



Planning and Development Services

Prepared for	Council-in-Committee	Report No.	PDS-73-2022
Agenda Date	November 21, 2022	File No.	120204

Subject	PROPOSED PROVINCIAL BILL 23 – MORE HOMES BUILT FASTER ACT, 2022
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Recommendation	THAT Council receives Report No. PDS-73-2022 regarding the Province of Ontario proposed Bill 23 – <i>More Homes Built Faster Act, 2022</i> , and directs staff to forward Report No. PDS-73-2022 to the Province of Ontario, drawing attention to the Town’s comments.
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Relation to Council’s 2018-2022 Corporate Strategic Plan	Priority: Managed Growth through Responsibility, Stewardship and Preservation Initiative: 5.2 Review the Town’s policies to ensure responsible growth principles guide development approvals.
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List of Stakeholders	The Corporation of the Town of Fort Erie Regional Municipality of Niagara Province of Ontario Niagara Peninsula Conservation Authority Residents / Property Owners in the Town of Fort Erie
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Prepared by: ORIGINAL SIGNED	Submitted by:	Approved by:
Chris Millar, MCIP, RPP, CNU-A Senior Community Planner	ORIGINAL SIGNED	ORIGINAL SIGNED
Reviewed by: ORIGINAL SIGNED		
Signe Hansen, OALA, CSLA, MBA Manager, Community Planning	Alex Herlovitch, MCIP, RPP Director, Planning & Development Services	Chris McQueen, MBA, Chief Administrative Officer

Purpose

The purpose of this report is to update Council on the recent release of the Province of Ontario Bill 23 - *Build More Homes Faster Act* and to seek authorization to submit the comments identified in this report to the Provincial of Ontario.

The proposed Bill is an omnibus bill containing sweeping changes to multiple legislative and regulatory statutes including the *Planning Act*, *Development Charges Act*, *Conservation Authorities Act*, *Ontario Land Tribunal Act*, and the *Ontario Heritage Act*. In total, 10 separate Acts are subject to amendment under this Bill.

Commenting deadlines for the proposed amendments to the various Acts and Regulations contained in Bill 23 have varied deadlines. Notably, commenting on the proposed changes to the *Planning Act* and *Development Charges Act* are due November 24, 2022. A list of the various Environmental Registry of Ontario (ERO) postings and respective commenting deadlines can be found as **Appendix “1”** to this report.

The impact of several other recent Bills introduced (e.g. Bill 109) by the provincial government impose requirements for accelerated application processing timelines and related financial implications. Staff will be preparing a future report to outline the impact of these changes, and propose recommendations to Council for the Town to streamline planning related processes, delegate certain authorities and establish approval timelines to avoid financial penalties.

Analysis

Background

The Provincial government has been taking aggressive steps towards addressing the ‘Housing Crisis’ over the past several years. This includes introduction of omnibus bills

spanning related legislation and their enabling regulations, in effort to reduce the time it takes to process development approvals.

Bill 108 (June 6, 2019) shortened Council decision timelines for appeal purposes. Bill 109 (April 14, 2022) applied a punitive framework for development application processing timelines and delegated certain responsibilities to local staff in an effort to expedite approval processing. It also increased Ontario Land Tribunal (OLT) resources to assist in clearing the backlog of existing appeals and appeal processing.

This most recent Bill 23 takes additional steps, building on the Province's strategy to construct 1.5 million homes by 2031 and proposing some significant changes to the legislation noted earlier. Not all amendments proposed under Bill 23 have direct implications on the Town of Fort Erie. Some are specific to the City of Toronto, regions outside of Niagara, or changes with respect to the Greenbelt and Niagara Escarpment Plan Areas.

In addition, the Province has indicated additional changes are pending as they work towards merging the *Provincial Policy Statement* and *A Place to Grow: Growth Plan for the Greater Golden Horseshoe*, and ensuring the Building Code is responsive to the changes under this Bill.

The Province has issued aggressive timelines for much of their recent changes (Bill 109 and proposed Bill 23) to which local and regional governments will be required to comply and adapt procedurally in an expeditious manner.

Staff offer the following summary of proposed amendments believed most relevant to the Town. With Council approval, staff will submit comments to the Province's ERO prior to the stated commenting deadlines. Interpretation and refinement to staff's understanding of these amendments may be forthcoming in the months ahead as regulations are released to support this new Bill.

