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Ontario government proposes sweeping changes to the planning and development system

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Author: Chris Barnett

On May 2, 2019, the Government of Ontario released its Housing Supply Action Plan called "More Homes, More Choice." It consists of sweeping changes to the planning and development approvals process, with amendments proposed to 13 different statutes, and the approval of a new Growth Plan called "A Place to Grow." It is anticipated that the proposed legislative changes could be passed before the end of this legislative session on June 6, while "A Place to Grow" comes into force on May 16, 2019.

Osler has prepared blackline versions of the key statutes and the Growth Plan, showing how the statutes are proposed to be amended. They can be downloaded here, or by contacting a member of our Real Estate Group.

Broadly speaking, the changes respond to many of the criticisms that have been made about the existing approvals process and are intended to provide quicker approvals and more certainty around the costs associated with development. The changes include:

- A new approach to financing costs associated with development, with changes to the *Development Charges Act*, the elimination of section 37 bonus agreements and changes to the parkland sections of the *Planning Act*, eliminating alternative parkland rates.
- The Ontario Land Tribunal keeps the new name, but will look much more like the old Ontario Municipal Board (OMB). Restrictions on calling evidence have been removed, and LPAT can make final decisions on what represents good planning, without having to send decisions back to municipal councils for a second decision.
- A shift in how decisions under the *Ontario Heritage Act* made. Decisions to designate properties can be appealed to the LPAT for a final decision, as opposed to a recommendation on the designation being made to councils following a hearing by the Conservation Review Board.

These changes and others are discussed in more detail below.

The most significant practical changes are to the charges and fees that a municipality can impose on development through development charges, section 37 agreements and the setting of alternative rates for parkland.

Community benefit charges

The proposed amendments to the *Planning Act* include a complete overhaul of section 37. The old section permitting by-laws requiring bonusing for height and density is completely repealed. It is replaced with the authority for municipalities to pass "community benefit charge" by-laws. The scope of what can be covered by these charges is not specifically defined, but it cannot include costs covered under development charges. Some of the costs that are no longer recoverable under the revisions to the *Development Charges Act* (such as libraries and other "soft services") are intended to be recoverable under this new regime.

Parkland costs are also intended to be addressed under this new regime. Once a community benefit charge by-law has been passed, then the municipality cannot have a parkland dedication by-law.

There will be a regulation (not yet released) that will cap the amount of a community benefit charge at an amount tied to a percentage of the valuation of the property to be developed. A process is set out to address disputes over the value of the land.

Parkland rates

A major issue that was litigated in the Courts and is still the subject of ongoing LPAT appeals was the setting of alternative rates for parkland dedication and payment of cash-in-lieu of parkland. The proposed changes to the *Planning Act* eliminate any uncertainty around alternative rates: the sections authorizing them are proposed to be deleted in their entirety. The parkland rate will therefore be a maximum of 5% for residential development and 2% for commercial/industrial lands.

Development Charges Act changes

The proposed changes to the *Development Charges Act* will bring some certainty to amounts that are to be paid. The date for the calculation of a charge will be set on the date that a site plan (or, if no site plan is required) zoning by-law amendment application is filed. The charges are still payable when permits are pulled, but if the by-law was amended after the date of application, the earlier rate will apply. This only applies to applications filed after these changes are passed, which could be as soon as June.

A different payment regime is proposed for industrial, commercial, institutional, rental and non-profit housing. Charges will be payable from the date of first occupancy in six installments. The first is due on occupancy, with the remainder to be paid in five equal installments on the anniversary of the first payment.

Appeals from Council decisions – everything old is new again

While the LPAT keeps its name, in all other aspects it will be like the OMB. The limitation on appealing council decisions based only on issues around provincial policy has been removed. Appeals can be filed for the same broad range of issues that were considered by the OMB.

One of the major procedural changes when LPAT was created was the limitation on the ability of parties to call and examine witnesses. That restriction is proposed to be removed. While the LPAT may need to revise its rules, we expect that hearings under the proposed system will be largely the same as hearings at the OMB. Significantly, the government has

recognized that the lack of funding and resources for LPAT have limited its ability to consider appeals, and so its budget has been increased to help clear the backlog.

The timing for filing appeals from the date of application has been shortened. Appeals of applications for official plan and zoning by-law amendments and plans of subdivision can be filed within 120 days of the date of application if no decision has been made, down from 210 days.

Other changes include:

- No appeals can be filed by members of the public from a decision to approve a draft plan of subdivision.
- Third parties cannot appeal the non-decision by an approval authority of a private filed official plan amendment application.
- The province can require a municipality to implement a development permit system for parts of a municipality. This might be used to require a more streamlined approval system around Major Transit Station Areas.

A Place to Grow: updates to the Growth Plan

Beginning May 16, an updated Growth Plan called A Place to Grow will be in effect. Most of the changes that were released in draft form for public comment in March will come into force. These include:

- Major Transit Station Areas can be identified by municipalities before the next municipal comprehensive review (MCR) of their official plans, allowing the higher density targets for those areas to come into effect sooner;
- Employment land conversions can occur outside of the MCR process, provided (among other criteria) a "significant number of jobs" are maintained, which allows for mixed-use developments;
- The density targets for greenfields within the broader GTA have been reduced from 80 persons and jobs per hectare to 50;
- Outside of the MCR process, settlement area boundaries can be:
  - adjusted, provided there is no net increase in settlement area lands;
  - expanded by up to 40 hectares provided defined criteria are met;
- Provincially significant employment zones have been defined and cannot be converted outside of the MCR process.

Ontario Heritage Act

Significant changes are proposed to the *Ontario Heritage Act* (OHA). All decisions on the designation of heritage properties and permits relating to such properties can now be appealed for a final decision to the LPAT. Additional processes are also required prior to listing a property on the heritage register and around designating properties. There will also be a prohibition on beginning the designation process beyond 90 days after a defined event – which has yet to be defined. It is expected to be tied to the filing of various *Planning Act* applications.

The province will also have the authority to establish principles that a Council will be required

to consider when making decisions under the OHA. These will be established by regulation, but have not yet been released.

Endangered Species Act

Substantial changes are proposed to this Act related to both how protected species are identified, and how species and their habitat are protected. The condition of a species both inside and outside Ontario will be considered in determining the level of protection that will be required. Any new listing of species will not automatically lead to protections – the Minister will have the authority to suspend protections temporarily. The Minister also has the authority to make regulations that limit the protections granted by the Act to protected species.

The proposed amendments also introduce the ability for the Minister to enter into agreements which can allow authorized activities to take place that might otherwise be prohibited under the Act, provided certain criteria are met. Agreements can include the payment of a "species conservation charge" which would be paid in to a new Species at Risk Conservation Fund, the purpose of which is to fund activities to protect or recover funded species.

The Minister is also given other powers to authorize by regulation activities that might otherwise be prohibited by the Act. The details of these regulations have not yet been made public.

Next steps

It is anticipated that these changes will be passed by the legislature before the summer break begins on June 7, 2019. Comments on the proposed changes can be made, and some of the changes will come into force immediately, while others may be phased in over time. Some of the key implementation details are not yet known, including the caps on community benefit charge by-laws and how existing appeals at the LPAT will be treated. Osler will continue to provide updates as more details become public.