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November 23, 2022

Hon. Steve Clark, Minister of Municipal Affairs and Housing
College Park, 17th Fl.
777 Bay St.
Toronto, ON, M7A 2J3

Dear Minister Clark:

RE: City of Kitchener comments: Bill 23, More Homes Built Faster Act

I am writing you today to share some key perspectives from the City of Kitchener's review of *Bill 23, More Homes Built Faster Act, 2022*. Kitchener continues to be a leader in Ontario and has already undertaken some of the work that Bill 23 seeks to achieve:

- Kitchener's **Development Services Review** was acknowledged by yourself in announcing the changes proposed by Bill 23. We are proud of our successes in streamlining development approvals and have seen tremendous results.
- Kitchener Council recently approved a \$2 million fund to pay development charges for **affordable housing** and in August 2022 through Council's approval of a parkland dedication bylaw, exempted parkland dedication requirements for affordable housing. I fully support Bill 23 changes to make affordable housing projects exempt from development charges and parkland dedication.
- In 2021, Kitchener Council was one of the first municipalities in Ontario to update our zoning by-law to allow for **tiny houses (additional dwelling units)** on over 25,000 lots. To date we have received 37 applications for tiny homes with some already occupied. My team would be pleased to work with your team to assist with a potential consistent province-wide approach to regulating tiny homes.

Kitchener's key areas of concern, and where we have questions/comments for the Province's consideration, include the following:

- **Development charge framework** – Bill 23 includes changes in development charge (DC) eligible items but does not fully account for the need to continue to supply infrastructure in a timely coordinated manner to support growth. Further it proposes to phase in DCs over a 5-year period resulting in an approximate \$17 million reduction in DC revenues for Kitchener. These changes move us farther from a "growth pays for growth" approach and has the potential to shift infrastructure costs associated with growth to existing residents. We are requesting that the Province carefully examine the implications of the proposed changes to development charges to ensure that infrastructure delivery continues to be aligned with housing supply. It is important that Kitchener can quickly deliver and adequately fund the infrastructure needed to support housing growth.
- **Parkland dedication framework** – It is our understanding that under Bill 23 park land and cash-in-lieu of land conveyances will be reduced by at least 50%. The cap reduces higher density park land dedication substantially

yielding negligible park land per person in higher density scenarios. In August 2022, Kitchener Council approved a new park land dedication bylaw together with a park land strategy, Places and Spaces. Kitchener's park land strategy is balanced and considers impacts on development proformas and sets realistic and achievable park land provision targets. We are requesting that the Province hold off on any changes to park land dedication to allow for recently approved by-laws that have been appealed to be tested at the OLT and be implemented for a period of time. This approach provides an opportunity to understand any potential implications and areas for refinement.

- **Changes to regional planning authorities** – Bill 23 proposes to remove planning responsibilities from the Region of Waterloo. There is merit in a continued coordinated approach to certain aspects that are currently within the Region's planning jurisdiction. Coordination of growth in geographic areas with shared interests and infrastructure, like groundwater/sourcewater protection, wastewater and water treatment, natural heritage, and transit is beneficial. Coordination will assist with continuing to balance increasing housing supply while maintaining agricultural lands for needed food supply and protecting and conserving lands that are an integral part of our watershed and natural heritage system that cross municipal boundaries.
- **Site plan exemptions** – Bill 23 proposes to exclude buildings of 10 units or less from site plan control. Further, Bill 23 proposes to exclude exterior design matters including character, scale, appearance, and design features. Kitchener has concerns about exempting buildings from a site plan process where parking lots, significant grading, or new servicing is proposed. Infill developments are often improved through a site plan process to eliminate off-site impacts. Rather than exempt developments by the number of units, it is recommended that the Province consider exempting certain types of developments, such as street fronting townhouses and additional dwelling units from site plan control. Kitchener supports the exemption of review of exterior design matters such as colour, texture, type of material, and window details from site plan review. We request that the Province consider piloting these exemptions only at this time and monitoring to see if further exemptions are needed.
- **Natural heritage system review/evaluation jurisdiction** – Bill 23 proposes to limit the role of the GRCA to matters related to natural hazards and will no longer permit MOUs for services. Kitchener works in partnership with the Region and GRCA on matters related to natural hazards and natural heritage to ensure a consistent streamlined approach to conservation, enhancement and restoration. Should the changes in Bill 23 regarding Regional planning responsibilities and conservation authorities advance, there will be no cross municipal jurisdiction to ensure a consistent approach to the conservation, protection and restoration of natural heritage systems. This is of concern especially in the areas of sub-watershed studies and related community/secondary plan processes.
- **Cultural heritage register and designation** – Among the changes within Bill 23 are changes to the timing of the review and addition of properties to the heritage register. Kitchener is concerned that these changes will diminish a municipality's ability to designate significant cultural heritage resources resulting in potential significant loss of Kitchener's cultural heritage. Completing an evaluation and designation process for all cultural heritage resources on Kitchener's register within a 2-year timeframe will at best be challenging. Kitchener is supportive of advancing work on reviewing its register and is requesting that the Province revisit the proposed 2-year timeframe.

Overall, Kitchener remains committed to streamlining housing approvals and will work with the Province to build 1.5 million new homes in Ontario in the coming years. I would be pleased to discuss any of these matters you with, or your team. I have attached our full technical response submitted through the ERO postings.