Bill 23 Summary and Implications

Planning Act – While there are many changes proposed to the *Planning Act* under the Bill 23, some are not applicable to the Town. The summary below provides information on the proposed *Planning Act* amendments staff believe are the most notable and impactful to the Town of Fort Erie, following internal review, discussions with municipal partners, and gleaned provincial and industry publications on the topic.

- Removal of Planning Responsibilities from Niagara Region –The Bill proposes to remove planning authority over lower-tier planning matters from seven upper-tier regional governments, and download all planning decisions to the local municipalities. Niagara Region is one such municipality that will be known as an “upper-tier municipality without planning responsibilities” (UTMWPR).

- Ministry of Municipal Affairs and Housing (MMAH) Approval Authority – As a consequence of the above noted classification of Niagara Region as a UTMWPR, the MMAH will be the approval authority for the Town's Official Plan once updated.

Furthermore, with the recent approval of Niagara Region's new Official Plan (November 4, 2022), the Province is directing local municipalities to use the Region's Official Plan as an in-effect policy document until such time as local municipalities update their own local Official Plans and they are approved by the Province. Planning staff are still assessing and seeking clarity relative to the application of the existing Town Official Plan and the downloading of the Regional Official Plan in the review and processing of new development applications.

- Statutory Public Meetings for Plans of Subdivision – Statutory public meetings for Plans of Subdivision will no longer be required.
- Additional Residential Units (ARUs) – In keeping with earlier efforts to encourage gentle intensification, as-of-right permissions will allow up to 3 ARUs on a residential property. Specifically, this can be 3 units within a residential structure or 2 units within a residential structure and an additional dwelling unit in an accessory structure such as an apartment above a garage. Furthermore, municipalities cannot require more than one parking space per dwelling unit for these expanded provisions, nor can the Town's By-law dictate a minimum dwelling unit size. ARUs will be exempt from Development Charges as well as Parkland Dedication, whether through retrofit or new development providing ARUs.
- Parkland Dedication - Bill 23 proposes several changes to *Planning Act* provisions that currently allow municipalities to require the dedication of land (or payment of cash in-lieu) for the purpose of public parks as a condition of development/redevelopment or subdivision of land – generally referred to as Parkland Dedication. These amendments will have a significant impact on the provision of parkland to the community. The proposed changes generally relate to the reduction of parkland dedication requirements where affordable and attainable housing is provided and the tightening of restrictions on municipalities' ability to acquire parkland.

Specifically, affordable and attainable residential units, non-profit housing and ARUs will be exempt from parkland dedication requirements.

Municipalities will be required to spend a minimum of 60% of their cash-in-lieu account (Parkland Reserve) each year.

With respect to parkland provisions for higher density or larger development, which is based on the number of proposed units, parkland dedication has been reduced by 50% from 1 hectare per 300 dwelling units to 1 hectare per 600 net residential units. A cap on the maximum percentage of land or value that can be conveyed will apply.

Amendments also propose to allow landowners to identify lands they wish to convey to the municipality as per parkland dedication requirements, and can appeal the rejection of those lands by the municipality to the Ontario Land Tribunal, meaning conveyed parkland may not be in an appropriate location or of an appropriate size or condition to suit the municipality's parkland needs.

- Community Benefit Contributions – Bill 23 proposes several changes to the *Planning Act* to encourage the development of affordable and attainable housing. The maximum amount of a community benefit charge (CBC) will be based on the land value only of new buildings or structures on a development site, and affordable/attainable residential units will be exempt from community benefits charges. The Town's Community Benefit Study will require an update to reflect these legislative changes.
- Restricting use of Site Plan Control – Municipalities will no longer be able to require site plan control on developments with 10 or fewer residential units. In addition, the exterior design/aesthetics/urban design of developments with 10 or fewer residential units will no longer be subject to municipal review. This may have negative effects on areas or districts of identifiable or historical character, as it is envisioned this type of development will be occurring as infilling sites or redevelopment of sites within an established built-up area or streetscape.

Development Charges Act – Development charges are another tool used to ensure that new development and growth can pay for itself and provide community benefits. The Bill proposes a number of exemptions that will shift the cost of certain new development to the taxpayer.

