

November 24, 2022

To Public Input Coordinator
MNR – PD – Resources Planning and Development Policy Branch
300 Water Street, 6th Floor, South Tower
Peterborough, ON
L9J 8M5

Re: ERO 019-6172: Proposed Planning Act and Development Charges Act, 1997
Changes: Providing Greater Cost Certainty for Municipal Development-related Charges.
Parkland Dedication

On behalf of our many municipal clients, we are submitting our comments related to the proposed changes to the *Planning Act* related to the parkland dedication requirements, as proposed by Bill 23 (*More Homes Built Faster Act*), as amended by the Standing Committee on Heritage, Infrastructure and Cultural Policy.

1. Overview Commentary

The Province has introduced Bill 23 with the following objective: *“This plan is part of a long-term strategy to increase housing supply and provide attainable housing options for hardworking Ontarians and their families.”* The Province’s plan is to address the housing crisis by targeting the creation of 1.5 million homes over the next 10 years. To implement this plan, Bill 23 introduces a number of changes to the *Planning Act* (along with nine other Acts, including the *Development Charges Act* (D.C.A.)), which seek to increase the supply of housing.

As discussed later in this letter, the proposed changes to parkland dedication would significantly reduce the amount of parkland conveyance and payments-in-lieu (P.I.L.) of parkland to municipalities. The proposed changes under Bill 23 would impact municipalities by:

- Reducing the amount of development subject to parkland dedication by exempting affordable, attainable, non-profit and additional residential dwelling units;
- Reducing P.I.L. revenues for some developments by grandfathering in charges by up to 2 years, reflecting land values at the time of Site Plan and Zoning By-law Amendment applications;
- Reducing and capping the alternative requirements for parkland dedication, which results in significant reductions in parkland conveyance and P.I.L. revenues, particularly for high-density developments;



- Increasing the administrative burden on municipalities by requiring the preparation of and consultation on a parks plan with the passage of a parkland dedication by-law, whether utilizing the standard or alternative requirements, and by requiring the allocation and reporting on funds annually; and
- Limiting local decision-making by allowing the Province to prescribe criteria for municipal acceptance of encumbered lands and privately owned public space (POPs) for parks purposes.

It is anticipated that the resultant loss in parkland dedication from development will result in either a cross-subsidization from existing taxpayers having to provide increased funding for parks services to maintain planned levels of service in their community, or an erosion of service levels over time. The timing of these changes, and others proposed in Bill 23 to limit funding from development, is occurring at a time when municipalities are faced with increased funding challenges associated with cost inflation and the implementation of asset management plans under the *Infrastructure for Jobs and Prosperity Act*.

A summary of the proposed parkland dedication changes under section 42 of the *Planning Act*, along with our firm's commentary, is provided below.

2. Changes to Section 42 of the *Planning Act*

2.1 New Statutory Exemptions: Affordable residential units, attainable residential units, inclusionary zoning residential units, non-profit housing and additional residential unit developments will be exempt from parkland dedication requirements. For affordable, attainable, and inclusionary zoning residential units, the exemption is proposed to be implemented by:

- discounting the standard parkland dedication requirements (i.e., 5% of land) based on the proportion of development excluding affordable, attainable and inclusionary zoning residential units relative to the total residential units for the development; or
- where the alternative requirement is imposed, the affordable, attainable and inclusionary zoning residential units would be excluded from the calculation.

For non-profit housing and additional residential units, a parkland dedication by-law (i.e., a by-law passed under section 42 of the *Planning Act*) will not apply to these types of development:

- Affordable Rental Unit: as defined under subsection 4.1 (2) of the D.C.A., where rent is no more than 80% of the average market rent as defined by a new bulletin published by the Ministry of Municipal Affairs and Housing.
- Affordable Owned Unit: as defined under subsection 4.1 (3) of the D.C.A., where the price of the unit is no more than 80% of the average purchase price as



defined by a new bulletin published by the Ministry of Municipal Affairs and Housing.