Sincerely,



Garett Stevenson, MCIP, RPP
Interim Director of Planning

Attachment - City of Kitchener Comments on October 25, 2022 ERO postings

This summary includes the City of Kitchener’s comments on relevant proposed changes to various legislation, regulations, and policy documents contained within the ERO postings tabled October 25, 2022. Additional comments may be provided on the following ERO postings, where warranted, at a later date:

- [Conserving Ontario’s Natural Heritage](#)
- [Proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario](#)
- [Review of A Place to Grow and Provincial Policy Statement](#)
- [Proposed Changes to Sewage Systems and Energy Efficiency for the Next Edition of Ontario’s Building Code](#)

Bill 23: More Homes Built Faster Act, 2022

Proposed Amendment and What it Means	City of Kitchener Comments and Questions
Development Charges Act, 1997, (ERO posting 019-6172)	
<p>Development Charge exemptions The following types of residential units will be exempt from paying Development Charges (DC’s):</p> <ul style="list-style-type: none"> • Affordable rental housing (defined) • Affordable ownership housing (defined) • Attainable housing (not defined, criteria provided) • Non-profit housing • Inclusionary zoning units • Residential rental additions in buildings greater than 4 units • Additional dwelling units (second and third units on an existing lot) 	<p>Comments Kitchener appreciates the addition of definitions for affordable rental and affordable ownership housing as this will assist with determining what developments are exempt.</p> <p>As part of the implementation of Kitchener’s Housing for All Strategy, Kitchener pays the DC’s for affordable housing projects. This approach is in line with the proposed DC exemptions for affordable housing projects outlined in Bill 23.</p> <p>DC exemptions for other housing forms proposed will decrease DC revenues for the City, but the specific impact is unknown.</p> <p>Questions of clarification A definition of attainable housing is recommended to provide clarity on this proposed DC exemption. Additionally, clarification is sought on what is meant by the following criteria listed in the description of attainable residential unit “the residential unit was developed as part of a prescribed development or class of developments”</p>
Eligible capital costs	Comments

Proposed Amendment and What it Means	City of Kitchener Comments and Questions
<p>Certain studies (i.e. growth-related studies) are proposed to be removed from the list of DC eligible capital costs.</p> <p>New DC rate increases are proposed to be phased in starting at 80% in year 1 and increasing by 5% per year for each year thereafter for DC bylaws that are approved after June 1, 2022.</p> <p><i>Note – It is our understanding that on November 21, 2022 an amendment to Bill 23 was tabled and approved that changes the above date from June 1 to January 1, 2022.</i></p>	<p>The proposed changes in DC eligible items does not reduce the need of infrastructure required to support growth, but rather moves us further from a “growth pays for growth” mentality. Alternative revenue sources, including the potential for tax funded infrastructure and offsets from other levels of governments, will need to be explored. Should alternative revenue sources not be available lack of adequate funding may slow the delivery of necessary infrastructure to support growth which does not align with the goal of increasing the supply of housing.</p> <p>In an amendment to Bill 23 (On November 21, 2022), it is proposed to have the phase-in apply retroactively to January 1, 2022 (instead of June 1, 2022) which would impact Kitchener’s recently adopted bylaw from May 30, 2022. The impact would be a reduction of \$17M in DC revenues over the phase-in period. This will:</p> <ul style="list-style-type: none"> • Reduce DC revenues and delay the construction of infrastructure required to support new housing units • Have the unintended consequence of allowing less housing to be built and having poorly serviced/incomplete communities while the City waits for DC funds to be collected. <p>If a phase-in provision is going to be instituted, at a minimum it should come into effect after the date Bill 23 is passed. The current proposal will negatively impact DC bylaws currently in place and require significant administration to determine DC rebates for customers who already have chosen to move forward with their projects based on the full DC rates being charged.</p> <p>The current legislative DC framework provides for the ability to freeze DC rates enabling developers to pay at existing rates as long as they move ahead with their project within two years. This protects developers from large rate increases making the proposed phase in approach redundant.</p> <p>Questions of clarification</p>

Proposed Amendment and What it Means	City of Kitchener Comments and Questions
	The legislation proposes that growth studies and DC background studies will no longer be DC eligible. Clarification on whether other studies, such as EA related studies, will no longer be DC eligible is needed.
<p>DC Bylaw review timeframe Provides for DC bylaws to be reviewed every 10 years instead of 5 years.</p>	<p>Comments This enables municipalities to review and update bylaws more frequently. Higher growth municipalities like Kitchener may determine that a more frequent review is necessary to ensure that cost recovery through DCs keeps pace with inflation.</p>
<p>DCs for rental housing Provides for reduced DC rates for rental housing developments (4 or more units) based on the number of bedrooms in a unit. DCs are reduced by:</p> <ul style="list-style-type: none"> • 25% for 3+ bedroom units • 20% for 2-bedroom units • 15% for 1 bedroom and bachelor units <p><i>Note – It is our understanding that on November 21, 2022 an amendment to Bill 23 was tabled and approved that changes the 15% reduction to apply to any rental housing developments with units of all other bedroom type compositions.</i></p>	<p>Comments Kitchener acknowledges the this may act as an incentive for rental units, specifically larger rental units. This may decrease DC revenues for the City, but the specific impact is unknown.</p>
<p>Interest rate A new section is proposed to provide a maximum interest rate for a DC rate freeze and deferrals capped at prime plus 1% (to be updated quarterly).</p>	<p>Comments Having a prescribed interest rate defined in legislation will be helpful in ensuring a consistent approach across the province. The proposed interest rate is consistent with and only slightly lower than Kitchener’s current rate.</p>
<p>DC reserves A new section is proposed that requires municipalities to spend or allocate at least 60% of DC reserve fund balances each year for</p> <ul style="list-style-type: none"> • Water, wastewater, and roads • Other DC services may be prescribed 	<p>Comment Kitchener has made efficient use of its DC reserves that includes a plan for its expenditure in a planned, timely fashion. This proposed change will add administrative steps to an already efficient process.</p> <p>Questions of clarification Please clarify what is intended by “allocate” and that municipalities can re-allocate according to the most pressing infrastructure needs</p>