- Exemption and Reductions - The Bill will either provide exemption to or reduce the rate of Development Charges (DCs) on affordable housing, attainable housing and purpose-built rental housing. Reducing this revenue source will impact capital improvement project funding that is a consequence of new growth. Without private sector funding, any supplement is expected to come primarily from the tax base through increased levies.
- Eligible costs – Changes to what is eligible for DC funding is reduced. As an example, studies related to capital growth planning, such as the Development Charges Study and secondary plan studies, may no longer be eligible.
- By-law Period – Development Charge By-laws would be moving to a 10-year renewal cycle as opposed to the current 5-year cycle which will provide for less flexibility in changing economic climates.

Conservation Authorities Act – Bill 23 has a significant impact on the mandates of the Conservation Authorities and their role relative to land use planning and growth of our

communities. It should be noted that previous responsibilities of the Region and/or NPCA are being removed and downloaded to the local municipalities for review and approval. A few of the notable changes to the Conservation Authorities Act through Bill 23 include:

- Consolidation of Power under the Minister – Allows the Minister to override a Conservation Authority (CA) on such matters as required fees, permits and conditions, and permit development in hazard lands, wetlands, river or stream valleys, wave uprush and erosion areas.
- Changes to CA Approval Process – Removes the CA's ability to comment on planning applications outside their core mandate of natural hazard and flood protection and introduces shorter commenting timelines. Additionally, disputes would be heard by the Minister, bypassing the need to go to the respective CA Board first to seek decision.

Ontario Land Tribunal Act – Generally, the Bill is focused on the more rapid processing of OLT appeals and shielding it from nuisance appeals. The following are some of the notables respecting proposed OLT Act changes:

- Third Party Appeals: Third party appeals would no longer be permitted under the proposed amendments. The legislation would deem all third party appeals already filed to have been dismissed if a hearing was not scheduled as of October 25, 2022, the day Bill 23 was first introduced.
- Tribunal dismissal wording simplified – modified and simplified respecting the Tribunal's ability to dismiss an appeal without a hearing for reasons of undue delay.
- Awarding of costs – wording would appear to elevate the significance of awarding of costs as a warning or deterrent to those who may appeal on frivolous and vexatious grounds.
- Prioritization – allows for prioritization of certain class of appeals that are less complex (less time needed to resolve) together with consideration given to highest yield returns to be heard first.
- Prescribed timelines placed on the Tribunal – OLT resourcing will be assessed to keep processing at an acceptable or expedited rate. This is intending to signal that the Province is doing its part to insure undue delay, should an application end up before the OLT.

Ontario Heritage Act – the Bill seeks to address concerns over the Heritage Act being used to stave off development interest.

- Heritage Register limitations - Properties listed on the Municipal Register will no longer be allowed to remain indefinitely. The Bill proposes that properties may only be listed on the Municipal Register for a period of two years. Should designation not advance within two years, the listed property will be removed from the Register and could not be placed back on for a period of 5 years. Consultation with a Municipal Heritage Committee will not be required if a property is removed from the Register because the two-year time period has elapsed.
- A Council cannot designate a property that is not listed on the Municipal Register - Within 90 days of the initiation of an official plan amendment, zoning by-law amendment, or plan of subdivision application on a property, the municipality could only give notice of intention to designate the property under the *Ontario Heritage Act* (OHA) if the property is already listed on the Municipal Register.
- Exemptions as determined by the Lieutenant Governor in Council - Heritage standards and guidelines may not apply if an exemption by order for a specific property may advance one or more provincial priorities including transit, housing, health and long-term care, other infrastructure, or such other priorities as may be prescribed.

In summary, this latest release of omnibus Bill 23 follows a relatively quick succession of prior Provincial directives and legislative intervention as part of the Province's broader strategy to *Build More Homes Faster*. The consequences of the proposed amendments to the suite of Acts are still being analyzed by public and private sector interests, and impacts and interpretations being discussed are still very new throughout the industry. While additional changes to the relevant legislation were anticipated since release of Bill 109, the scale of these amendments are still being measured for impact by local and regional governments. As mentioned above, Town staff will be preparing a future report to outline the impact of these changes, and propose recommendations to Council for the Town to streamline planning related processes, delegate certain authorities and establish approval timelines to avoid financial penalties.

Recommended Comments to the Province

Based upon the information and analysis presented in this report, Staff recommend submitting the following comments to the Province by way of the Environmental Registry of Ontario, prior to the November 24, 2022 deadline.

Bill 23, as presented, falls short in addressing the stated goals of increasing housing affordability or supply, and improving processes. It may result in the loss of environmental protections, heritage conservation, urban design, and accountability to the public, in addition to severe financial implications for the Town, Region and taxpayer.