- Attainable Unit: as defined under subsection 4.1 (4) of the D.C.A., excludes affordable units and rental units, will be defined as prescribed development or class of development and sold to a person who is at “arm’s length” from the seller.
- Inclusionary Zoning Units: as described under subsection 4.3 (2) of the D.C.A.
- Non-Profit Housing: as defined under subsection 4.2 (1) of the D.C.A.
- Additional Residential Units, including:
 - A second unit in a detached, semi-detached, or rowhouse if all buildings and ancillary structures cumulatively contain no more than one residential unit;
 - A third unit in a detached, semi-detached, or rowhouse if no buildings or ancillary structures contain any residential units; and
 - One residential unit in a building or structure ancillary to a detached, semi-detached, or rowhouse on a parcel of urban land, if the detached, semi-detached, or rowhouse contains no more than two residential units and no other buildings or ancillary structures contain any residential units.

Analysis/Commentary

- While reducing municipal requirements for the conveyance of land or P.I.L. of parkland may provide a further margin for builders to create additional affordable housing units, the proposed parkland dedication exemptions will increase the financial burdens on municipalities to fund these exemptions from property tax sources (in the absence of any financial participation by senior levels of government) or erode municipalities’ planned level of parks service.
- The definition of “attainable” is unclear, as this has not yet been defined in the regulations to the D.C.A.
- Under the proposed changes to the D.C.A, municipalities will have to enter into agreements to ensure these units remain affordable and attainable over a period of time, which will increase the administrative burden (and costs) on municipalities. An agreement does not appear to be required for affordable/attainable units exempt from parkland dedication. Assuming, however, that most developments required to convey land or provide P.I.L. of parkland would also be required to pay development charges, the units will be covered by the agreements required under the D.C.A. As such, the *Planning Act* changes should provide for P.I.L. requirements if the status of the development changes during the period.
- It is unclear whether the bulletin provided by the Province to determine if a development is affordable will be specific to each municipality or aggregated by County/Region or Province. Due to the disparity in incomes across Ontario, affordability will vary significantly across these jurisdictions. Even within an



individual municipality there can be disparity in the average market rents and average market purchase prices.

- While the proposed exemptions for non-profit housing and additional residential units may be easily applied for municipalities imposing the alternative requirement, as these requirements are imposed on a per residential unit basis, it is unclear at this time how a by-law requiring the standard provision of 5% of residential land would be applied.

2.2 Determination of Parkland Dedication: Similar to the rules under the D.C.A., the determination of parkland dedication for a building permit issued within two years of a Site Plan and/or Zoning By-law Amendment approval would be subject to the requirements in the by-law as at the date of planning application submission.

Analysis/Commentary

- If passed as currently drafted, these changes would not apply to site plan or zoning by-law applications made before subsection 12 (6) of Schedule 9 of the *More Homes Built Faster Act* comes into force.
- For applications made after the in-force date, this would represent a lag in P.I.L. value provided to municipalities, as it would represent the respective land value up to two years prior vs. current value at building permit issuance. For municipalities having to purchase parkland, this will put additional funding pressure on property tax funding sources to make up the difference, or further erode the municipality's planned level of parks service.

2.3 Alternative Parkland Dedication Requirement: The following amendments are proposed for the imposition of the alternative parkland dedication requirements:

- The alternative requirement of 1 hectare (ha) per 300 dwelling units would be reduced to 1 ha per 600 dwelling units where land is being conveyed. Where the municipality imposes P.I.L. requirements, the amendments would reduce the amount from 1 ha per 500 dwelling units to 1 ha per 1,000 net residential units.
- Proposed amendments clarify that the alternative requirement would only be calculated on the incremental units of development/redevelopment.
- The alternative requirement would be capped at 10% of the land area or land value where the land proposed for development or redevelopment is 5 ha or less; and 15% of the land area or land value where the land proposed for development or redevelopment is greater than 5 ha.

Analysis/Commentary

- If passed as currently drafted, the decrease in the alternative requirements for land conveyed and P.I.L. would not apply to building permits issued before subsection 12 (8) of Schedule 9 of the *More Homes Built Faster Act* comes into force.



