled would apply • Encumbered parkland/strata parks, as well as privately owned publicly accessible spaces (POPS) to be eligible for parkland credits • Landowners can identify land they intend to provide for parkland, with the municipality able to appeal to the Tribunal if there is a disagreement • Parks plans to be required prior to the passing of any future parkland dedication by-law (would not apply to by-laws already passed) • Parkland dedication will apply to new units only (i.e., no dedication can be imposed for existing units) • Municipalities will be required to spend or allocate 60% of parkland reserve funds at the start of each year

Development Charges	• Five year phase in of DC rate increases, beginning with a 20% reduction in the first year, with the reduction decreasing by 5% each year until year five when the full new rate applies. This is proposed to apply to all new DC by-laws passed since June 1, 2022. Click here for our calculator showing how the Phase in will work • Historical service level for DC eligible capital costs (except transit) extended from 10 to 15 years • DC by-laws will expire every 10 years, instead of every five years. By-laws can still be updated any time • Cap the interest paid on phased DCs for rental, institutional and non-profit housing to prime plus 1% • DC/CBC/parkland exemptions for attainable housing, which will be projects designated by future regulations • New regulation authority to set services for which land costs would not be an eligible capital cost recoverable through DCs • Exclude the cost of studies (including background studies) from recovery through DCs • Municipalities will be required to spend at least 60% of DC reserves for priority services (i.e., water, wastewater and roads). • Discount for purpose built rental units, with a higher discount for larger units, on top of the existing DC freeze and deferral of payments over five years
Community Benefit Charges	• Maximum CBC payable to be based only on the value of land proposed for *new* development, not the entire parcel that may have existing development • Maximum CBC to be discounted by 4% of land value divided by the existing building size, as a proportion to total building square footage
Removal of Upper Tier approval powers	• All upper tier municipalities in the Greater Toronto Area, as well as Waterloo and Simcoe will be removed from the *Planning Act* approval process for both lower tier official plans and amendments and plans of subdivision • Minister would (unless otherwise provided) therefore become the approval authority for all lower tier OP and OPAs, and Minister's decisions are not subject to appeal

Zoning in MTSAs	• Municipalities will be required to update zoning to include minimum heights and densities within approved Major Transit Station Areas (MTSA) and Protected MTSAs within one year of MTSA/PMTSA being approved
No third-party appeals	• No one other than the applicant, the municipality, certain public bodies, and the Minister will be allowed to appeal municipal decisions to the Tribunal. This applies to all *Planning Act* decisions (including consents and minor variances) • Existing third-party appeals where no hearing date has been set as of October 25 will be dismissed. The scheduling of a case management conference or mediation will not be sufficient to prevent an appeal from being dismissed
Gentle Density/Intensification	• As of right zoning to permit up to three residential units per lot (two in the main building and one in an accessory building), with no minimum unit sizes • New units built under this permission would be exempt from DC/CBC and parkland requirements, and no more than one additional parking space can be required
Subdivision approvals	• Public meetings no longer will be required for applications for approval of a draft plan of subdivision
Site plan control	• Developments of up to 10 residential units will be exempted from site plan control • Architectural details and landscape design aesthetics will be removed from the scope of site plan control
Rental Replacement	• Minister to be given the authority to enact regulations related to the replacement of rental housing when it is proposed to be demolished or converted as part of a proposed development

Heritage	• 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 • Heritage registers to be reviewed and a decision made whether listed properties are to be designated, and if not, removed from the register • A process is proposed which will allow Heritage Conservation District Plans to be amended or repealed • Criteria for Heritage Conservation District Plans can be established for regulation
Ontario Land Tribunal procedures	• The Tribunal will have increased powers to order costs against a party who loses a hearing at the Tribunal • The Tribunal is being given increased power to dismiss appeals for undue delay • The Attorney General will have the power to make regulations setting service standards with respect to timing of scheduling hearings and making decisions • Regulations can also be made to establish priorities for the scheduling of certain matters
Aggregate Resources	• Decisions on aggregate applications will be delegated to staff (instead of the Minister) • *Planning Act* applications for aggregate proposals will be exempt from the two-year freeze on applications to amend new official plans, secondary plans and zoning by-laws
Natural heritage planning	• A program to offset development pressures on wetlands is being considered, which will require a net positive impact on wetlands. The language appears to contemplate that wetlands can be developed provided a net positive impact is demonstrated • The Wetland Evaluation System is also being revised, and the proposed changes would eliminate the concept of wetland complexes

Conservation Authorities	• Permits will not be required within regulated areas (including wetlands) for activity that is part of a development authorized under the Planning Act • A single regulation is proposed for all 36 Authorities in the province • Clear limits are proposed on what Authorities are permitted to comment on as part of the planning approvals process, which will keep their focus on natural hazards and flooding
Consumer protection	• Proposed increases to penalties under the *New Homes Construction Licensing Act, 2017* of up to $50,000

Taken together, these changes will fundamentally change how land use planning approvals are processed, approved and implemented in Ontario.

It will cause municipalities to go back to the drawing board with respect to the calculation of development charges, as well as parkland by-laws. The prohibition of third-party appeals will reduce backlogs both at the Toronto Local Appeal Body as well as the Tribunal, as neighbours no longer will be able to appeal minor variance approvals to either body.

Osler will continue to monitor these legislative changes and will provide updates as they become available.

Links to blackline versions of the Acts that are proposed to be amended are below:

- Ontario Land Tribunal Act First Reading Blackline Final
- Ontario Heritage Act First Reading Blackline Final
- Development Charges Act First Reading Blackline Final
- Planning Act First Reading Blackline Final
- Conservation Authorities Act Blackline Final

Enter a new DC rate in the calculator below to see how the phase in will work

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