1. Bill 23 will have a significant and immediate financial and operational impact on lower tier municipalities, due to the downloading of substantial responsibilities

from upper tier municipalities and conservation authorities. The Town requests an appropriate transition period such that lower tier municipalities can build the necessary expertise and capacity to effectively manage downloaded responsibilities.

2. The Town is supportive of maintaining public meeting requirements for Plans of Subdivision, in order to ensure transparent development application processes and meaningful community engagement, despite the removal of third party appeals to the Ontario Land Tribunal. The Town believes such consultation is necessary for the greater public good, and is not an impediment to advancing affordable and attainable housing.
3. The proposed financial exemptions to development charges, parkland dedication and community benefit charges will effectively transfer the financial responsibility related to growth from private developers to the individual taxpayer and will not necessarily result in affordable or attainable housing.
4. Further to the ADU permissions being required in municipal zoning by-laws by the Province, and receiving relief from development charges and parkland calculation, Town staff believe it was the Province's intention to open up ADUs for the specific purpose of long-term rental. Measures must be considered to avoid the use of ADU's as short-term rentals (STR) outside of municipal licencing. Property owners, particularly those in downtown core areas, high tourist areas and along waterfronts, may see this as an opportunity to avoid development charges for the sole purpose of establishing STR use, which would not serve the Provincial agenda in which it is intended.
5. Exemptions from Site Plan Control and urban design requirements for development under 10 units will, especially in mature neighbourhoods and downtown districts, negatively impact their existing character and heritage quality due to the removal of a primary quality control mechanism to promote good planning and urban design. Minimizing the importance of excellence in design will limit a municipalities ability to implement requirements established in Official Plans, protect heritage character as well as climate change initiatives that make our neighbours unique and sustainable.
6. The proposed OHA changes provide inadequate time to undertake the designation of the quantity of properties currently on the Municipal Register and requires a reasonable transition period of at least five years after the passing of Bill 23. The five-year moratorium of adding a property back onto the Register is detrimental to the preservation of the heritage attributes of a community.
7. Proposed legislation to permit the landowners to identify land to be conveyed as parkland could result in lands unsuitable in size, location or quality for the municipalities to develop or maintain as useful parkland or recreational facilities

and is effectively contrary to the requirement for a municipal park master plan to guide future park development.

8. For municipalities that collect relatively small amounts of cash-in-lieu of parkland, it may take several years to accrue adequate funds for growth-related costs of land for parks and other recreational purposes. In such cases, the expenditure of 60% of collected cash-in-lieu per year does not support this intent and will negatively impact the provision of parks and recreational facilities that support a healthy and active community.
9. Permissions to allow 3 dwelling units on one parcel conflicts with provisions of the Ontario Building Code (OBC) relative to the servicing of a property, requiring appropriate amendments to the OBC.
10. Council strongly recommends that substantial Provincial investment be provided to support municipalities to fund anticipated infrastructure upgrades to accommodate new intensification goals and compensate for decrease of development charge, parkland dedication and community benefit funding opportunities as outlined in the proposed legislation.

Financial/Staffing and Accessibility (AODA) Implications

The aggressive steps already approved through Bills 108 and 109 are further compounded by the proposed changes of Bill 23. Of greatest concern to staff is the exemption of Development Charges, Parkland Dedication and Community Benefit Charges for affordable housing, attainable housing and ADUs, all of which will collectively necessitate capital infrastructure improvements. Unless there is a source for full cost recovery coming out of the Province or private sector, the Town would need to review the Capital Budget and long-term forecasts for changes and would expect shortfalls in funding for development related capital improvement projects. Additional impacts would be expected with the Town's next DC Study and By-law which was scheduled for 2023.

The recognizable mantra of “development pays for development” is compromised with the proposed changes and any lost revenue would fall on the back of the taxpayer through increased tax levy and/or some form of recovery at the provincial level through taxation.

Coupled with the implications of Bills 108 and 109, staffing levels will need to increase if Bill 23 comes into effect, as development applications must be processed more quickly, application volumes increase, heritage designation timelines tighten, and significant parkland reserve funds must be spent expeditiously.

Policies Affecting Proposal

Until such time as Bill 23 is given Royal Assent, the Town's current Official Plan is in force and effect. The Province provided approval of the Niagara Official Plan (as modified) on November 4, 2022. Normally, the Town would need to update its Official Plan to conform within one year of November 4, in addition to performing a 10-year update. If Bill 23 comes into force, the Regional Official Plan will come into effect as the Town's new Official Plan, until an update takes place and is approved by the Province.