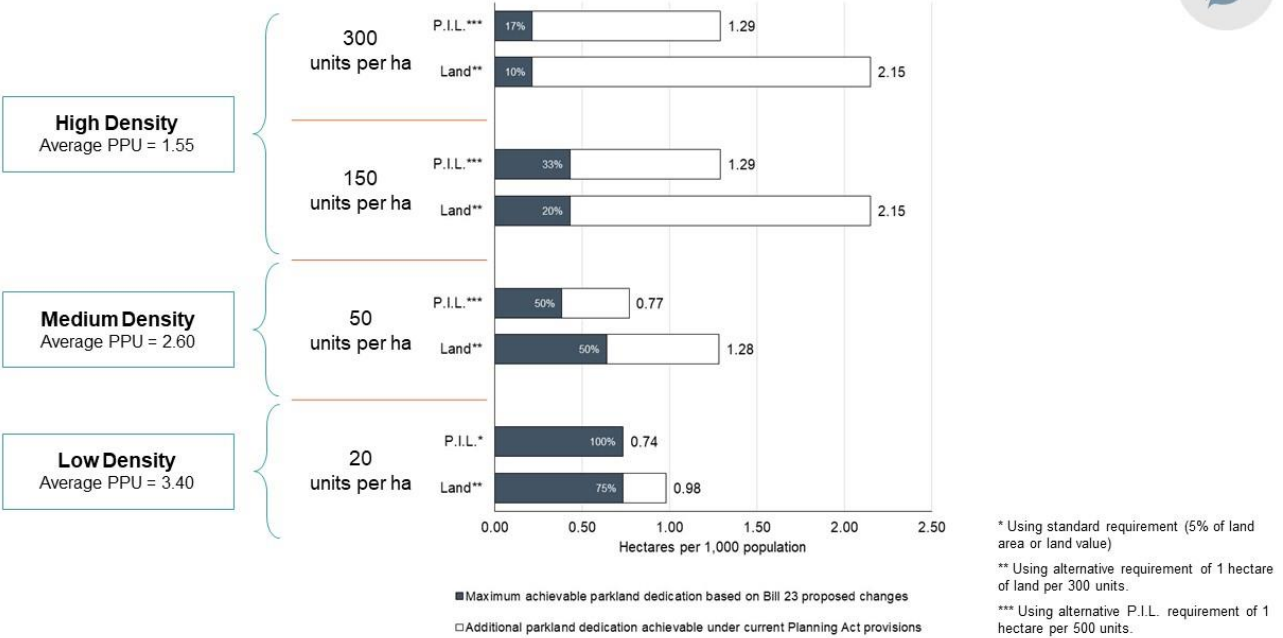
- Most municipal parkland dedication by-laws only imposed the alternative requirements on incremental development. As such, the proposed amendments for net residential units seek to clarify the matter where parkland dedication by-laws are unclear.
- Section 42 previously imposed the alternative requirement caps of 10% and 15% of land area or value, depending on the respective developable land area, for developments only within designated transit-oriented communities. By repealing subsection 42 (3.2) of the *Planning Act*, these caps would apply to all developable lands under the by-law.
- As illustrated in the figure below, lowering the alternative parkland dedication requirement and imposing caps based on the developable land area will place significant downward pressure on the amount of parkland dedication provided to municipalities, particularly those municipalities with significant amounts of high-density development. For example:
 - Low-density development of 20 units per net ha (uph), with a person per unit (P.P.U.) occupancy of 3.4, would have produced a land conveyance of 0.98 ha per 1,000 population. The proposed change would reduce this to 0.74 ha, approximately 75% of current levels.
 - Medium-density development of 50 uph, with a P.P.U. of 2.6 would produce land conveyance at 50% of current levels (0.64 vs. 1.28 ha/1,000 population).
 - Low-rise development of 150 uph, with a P.P.U. of 2.6 would produce land conveyance at 20% of current levels (0.43 vs. 2.15 ha/1,000 population). P.I.L. would be approximately 1/3 of current levels.
 - High-rise development of 300 uph, with a P.P.U. of 2.6 would produce land conveyance at 10% of current levels (0.22 vs. 2.15 ha/1,000 population). P.I.L. would be approximately 17% of current levels.^[1]

^[1] Low-rise and high-rise developments with sites larger than 5 ha would only be marginally better under the proposed changes, at 30% and 15% of land conveyance and 50% and 25% P.I.L., respectively.



