

January 29, 2021

Planning Consultation
Provincial Planning Policy Branch
777 Bay Street, 13th floor
Toronto, ON
M5G 2E5

Re: Proposed Implementation of New In-force Provisions in S.47 of the Planning Act (ERO019-2811)

On behalf of the City of Toronto I am pleased to submit comments from City Planning regarding posting ERO 019-2811 on the Environmental Registry of Ontario. We understand the Province is seeking comments regarding the changes to certain legislative provisions in the Planning Act that came in force on July 21, 2020 with the enactment of Bill 197, the COVID-19 Economic Recovery Act, 2020 that enable the Minister to address site plan matters and apply inclusionary zoning as part of a zoning order.

While the scope of the consultation is focused on the new provisions of section 47 of the Planning Act, our comments also provide some recent examples that support our comments.

Ministers Zoning Orders

City staff believe that providing for the legislative ability to put in place a Ministers Zoning Order is an appropriate and valuable tool when used judiciously, in consultation with the affected municipality, and in full recognition and accounting for, where possible, the interests of all those that may be impacted by its use.

The use of the MZO powers should be limited to demonstrated Provincial interests guided by planning principles. Municipalities best understand the local public interest, the requirements of the site in its surrounding context, and all aspects of what may be required to make the development of the site align with the all the goals of the PPS, as well as local development requirements providing for safety, water, waste water and transportation servicing, technical feasibility, as well as the coherent and connected development of the site relative to its location.

The Province has indicated that the primary reasons for the need and use of the MZO tool, and the increased authority it provides, is to help to overcome potential barriers and

development delays. The Province has also indicated the proposed new authority could be used to support the delivery of transit station infrastructure and the optimization of surplus lands (e.g., affordable housing and long term care homes), provide increased certainty for strategic projects, remove potential approvals delays, increase the availability of affordable housing, and provide for additional value capture to enable economic recovery. All of these goals align with the City's Official Plan and desired outcome of the City. Development which fits within the vision established through Council's Official Plan, supported by quality technical studies almost always proceeds quickly through the planning process while providing public input and transparency. On this basis, it strengthens the need for the MZO tool to be used prudently.

City staff believes that the use of the MZO tool should be done judiciously and should address each of the following prior to its use in every occasion:

1. Engagement, consultation and agreement from the affected municipality in advance of making a decision to issue a MZO;
2. Consideration and application of the provincial land use planning policy and its priorities,
3. Openness and transparency of the decision making process and the provinces considerations in making its decision. Clear articulation of how the provincial tests were met and the rationale for decisions that put one priority over another,
4. Consistency of application of the MZO tool.

Following these general guidelines will help to ensure public acceptance of the Provincial decision making and the support of the use of the MZO tool, and will ensure the most effective and efficient development approvals process.

Use of Inclusionary Zoning and Affordable Housing Provisions

The addition of the powers of the Minister to add affordable housing and inclusionary zoning provisions within a Ministers Zoning Order aligns with the Provincial Policy Statement, the provincial land use plans, and the efforts of all three levels of government. The use of this new provision is valuable and the requirement for affordable housing as part of a development approval through a Ministers Order, provided it can be secured for the long term as affordable, is a helpful tool.

City Planning is of the opinion that this provision should remain, and it should be utilized appropriately. It is important to note that where affordable housing is required and/or been agreed to as part of the development, the affordable housing requirements should be included in the MZO and meet or exceed a municipality's inclusionary zoning provisions, they should never diminish them. In circumstances where the Province is enacting a MZO on its own lands this provides the opportunity for the Province to achieve affordable housing as part of its permissions enabled by the MZO.

City staff note that while affordable housing was identified as one of the key driving factors for the issuance of Minister's Zoning Orders O. Reg. 594/20, O. Reg. 595/20 and O. Reg. 596/20 in the West Don Lands on October 22, 2020, and despite the provisions in the Planning Act providing for the inclusion of affordable housing requirements being available to be used as of that date, the MZO's did not include any regulatory requirement for affordable housing on these sites.

The use of the inclusionary zoning provision is of value, and we do not want to limit its use, however the current provincial land use planning framework limits the use of the IZ tool, for the City of Toronto, to Protected Major Transit Station Areas (PMTSA) and areas where the Development Permit System is used. No such restriction applies to the use of the MZO. The City has previously flagged our concerns with the limited geography to which the IZ provisions can apply as the City of Toronto has vastly diverse neighbourhoods across its land area, and it is clear that permission to utilize IZ across the City would better enable the City, and other levels of government to tackle the affordable housing issues we collectively face. We remain supportive of the s.47 provisions but we ask the Province to once again revisit the limitations of the IZ policies in the provincial plans to align better with the s.47 tool and the common goal of providing for affordable housing options across the province.

Site Plan and s.47

Section 114 of the City of Toronto Act and Section 41 of the Planning Act grant the City the authority to include in its Official Plan areas to be designated as "areas of Site Plan Control."

This authority provides a process that examines the design and technical aspects of a proposed development to ensure it is attractive and compatible with the surrounding area and contributes to the economic, social and environmental vitality of the City. Features such as building designs, site access and servicing, waste storage, parking, loading and landscaping are reviewed. In the City, this can include specific details related to municipal infrastructure, site preparation and safety, environmental protection and sustainable design, transportation design, separation agreements, and all manner of site specific detail that only the City can ensure is addressed at the local level. While s.47 provides for agreements to be entered into between the landowner and the City, there is no obligation to involve the City in the creation of these agreements as proposed in the new legislation.