Proposed Amendment and What it Means	City of Kitchener Comments and Questions
Planning Act, 1990 (ERO posting 019-6163), (ERO posting 019-6172)	
<p>Regional Planning Authority jurisdiction</p> <p>A definition of “upper-tier municipality without planning responsibilities” is proposed to be added which includes the Regional Municipality of Waterloo (Region). The effect of this removes planning responsibilities from the Region, such as the authority to have an Official Plan and approve planning applications.</p> <p>Proposed changes would require Kitchener to assume the Region’s Official Plan. The Region’s Official Plan (ROP) would exist alongside Kitchener’s but would be within Kitchener’s jurisdiction to oversee and eventually incorporate into one new Official Plan for Kitchener. The removal of the Region as a planning authority makes Kitchener’s Official Plan and Official Plan amendments subject to ministerial approval.</p> <p>Establishes that a lower-tier municipality is the approval authority for planning applications, in areas where the upper-tier municipality does not have planning responsibilities, which includes Kitchener.</p> <p>Changes related to upper-tier municipalities without planning responsibilities will come into effect on the day that is prescribed in regulation. The regulations are pending.</p>	<p>Comment</p> <p>It would be beneficial to ensure that mechanisms exist to ensure a coordinated approach to managing growth across large geographic areas/regions with shared interests and infrastructure, like groundwater/sourcewater protection, natural heritage, and transit . It would assist with continuing to balance increasing housing supply while maintaining agricultural lands for needed food supply and protecting and conserving lands that are an integral part of our watershed and natural heritage system that cross municipal boundaries.</p> <p>The Province is currently seeking input on a streamlined Provincial Policy Statement (PPS) and Growth Plan which may result in a change in the provincial priorities outlined in the PPS. Depending on the nature of these changes, coupled with the proposed removal of regional coordination of growth, municipalities will be challenged in delivering planned, deliberate, fiscally responsible growth. Kitchener intends to submit comments regarding proposed PPS/Growth Plan changes under separate cover.</p> <p>Kitchener currently has delegated planning approval authority for all application types under the Planning Act with the exception of Official Plans and Official Plan amendments and is supportive of further delegation of Official Plan amendments to Kitchener.</p> <p>There is an opportunity to continue to work with the Province and the Region on streamlining aspects of the development review process that currently reside with the Region, like matters related to noise studies through the establishment of standard requirements or mitigation measures</p> <p>An appropriate transition of upper-tier planning responsibilities to lower tier municipalities is necessary to enable discussions of, among other matters, resource capacity.</p>

Proposed Amendment and What it Means	City of Kitchener Comments and Questions
	<p>Kitchener welcomes the delegation of approval authority of amendments to its Official Plan. As drafted, the proposed legislation appoints the Minister as the approval authority for an Official Plan and Official Plan Amendment, not at the local level, which may increase the time for a decision to be made. Kitchener supports further delegation from the Province and from the Region of Waterloo for Official Plan amendments. Kitchener would want the same permissions and authorities currently delegated to the Region of Waterloo if the Region becomes an upper-tier municipality without planning responsibilities. As part of this delegation, notice would be provided of all Official Plan amendments to the Minister who would retain the ability to overrule. Delegation would ensure a streamlined approvals process.</p> <p>Questions of clarification To assist with implementation of upper-tier planning responsibilities, clarification of what constitutes a planning responsibility is needed.</p>
<p>Appeal rights A definition of “specified person” is proposed to be added to facilitate the narrowing of appeal rights to the applicant, relevant municipality, minister and certain public bodies.</p> <p>Appeal rights for upper-tier municipalities without planning responsibilities (e.g. the Region of Waterloo) and Conservation Authorities are proposed to be removed.</p> <p>Currently, most planning applications can be appealed by anyone who made a submission as part of the public meeting (i.e. 3rd party appeals). Bill 23 proposes to remove these types of appeals on all new matters and on all matters that are currently before the Ontario Land Tribunal where no hearing has been scheduled.</p>	<p>Kitchener is supportive of planning processes that include community input early and often throughout the planning process prior to a decision.</p> <p>Kitchener has had a relatively low appeal rate by 3rd parties and where 3rd party appeals were filed they were generally unsuccessful.</p>

Proposed Amendment and What it Means	City of Kitchener Comments and Questions
<p>Note – It is our understanding that on November 21, 2022 an amendment to Bill 23 was tabled and approved maintains 3rd party appeals.</p>	
<p>Additional residential units A definition of “parcel of urban residential land” is proposed to be added to facilitate the DC exemption for these types of units and to enable the permission of small-scale residential development up to 3 units “as of right”.</p> <p>Official Plans and Zoning Bylaws cannot prohibit the use of up to three residential units on a lot where zero, one or two units are ancillary (i.e. ADUs). Official Plans and Zoning Bylaws also cannot require more than one parking space or establish a minimum floor area for ADUs.</p> <p>The Minister may make regulations to establish requirements and standards for second and third residential units.</p>	<p>Comments Kitchener is a leader in establishing land use and zoning permissions for second and third units on residential lands. Permissions for 2 units (e.g. duplexes) have existed in Kitchener’s zoning bylaw since the 1990s.</p> <p>Additionally, Kitchener was among the early adopters of a new zoning framework to permit 3 residential units, in the form of additional residential dwellings (attached and detached) across much of Kitchener. Kitchener’s regulatory framework strikes an appropriate balance between encouraging this form of missing middle housing and ensuring rules to enable appropriate building setbacks and lot sizes to address safety and servicing requirements.</p> <p>Subsection 35.1 (2) enables the Minister to make regulations establishing requirements and standards for second and third residential units. The City would support Province-wide standards for additional units as this would enable a consistent approach across Ontario municipalities. We suggest looking to Kitchener’s regulations for guidance which can be found here.</p>
<p>Matters of provincial interest The Minister may amend an OP if they are of the opinion that the plan is likely to adversely affect a matter of provincial interest. References to the Provincial Policy Statement and obligation of the Minister to provide municipalities with the opportunity to revise their Official Plans is proposed to be removed.</p>	<p>Comment Kitchener supports the continued use of the Provincial Policy Statement to assist with establishing matters of provincial interest and also supports a role for municipalities in decisions on their Official Plans.</p>
<p>Community Benefits Charges Establishes a maximum amount of CBC to specify that, in the case of additions, CBCs are pro-rated based on the land value in proportion to the net increase in floor areas only, as opposed to the entire property.</p>	<p>Comment Kitchener is in the process of considering the merits of a community benefits charge bylaw and has no comments on this change at this time.</p>