Maximum Achievable Parkland Dedication (hectares per 1,000 population)

Development Sites ≤ 5 hectares



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- Based on the proposed alternative requirement rates and land area caps, municipalities would be better off:
 - For land conveyance, imposing the alternative requirement for densities greater than 30 units per ha.
 - Sites of 5 ha or less, land conveyance would be capped at 10% of land area at densities greater than 60 units per ha.
 - Sites greater than 5 ha, land conveyance would be capped at 15% of land area at densities greater than 90 units per ha.
 - For P.I.L. of parkland, imposing the alternative requirement for densities greater than 50 units per ha.
 - Sites of 5 ha or less, land conveyance would be capped at 10% of land area at densities greater than 100 units per ha.
 - Sites greater than 5 ha, land conveyance would be capped at 15% of land area at densities greater than 150 units per ha.
 - For densities less than 30 units per ha, imposing the standard requirement of 5% of land area for land conveyance and P.I.L. of parkland.

2.4 Parks Plan: The preparation of a publicly available parks plan as part of enabling an Official Plan will be required at the time of passing a parkland dedication by-law under section 42 of the *Planning Act*.

Analysis/Commentary

- The proposed change will still require municipal Official Plans to contain specific policies dealing with the provision of land for parks or other public recreational purposes where the alternative requirement is used.
- The requirement to prepare and consult on a parks plan prior to passing a by-law under section 42 would now appear to equally apply to a by-law including the standard parkland dedication requirements, as well as the alternative parkland dedication requirements. This will result in an increase in the administrative burden (and cost) for municipalities using the standard parkland dedication requirements.
- Municipalities imposing the alternative requirement in a parkland dedication by-law on September 18, 2020 had their by-law expire on September 18, 2022 as a result of the *COVID-19 Economic Recovery Act* amendments. Many municipalities recently undertook to pass a new parkland dedication by-law, examining their needs for parkland and other recreational assets. Similar transitional provisions for existing parkland dedication by-laws should be provided with sufficient time granted to allow municipalities to prepare and consult on the required parks plan.

2.5 Identification of Lands for Conveyance: Owners will be allowed to identify lands to meet parkland conveyance requirements, within regulatory criteria. These lands may include encumbered lands and privately owned public space (POPs).



Municipalities may enter into agreements with the owners of the land regarding POPs to enforce conditions, and these agreements may be registered on title. The suitability of land for parks and recreational purposes will be appealable to the Ontario Land Tribunal (OLT).

Analysis/Commentary

- The proposed changes allow the owner of land to identify encumbered lands for parkland dedication consistent with the provisions available to the Minister of Infrastructure to order such lands within transit-oriented communities. Similar to the expansion of parkland dedication caps, these changes would allow this to occur for all developable lands under the by-law. The proposed changes go further to allow for an interest in land, or POPs.
- The municipality may refuse the land identified for conveyance, providing notice to the owner with such requirements as prescribed. The owner, however, may appeal the decision to the OLT. The hearing would result in the Tribunal determining if the lands identified are in accordance with the criteria prescribed. These “criteria” are unclear, as they have not yet been defined in the regulations.
- Many municipal parkland dedication by-laws do not except encumber lands or POPs as suitable lands for parkland dedication. This is due, in part, to municipalities’ inability to control the lands being dedicated or that they are not suitable to meet service levels for parks services. Municipalities that do accept these types of lands for parkland or other recreational purposes have clearly expressed such in their parkland dedication by-laws. The proposed changes would appear to allow the developers of the land, and the Province within prescribed criteria, to determine future parks service levels in municipalities in place of municipal council intent.

2.6 Requirement to Allocate Funds Received: Similar to the requirements for C.B.C.s, and proposed for the D.C.A. under Bill 23, annually beginning in 2023, municipalities will be required to spend or allocate at least 60% of the monies in a reserve fund at the beginning of the year.

Analysis/Commentary

- This proposed change appears largely administrative, increasing the burden on municipalities. This change would not have a fiscal impact and could be achieved as a schedule to annual capital budget. Moreover, as the Province may prescribe annual reporting, similar to the requirements under the D.C.A. and for a C.B.C under the *Planning Act*.



We appreciate the opportunity to provide comments related to the proposed changes on behalf of our municipal clients .

Yours very truly,

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