City planning staff are of the opinion that the site plan provisions set out in s.47 should be removed, as they are best addressed at the local level. Should the province decide to maintain these powers, we are of the opinion that the powers should not be used without the full engagement and agreement of the City, to ensure the most efficient process of addressing the fulfillment of conditions or requirements of agreements, and that no circumstance of potential liability are created. It is our recommendation that at a minimum this approval be delegated to municipal staff who have the ability to complete the

required review in the context of both the MZO and Council's approved plans. An example of where this successfully occurred was with the Province's issuance of Ontario Regulation 343/20 and Ontario Regulation 354/20 which provided for the development of two supportive modular housing projects. The site plan approval process occurred in lock step with the Minister's issuance of the MZO and ensured that the matters referenced above were addressed.

Examples of Proper and Improper Use

At its best, the use of the Ministers Orders are effective and efficient, raising no municipal or public concerns. They are done cooperatively and in the true spirit of the public interest. There have been a number of instances recently where the use of the s.47 powers has occurred successfully, with public support and effective and efficient delivery of the outcomes. For example the City and the Province collaborated recently to respond to the immediate need for affordable housing and implementation of the modular housing initiative as part of the HousingTO 2020-2030 Action Plan. In this instance, the Province put in place the zoning provisions, and the City expedited and managed the site plan approval.

However, in the past few months, there have been instances when the tool has been used inappropriately in our view. For example, on Thursday, October 22, 2020, three provincial sites in the West Don Land received Minister's Zoning Orders (O. Reg. 594/20, O. Reg. 595/20 and O. Reg. 596/20). The Province did not have any communication with the City leading up to, prior to or following the issuance of these zoning orders.

The Province's unilateral decision to permit significant intensification on the properties, including one site that has not even been the subject of a formal application with the City, sidesteps municipal governance, public consultation and the right to appeal options. The use of the MZO in circumstances such as this, without engagement of the municipality, does not take into account potential liability, safety, noise mitigation as a result of development being adjacent to rail corridors, the impacts that additional unplanned development will have on the community such as schools, parks, transit, traffic, parking, and social services; it does not allow the City to collect applications fees needed to study the impacts, resulting in a loss of revenue; and in some cases sidesteps existing development agreements that have been in place between the Province and City related to alterations to existing heritage listed buildings.

The West Don Lands has long been planned for growth, utilizing public land to create a new complete community with thousands of new affordable housing units, transit and new parkland and public realm. Removing the city from the zoning approval and potentially the site plan control can reverse years of progress made in implementing master plans to achieve complete communities. It not only removes the municipality from the process but is unfair to other landowners who have worked cooperatively with the City to deliver a high quality built environment. The area, adjacent to the Don River, is home to significant brownfield assets that are being unlocked as new flood protection and remediation efforts

are completed. Over the past 15 years since Waterfront Toronto began planning this new community in collaboration with the City, it has always represented a good faith effort from all levels of government to engage with residents and each other to master plan this community.

The use of the MZO in a circumstance like this, where new densities, height and built form entitlements are provided, that deviate from those provided for by the municipality through a master plan exercise, can and will set precedents that deviate from the council approved plans which we anticipate will result in requests for amendments from other sites, potential LPAT appeals, and the resulting cascading effect on all elements of the master plan for the neighbourhood.

The considerations for the use of the Ministers Zoning Order should be the same whether it is being used to advance works on provincially owned property, or other publicly owned or privately owned property. The use this tool should not by-pass the consideration of the provincial land use planning policy directions and should be done in full consideration of its on-going impacts in a neighbourhood or community.

Lastly, as can be seen by the public outcry related to the use of the MZO tool for these lands, there is value in considering provisions in the Act for public notice and community consultation. While there is currently no public process required in approval of Minister's Zoning Orders nor notice of their passing, at minimum it is recommended that the public and municipality be informed clearly of the permissions granted and the reasons for such an approval. Public notice is currently only required for amendments to existing Minister's Zoning Orders and not for the original order itself. Transparency of decision making and community engagement would be of value to eliminate these issues.

Conclusion

City planning staff is of the opinion that:

1. Ministers Zoning Orders can be a good tool when used judiciously, in consultation with the affected municipality, and in full recognition and accounting for, where possible, the interests of all those that may be impacted by its use.
2. The Minister must consult with and engage, and reach agreement with the affected municipality in advance of making a decision to issue a MZO,
3. The Minister should consider and apply the provincial land use planning policy and its priorities in all decisions,
4. The decision making process should be more open and transparent, providing clear articulation of how the provincial tests were met and the rationale for decisions that put one priority over another. The province should consider some form of formal public engagement where appropriate in the use of the MZO.
5. There should be consistency of application of the MZO tool.
6. The inclusion of powers to apply affordable housing requirements is of benefit, but they should be applied consistently, and the affordable housing requirements must

meet or exceed a municipality's inclusionary zoning provisions, they should never diminish them.

7. The Province should reconsider the value and use of the Site Plan approval provisions in s.47, and either eliminate them, or require mandatory approval of the affected municipality prior to the use of them.

City planning staff always welcome the opportunity to work with provincial staff to effectively implement the provinces policy led planning system, drawing on each of our strengths to create sustainable, healthy, and complete communities. We all play an important role in our land use planning and approvals processes, and we look forward to the opportunity to work with the Province to strengthen and improve the use and outcomes of Ministers Zoning Orders.

Thank you for the opportunity to provide these comments. City staff would be pleased to have further dialogue with the Province regarding the s.47 tool. Please feel free to follow up with me directly or with Mark Christie, Project Manager, SIPA.

A handwritten signature in blue ink, appearing to read "G. Lintern".

Gregg Lintern, MCIP, RPP
Chief Planner and Executive Director
City Planning Division