Proposed Amendment and What it Means	City of Kitchener Comments and Questions
<p>Additionally, if a project includes affordable or attainable units, CBCs are reduced in proportion total share of affordable or attainable units.</p> <p><i>Note – It is our understanding that on November 21, 2022 an amendment to Bill 23 was tabled and approved that clarifies that an agreement can be made with municipalities for in kind matters provided through CBCs. In kind matters were already permitted in the Planning Act.</i></p>	
<p>Site Plan Control Amends the definition of development to exclude developments that are 10 units or less.</p> <p>For all developments subject to site plan control, municipalities will no longer be able to request drawings and review matters related to exterior design including character, scale, appearance, design features, sustainable design.</p> <p><i>Note – It is our understanding that on November 21, 2022 an amendment to Bill 23 was tabled and approved that allows the review of matters relating to building construction where a bylaw has been passed in accordance with the Municipal Act. Additionally, sustainable design matters can be considered through site plan control.</i></p>	<p>Comment Kitchener is supportive of excluding certain types of dwellings from site plan control such as additional dwelling units and street fronting townhouse dwellings. Kitchener is also supportive of site plan control for land lease communities and takes a similar approach to vacant land condos to ensure functional, safe projects.</p> <p>Further, there is merit in continuing, at a minimum scoped site plan control for other forms of multiple dwellings to mitigate impacts to adjacent properties and ensure functionality for residents of the development including grading and drainage, tree conservation, lighting and waste storage.</p> <p>The matters noted above are important for safety and site functionality and may necessitate the use of other planning or municipal act tools like zoning bylaws to achieve the same means that is achieved through site plan control if site plan authority is removed for all housing forms 10 units or less.</p> <p>Kitchener takes a streamlined approach to development standards through our Urban Design Manual which gives flexibility to establish the best solution without a need for major or minor changes to zoning regulations. If standards are codified into zoning because site plan control is not an option, variances may increase to address the unique challenges of urban infill, adding additional process and time to a project approval.</p>

Proposed Amendment and What it Means	City of Kitchener Comments and Questions
	<p>Kitchener supports the removal of character as a review consideration for building elevations. Kitchener does not try to control aesthetics (i.e., materiality, architectural style) through site plan (elevation review). However, window and door openings, balcony placement and orientation of the building are important features in a 15-minute city (e.g. active transportation and equity). Consideration should be given to limiting exemptions to building materials and design style rather than full exemption from exterior design. Features such as windscreens and canopies, for example, are important from a health and safety perspective. Additionally, landscape design review could be scoped to placement, species and soil volumes for trees, drought-tolerant and non-invasive species and functional outdoor amenity to address matters of health and safety.</p> <p>Should the exclusion for landscape design come into effect, it will also have a revenue implication for plan review fees. Kitchener uses plan review fees to fund development review positions – consistent and predictable revenue is required to adequately staff that team to quickly process development approvals.</p> <p>The City is currently studying zoning permissions for missing middle housing opportunities in neighborhoods above and beyond the three-unit permissions that are proposed. If site plan review is not possible for developments of 10 units or less, the City will likely look to regulatory mechanisms (e.g. zoning) adding regulations to address important matters considered through the site plan review process. The site plan review process is important to address site compatibility and functional issues. Without any site plan review, new developments exempt from review could be lower quality and create greater concern for infill developments for the community within MTSAs. Kitchener has been very successful in meeting our intensification targets with large redevelopments as well as smaller infill projects – all approved quickly</p>

Proposed Amendment and What it Means	City of Kitchener Comments and Questions
	<p>through the site plan approval process. We've had 18 development projects worth almost \$1 billion dollars in just a few short years, which has doubled the core's population and radically transformed our built form.</p> <p>Bill 109 already implements new regulations in 2023 for the refund of site plan application fees, which is an incentive for local approval authorities to approve site plan in an expedient manner.</p> <p>We also would welcome Province-wide standards (<i>Ontario Housing Affordability Task Force</i> recommendation 12c) for evaluating acceptable micro-climate impacts including shadow, noise, and wind criteria. Having a set standard would allow the industry to design to this standard and eliminate the need for lengthy peer review of these studies (and implementing agreements) through the approval process.</p> <p>We welcome the opportunity to continue to review sustainable design matters through site plan control as it aligns with the trajectory that is being advanced through changes to building codes across the country, Kitchener's and Canada's commitments to addressing climate change mitigation and adaptation, and the initiative being taken by several Ontario municipalities on green development standards. There are efficiencies in building construction and operating costs that can be advanced through sustainable design.</p>
<p>Parkland Dedication - maximum rate Reduces the maximum rate of parkland dedication to:</p> <ul style="list-style-type: none"> • one hectare (ha) per 600 units (down from one ha per 300 units) for the conveyance of land; • and one ha per 1000 units (down from one ha per 500 units) for cash-in-lieu; • and in no case shall the land or value dedicated exceed 10% of the site area for sites 5 ha or smaller; or 15% of the site area for larger sites 	<p>Comments</p> <p>It is Kitchener's understanding that park land and cash-in-lieu of land conveyances will be reduced by at least 50% under Bill 23. The cap reduces higher density park land dedication substantially yielding negligible park land per person in higher density scenarios.</p> <p>In August 2022 Kitchener approved a new parkland dedication bylaw together with a parkland strategy, Places and Spaces. The changes proposed under Bill 23 are not consistent with Kitchener's parkland</p>

Proposed Amendment and What it Means	City of Kitchener Comments and Questions
	<p>dedication bylaw and policy. The strategy takes a balanced approach to parkland dedication that considers impacts on development proformas and realistic and achievable parkland provision targets. They generally enable the City to maintain its current park provision rate of 10 sq m per person. Lower, realistic targets are set for Major Transit Station Areas.</p> <p>The new strategy, by-law and policy utilize two critical limits to achieve the balance – a hard cap on cash-in-lieu of land, and a provision cap on land conveyances to be no greater than 10 sq.m. per person or 1 hectare per 300 units, whichever is lower. On the highest density sites, the by-law sets the maximum per unit cap that is 86% less than the maximum permitted under current legislation for the highest density sites (less than 1 ha per 1000 units). Furthermore, it uses a ‘book value approach’ rather than individual appraisals to reduce red tape. Kitchener’s by-law sets the stage to provide critical open space needed to support more housing, while mitigating impacts on developers bottom line and, consequently, housing supply.</p> <p>Sites that have provided parkland dedication through a site plan control process but have not yet received a building permit may be eligible for a park dedication rebate under Bill 23. Kitchener has concerns with this approach.</p> <p>One of the predicted outcomes of this bill is that newly developed greenfield communities would have <u>30% less local park space</u> than the current <u>average</u> community in Kitchener. Impacts are even more severe through infill and intensification areas. Higher density developments will erode existing park supply with an inability to generate park land commensurate with target provisions.</p> <p>Kitchener recommends that its park dedication by-law, along with others recently passed in the province, be tested at the OLT and be implemented</p>

Proposed Amendment and What it Means	City of Kitchener Comments and Questions
	for a period of time prior to making additional changes to the legislative framework for park dedication.
<p>Parkland Dedication - exemptions Bill 23 proposes to exempt existing residential units, affordable rental units, Additional Dwelling Units (backyard homes), duplexes and triplexes from parkland dedication requirements.</p> <p>Additionally, exemptions are proposed for affordable ownership and attainable housing.</p>	<p>Questions of clarification Kitchener’s new parkland dedication bylaw already provides for these exemptions. Clarification is needed on whether any project including one or more affordable units is necessarily subject to the standard 5% requirement, or if the alternate rate could be applied proportionally.</p> <p>Depending on how affordable ownership and attainable housing are defined and implemented, this could result in a significant reduction in parkland dedication with negative impacts on park provision. Clarification is needed on definitions of affordable ownership and attainable housing.</p>
<p>Parkland Dedication - lands suitable for conveyance and OLT appeal Provides the ability for developers may propose land to be dedicated to the city to meet all or part of their park dedication requirement with little to no ability for municipalities to provide input or take direction from their parkland policies. The Bill spells out that the following lands are eligible for dedication:</p> <ul style="list-style-type: none"> • Parks on top of private parking garages • Parks with private underground stormwater cisterns, infiltration galleries, or other infrastructure. • Privately owned public spaces (POPS) <p>Bill 23 goes further to state that if municipalities do not accept the proposed land, it can be appealed to the OLT resulting in inadequate or undesirable land being acquired by municipalities for park purposes.</p>	<p>Comments Kitchener recognizes the value and need for a variety of parkland types to support communities and that these can be delivered in ways that differ from traditional parkland forms. This includes parks which are encumbered, are strata, and are privately owned publicly accessible spaces. Kitchener’s new parkland dedication by-law provides partial credit for POPS. However, like other municipalities, Kitchener believes that these are not equal to publicly owned park spaces. They do not provide reliable reinvestment in assets as they age, and wear and management is not accountable to a wider community. In addition, as has been demonstrated across North America, these spaces are not maintained as consistently, or as equitably accessed as traditional public parks. For this reason, while Kitchener agrees that these forms of parkland have value and should be credited, they should not be provided credits equal to publicly owned parkland spaces. Nor should the OLT have the ability to mandate municipalities to take ownership of land that has the potential to be small, fractured, awkwardly shaped, have unsuitable topography, with poor access, unmaintainable, un-programmable or otherwise unsuitable for park purposes.</p>

Proposed Amendment and What it Means	City of Kitchener Comments and Questions
	While the City is concerned with proposed changes to the required rates of parkland dedication, the ability of the OLT to mandate the taking of land that is unsuitable for parks has potential long-term implications to the financial health of Kitchener’s parks and its ability to provide suitable open spaces for passive and active recreation that are critical to good urban life. The quantity, quality and even public nature of parks in Ontario may be negatively impacted by this proposed change and is not supported by Kitchener.
<p>Parkland Dedication - allocation of Cash-in-lieu Beginning in 2023 and each year thereafter, municipalities are required to spend or allocate at least 60% of the monies in the parkland reserve at the beginning of the year.</p>	<p>Comment Kitchener has made efficient use of its parkland reserve that includes a plan for its expenditure in a planned, timely fashion. This proposed change will add administrative steps to an already efficient process. Please clarify what is meant by ‘allocate’ in this case</p>
<p>Minor Variances <i>Note – It is our understanding that on November 21, 2022 an amendment to Bill 23 was tabled and approved that removes the 2-year moratorium on applying for a variance on a property where one has been applied for within the previous 2 years.</i></p>	Kitchener currently uses its authority under the Planning Act to waive the 2-year moratorium requirement and as such has no concerns with this change at this time.
<p>Subdivision of Land Proposed removal of the requirement to hold a public meeting for subdivisions.</p>	<p>Comment In almost all instances in Kitchener, subdivision applications are accompanied by a zoning by-law amendment application which still requires the holding of a public meeting. This proposed change will not make a substantive difference to the subdivision process.</p>
Ontario Land Tribunal Act, 2021	
<p>New Powers to Dismiss Appeals Without Hearings These changes provide the Tribunal with new powers to procedurally dismiss appeals without hearings where there is undue delay by the party bringing the proceeding, or where a party fails to comply with an order of the Tribunal.</p>	<p>Comments Kitchener has no concerns with this change. This increased power will mean more efficient and organized hearings</p>
<p>Direction to award costs These proposed changes will give the OLT express power to order an unsuccessful party to pay a successful party’s costs. Prior to this change,</p>	<p>Comments This change, combined with the pressure created by Bill 109 to render a decision within the statutory time period (rather than working with the</p>

Proposed Amendment and What it Means	City of Kitchener Comments and Questions
<p>costs were rarely awarded by the Tribunal, and only in exceptional circumstances where “the conduct of course of conduct of a party has been unreasonable, frivolous or vexatious or if the part has acted in bad faith”. The province has indicated that the purpose of this proposed amendment is to encourage parties to resolve outstanding issues without going to the OLT.</p>	<p>developer to resolve issues during the review process) will create additional pressure on Council to approve development, even where it may not align with Provincial or Municipal Policy. The Costs awarded against the City would be funded by municipal taxes and could reach into the range of \$100K+ for hearings. This, combined with the removal of appeal rights of residents, unfairly tips the balance of any development approval in favour of the developer. Costs should not be awarded where substantial effort has been made by a Party for a fulsome hearing, and where every effort is made to scope and resolve issues prior to a hearing, and where a Party provides evidence for all issues. The City does not object to awarding costs where an appeal is used as a delay tactic and a where a Party is not productive and does not provide a reasonable effort to participate.</p>
<p>Conservation Authorities Act, 1990 – ERO Posting 019-6141</p>	
<p>Powers of Conservation Authorities The disposition of certain lands held by conservation authorities will no longer require Minister’s approval, just notice of disposition. Requirements for public notice and consultations (in certain circumstances).</p>	<p>Questions of clarification Clarification on what certain lands would be and how any potential impacts on natural lands will be considered prior to disposition is needed.</p>
<p>Municipal programs and services The Conservation Authorizes Act currently authorizes Conservation Authorities to provide, programs and services that it agrees to provide on behalf of a municipality under a memorandum of understanding in respect of the programs and services.</p> <p>Bill 23 proposes to limit these programs and services and will no longer permit conservation authorities to review or comment on development applications on behalf of municipalities or collect fees for such services.</p> <p>The conservation authorities services will be limited to “category 1” programs and services only which include matters related to:</p> <ul style="list-style-type: none"> • natural hazards (e.g. flooding, slope erosion etc.) • Source protection (Clean Water Act) 	<p>Comments Kitchener is currently part of a memorandum of understanding with the Region of Waterloo and Grand River Conservation Authority regarding services provided by the GRCA on behalf of the Region and local municipalities. This MOU together with our good working relationship has served Kitchener well over many decades. Kitchener works in partnership with the Region and GRCA on matters related to natural hazards and natural heritage to ensure a consistent streamlined approach to conservation, enhancement, and restoration.</p> <p>Further to our comments above on upper-tier planning authorities without planning responsibilities, should those changes advance, coupled with the proposed changes to the Conservation Authorities Act there will</p>

Proposed Amendment and What it Means	City of Kitchener Comments and Questions
<ul style="list-style-type: none"> • Watershed based resource management • Provincial water quality monitoring <p>Conservation Authorities will no longer be permitted to review matters related to natural heritage, sub-watershed planning, and watershed services.</p> <p>Additionally, a conservation authority permit will no longer be required for development within a regulated area where a planning act approval has been granted.</p>	<p>be no cross municipal jurisdiction to ensure a consistent approach to the conservation, protection and restoration of natural heritage systems.</p> <p>Questions of clarification It is our understanding that conservation authorities will also no longer be permitted to comment on natural heritage matters nor issue permits on the same as part of infrastructure undertakings under the Environmental Assessment Act. Clarification is required on what are permitted/prohibited matters of conservation authority comments outside of Planning Act applications (e.g. the EA Act, Drainage Act).</p> <p>Clarification is also needed on the role of conservation authorities in master planning studies such as subwatershed studies and related community/secondary plan processes.</p> <p>Finally, it is our understanding that for certain municipalities and under certain conditions (not yet identified), an approval under the Planning Act could remove the requirement for a permit under the Conservation Authorities Act for activities associated with the approved development. Clarification is needed to understand whether municipalities would assume sole liability for the impact of development on natural hazards within municipal boundaries and on neighbouring upstream and downstream communities.</p>
<p>Fees A new section authorizing the Minister to direct Conservation Authorities not to charge the fees it charges for a program or service for a specified period of time.</p>	<p>Questions of clarification Will the revenue stream continue to be adequate to resource their remaining responsibilities should the new powers by the Minister be utilized? There may be downstream implications on municipalities.</p>
<p>Prohibited activities Currently, subsection 28(1) of the CA Act provides a blanket prohibition on certain activities (such as certain development activities and activities that would interfere with a watercourse or a wetland, etc.) without a permit. Several factors must be considered by conservation authorities</p>	<p>Questions of clarification Related to comments above, clarification is needed to understand who retains or now has the authority to consider matters related to pollution and the conservation of land. Kitchener reiterates its comments that some matters cross municipal boundaries and there continues to be benefit for cross jurisdictional coordination.</p>

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<p>when making these decisions including control of flooding, erosion, dynamic beaches, pollution or the conservation of land.</p> <p>Bill 23 proposed to remove pollution and the conservation of land as factors that conservation authorities can consider.</p>	
Ontario Heritage Act, 1990 ERO Posting 019-6196	
<p>Alterations</p> <p>Bill 23 proposes to include demolition and removal as part of any alteration whereas the Act currently does not includes demolition and removal for the purposes of specific sections of the Act.</p>	<p>Questions of clarification</p> <p>Clarity is needed as to the purpose of this change. As it is proposed this may result in a difference in process when dealing with alterations of listed properties which currently do not require a heritage permit.</p>
<p>Provincial powers to exempt properties from OHA</p> <p>Bill 23 proposes to allow the Lieutenant Governor in Council to exempt the Crown, or ministry or prescribed public body to not comply with some/all of certain heritage standards/guidelines if the Lieutenant Governor in Council is of the option that an exemption could advance provincial priorities in the areas of:</p> <ul style="list-style-type: none"> • Transit • Housing • Health and long-term care • Other infrastructure • Other priorities that may be prescribed 	<p>Comments</p> <p>Kitchener continues to see merit and value in finding a balance between cultural heritage conservation and the provincial priorities outlined in this section of Bill 23, including on properties owned or operated by the Province and other prescribed bodies.</p> <p>Questions of clarification</p> <p>Clarity is needed to understand what other priorities may be prescribed.</p>
<p>Heritage register</p> <p>A heritage register may continue to include properties that are not designated but must now have a statement of significance confirming what criteria the property meets in addition to Council direction that the property may be of cultural heritage value or interest.</p> <p>Bill 23 also proposes to extend objection rights to property owners of properties that are already listed on the heritage register. Currently objections can only be made at the time that a property is listed on the heritage register. Any owner with property added to the list as of June 30, 2021 or on / after July 1, 2021 can object to their property being added and have council reconsider the decision.</p>	<p>Comments</p> <p>Kitchener currently maintains a list of properties with an ‘under review’ status which consists of properties that may have cultural heritage significance subject to a future assessment. Kitchener has concerns with the proposed change to this mechanism to Bill 23 as it appears that short term measures for heritage conservation are being limited or removed.</p> <p>It is our understanding that this proposed change would allow owners of all properties currently listed on a heritage register to object to the listing. Owners of a listed property can now object to being on the Register regardless of when their property was added. Kitchener is seeking</p>

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<p>Bill 23 also proposes that all properties currently on the register and those added to the register on or after the day Bill 23 comes into effect must be designated within two years or the properties are automatically removed from the register and cannot be added back to the register for a period of 5 years.</p> <p>Bill 23 proposes that consultation with a municipal heritage committee is not required for the removal of a property from the register.</p>	<p>clarification on what criteria may need to be met for a property to be removed by owner’s request.</p> <p>Kitchener’s current process to assess cultural heritage value works well and is integrated into our development review process.</p> <p>Kitchener currently asks for a Heritage Impact Assessment (HIA) for properties that are listed, or adjacent to a listed property. This provides an opportunity to determine and mitigate any potential impacts, as well as initiate conversations about potential designation at the same time as working with the developer on ways that the site can be developed. Kitchener is concerned that this proposed change through Bill 23 will remove the opportunity for these conversations which have been generally successful in Kitchener. Kitchener has always balanced heritage conservation with matters of public interest and have proven success with the reuse and redevelopment of heritage resources for healthcare, housing development, award winning offices, and vibrant commercial spaces.</p> <p>Kitchener is concerned that these changes will diminish a municipality’s ability to designate significant cultural heritage resources, where they are evaluated to determine their significance resulting in potential significant loss of Kitchener’s cultural heritage. Completing an evaluation and designation process for all cultural heritage resources on Kitchener’s register within a 2-year timeframe will at best be challenging. Kitchener is supportive of advancing work on reviewing its register and requests that the proposed 2-year timeframe be revisited.</p> <p>Kitchener’s heritage committee provides valuable insights and perspectives on Kitchener’s cultural heritage resources. Given the 2 year requirement mentioned above, seeking input from Heritage Kitchener will be challenging. Kitchener is an industry leader as some Heritage Permit Applications are delegated to staff and are processed in a timely manner.</p>

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<p>Heritage Designation - property Where a property is the subject of an Official Plan or Zoning Bylaw amendment or plan of subdivision and there is a matter of cultural heritage value on the property, the property must already be listed on the register and council must give notice of intention to designate the property within 90 days of the approval of the Official Plan/Zoning Bylaw amendment or plan of subdivision.</p>	<p>Comments Kitchener acknowledges the opportunities to further streamline development review process should designation occur at the Official Plan amendment or Zoning Bylaw amendment stage. However, there is concern that this may result in the loss of potential heritage resources. Properties that are in the Kitchener Heritage Inventory are reviewed and considered for listing or designation based off the recommendations of a Heritage Impact Assessment. The recommendations of the HIA are largely implemented at the site plan stage. This change will no longer provide the opportunity for a municipality to evaluate and list properties on the register as part of development applications.</p>
<p>Heritage Designation – district Bill 23 would require that Official Plans not only contain provisions about the establishment of heritage conservation districts but also that Official Plans outline criteria for determining a heritage conservation district.</p> <p>Provisions have been added to allow the amendment or repeal of a heritage conservation district bylaw and plan.</p>	<p>Comment Kitchener appreciates the potential flexibility introduced in the proposed legislation for amendments to heritage conservation districts. However, Kitchener continues to be supportive of a comprehensive evaluation and assessment of heritage conservation districts as a whole. An amendment process may compromise the intent of the heritage conservation district</p> <p>Questions of clarification The ability to amend a HCDP is helpful as Kitchener could update our HCDP to reflect attribute changes of the area and implement new best practice, etc. However, if it allows actions such as the removal of homes from the district per owner request, this may cause fragmentation which defeats the purpose of an HCD which generally is to conserve the character of an area as a whole or have other negative implications. Are site specific repeals being contemplated with Bill 23?</p>

Proposed updates to/new Regulations

[Proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario - ERO Posting 019-2927](#)

Summary of Regulation

The ministry is proposing to make a single provincial regulation to ensure clear and consistent requirements across all conservation authorities while still addressing local differences. The proposed regulation would focus permitting decisions on matters related to the control of flooding and other natural hazards and the protection of people and property. These proposed changes are consistent with Bill 23.

Comment

Kitchener does not have concerns at this time with the principle of a single provincial regulation for conservation authorities for consistency provided that local differences are reflected. Additional comments on proposed changes to the Conservation Authorities Act through Bill 23 are provided above.

Proposed change to O.Reg 299/19: Additional Residential Units - ([ERO posting 019-6197](#))

Summary of Regulation

Changes are proposed to this regulation to be consistent with changes to additional dwelling unit changes to the Planning Act as part of Bill 23. Official Plans and Zoning Bylaws cannot prohibit the use of up to three residential units on a lot where zero, one or two units are ancillary (i.e. ADUs). Official Plans and Zoning Bylaws also cannot require more than one parking space or establish a minimum floor area for ADUs.

The Minister may make regulations to establish requirements and standards for second and third residential units.

Comment

Kitchener is a leader in establishing land use and zoning permissions for second and third units on residential lands. Permissions for 2 units (e.g. duplexes) have existing in Kitchener's zoning bylaw since the 1990s.

Additionally, Kitchener was among the early adopters of a new zoning framework to permit 3 residential units, in the form of additional residential dwellings (attached and detached) across much of Kitchener. Kitchener's regulatory framework strikes an appropriate balance between encouraging this form of missing middle housing and ensuring rules to enable appropriate building setbacks and lot sizes to address safety and servicing requirements.

Subsection 35.1 (2) enables the Minister to make regulations establishing requirements and standards for second and third residential units. The City would support Province-wide standards for additional units as this would enable a consistent approach across Ontario municipalities. We suggest looking to Kitchener's regulations for guidance which can be found [here](#).

Proposed change to O.Reg 232/18: Inclusionary Zoning - ERO posting 019-6173

Summary of Regulation

The proposed changes include a shifting of responsibility for protected major transit station areas (PMTSAs) from the Region of Waterloo to the lower tier municipalities. To enable inclusionary zoning and provide appeal shelter PMTSA policies must now include land uses, minimum densities and delineation of PMTSA boundaries. The proposed changes also:

- set an upper limit of 5% of the total proportion of units/floor area in a development that can be required to be affordable
- set a maximum affordability period of 25 years
- exempt affordable units secured through inclusionary zoning from development charges, community benefits charges, and parkland dedication
- prescribe the approach to determine the lowest price/rent that can be required for inclusionary zoning units, which is proposed to be set at 80% of the average market rent for rental units
- limits the amount of parkland to be conveyed for developments or redevelopments if they include certain defined classes of affordable units to a maximum of 5% of the land multiplied by the ratio of the number of affordable units to the total number of units in the development

Comment

Kitchener supports a consistent approach to inclusionary zoning across the province, however there may be some challenges. The potential of a 5% threshold may limit opportunities to create a significant number of inclusionary zoning affordable units in strong market areas and the ability to modify inclusionary zoning requirements (i.e. increase them) over time when markets strengthen and have the capacity to absorb an increase. In the short term and in weaker markets a 5% threshold is likely appropriate. Through Kitchener's coordinated exploration of inclusionary zoning with the cities of Cambridge, Waterloo, and the Region of Waterloo we are exploring and see the benefit to balancing longer term affordability with depth of affordability. A 25-year affordability duration combined with a 5% affordable unit threshold can likely be incorporated into a successful policy. However, continuing to provide municipalities with the ability to understand their markets and explore depth and longevity of affordability to ensure the most appropriate approach for local context is of utmost importance.

Further, Kitchener can see how DC, CBC and parkland dedication exemption for inclusionary zoning units would assist with their financial viability. Additional work is needed at the local level to understand the financial impacts of these proposed exemptions.

The proposed lower limit for affordable rents that can be required through inclusionary zoning generally aligns with the rent thresholds being contemplated through Kitchener's inclusionary zoning work. Clarity is needed on how affordable ownership will be defined. Kitchener also suggests that a more equitable approach to determining lowest price/rent would be based on incomes rather than market.

And finally, should the Province include inclusionary zoning units within the list of defined classes of affordable units, developments that include these units would have reduced parkland requirements which may have a positive effect on the financial feasibility of inclusionary zoning. However Kitchener needs to understand whether there are any long-term implications of the potential change on our ability to acquire parkland.

Proposed updates to the Ontario Wetland Evaluation System (OWES) - [ERO Posting 019-6160](#)

Summary of proposed change

Proposed updates to the Ontario Wetland Evaluation System include:

- added guidance related to re-evaluation of wetlands and updates to mapping of evaluated wetland boundaries
- changes to better recognize the professional opinion of wetland evaluators and the role of local decision makers (e.g. municipalities)
- other housekeeping edits to ensure consistency with the above changes throughout the manual

It is indicated that these changes will allow for further streamlining of development decisions by removing the requirement for the ministry to review and confirm wetland evaluation results.

Comments

It is our understanding that wetland evaluations will be completed by certified wetland evaluators but will no longer be reviewed and accepted by Provincial wetland biologists. Further it is our understanding that a wetland re-evaluation will be considered complete once it has been received by a decision maker addressing a land use planning and development/resource management matter providing limited to no ability for a municipality to review, comment, and accept/reject the re-evaluation. The proposed changes to OWES entirely removes the responsibility for the assessment and acceptance of wetland (re-)evaluations from the Province (OMNRF) where scientific and technical wetland expertise resides. This, along with the proposed changes to the Conservation Authorities Act, means that Kitchener cannot rely on our agency partners for this expertise. It appears that the municipality (Kitchener) will be the sole “decision maker” and we are currently not resourced with the technical expertise for this type of review, and this may present challenges. Kitchener strongly recommends the continuation of Provincial scientific, evidence-based, peer review process to wetland evaluation and re-evaluation.