The Town seeks to further clarify administration of the Region's Plan at the overarching scale in which it is prepared and approved. Local Official Plan policies, such as those approved in Secondary Plans, are more refined and their policies specific to context. Unless otherwise directed, it is Town staff's position that the most restrictive policies of both local and Region will continue to apply where one overrides the other, so long as provincial policy is not in conflict.

Ultimately, the consolidation of these two separate Official Plans will be required, with repeal of the Region's Plan having standing within Fort Erie. Town staff had already initiated the preparation of a Request for Proposal to update Fort Erie's Official Plan and will continue to prepare the document in light of these more recent events occurring at upper levels of government.

Comments from Relevant Departments/Community and Corporate Partners

The provincial release of Bill 23 and associated commenting deadlines have left little time for consultation. Planning staff have assessed the Bill 23 changes and have offered comments based on their professional interpretations in this early stage of the aggressive and sweeping changes this Bill presents.

Further analysis of the implications of Bill 23 will occur in the future, with the Town's DC consultant (Hemson), the Municipal Finance Officers' Association of Ontario, Ontario Professional Planners Institute, Professional Engineers Ontario, AMO, as well as other area municipalities.

Alternatives

Should the Province enact the proposed legislative amendments of Bill 23, the Town will be required to adhere to the resulting policies and regulations.

Council may elect to direct the submission of additional comments to the province, alter the comments recommended by staff, or elect to refrain from commenting.

Communicating Results

Currently, the narrative of the proposed *Build More Homes Faster Act, 2022* is being led by the Province, its ERO postings, and media releases. The Town, along with all local municipalities and impacted regional governments are in the process of analyzing impacts to their respective communities. At present, there is no recommended course of communication to be taken by the Town respecting this Provincial initiative.

Conclusion

The Province of Ontario is moving forward with its commitments to build more homes faster by removing perceived impediments from the development process. While staff agree the steps taken will have the effect of seeing approval happening sooner, there is no tangible evidence that the scope and scale of what is being proposed through Bill 23 will result in the goals of seeing more and/or affordable homes built.

In the event that Bill 23 is approved it will necessitate changes and streamlining in the way Fort Erie reviews and processes planning applications, to reduce processing times.

Staff are cautious and do have concerns respecting lost revenue through Development Charge, Community Benefit Charges and Parkland Dedication collections, reduced park land requirements, accelerated timelines, erosion of public participation and a one-sided punitive approach to the planning approval process.

Staff would recommend the Province take an appropriate amount of time to allow for meaningful consultation with the local municipalities who expressing concern over the ability to react to the proposed changes. Not all local municipalities have the resources immediately available to pivot with the timelines and penalties being imposed by the Province.

In the Niagara specific context, the very recent approval of the Niagara Official Plan has also added a layer of complexity and major changes to which, not only the Town, but Niagara Region as well, have yet to fully realize respecting the implications related to the transfer of approval authority.

Attachments

Appendix “1” – Provincial ERO Posting list and commenting deadlines

APPENDIX "1" TO ADMINISTRATIVE REPORT PDS-73-2022, DATED NOVEMBER 21, 2022

Please see below for a list of Environmental Registry and Regulatory Registry of Ontario Postings regarding The *More Homes Built Faster Act, 2022*.

The chart below includes the consultation posting with weblinks to their respective home pages with additional information, the Ministry that has requested the consultation, and their due dates.

Consultation Posting	Corresponding Ministry
Due November 24, 2022	
<u>Supporting Growth and Housing in York and Durham Regions Act, 2022, ERO 019-6192</u>	Ministry of the Environment, Conservation and Parks
<u>Proposed Revocation of the Central Pickering Development Plan, ERO 019-6174</u>	Ministry of Municipal Affairs and Housing
<u>Proposed Planning Act and Development Charges Act Changes: Providing Greater Cost Certainty for Municipal Development-related Charges, ERO 019-6172</u>	Ministry of Municipal Affairs and Housing
<u>Proposed Updates to the Ontario Wetland Evaluation System, ERO 019-6160</u>	Ministry of Natural Resources and Forestry
<u>Legislative and regulatory proposals affecting conservation authorities to support the Housing Supply Action Plan 3.0, ERO 019-6141</u>	Ministry of Natural Resources and Forestry
<u>Proposed Changes to the Ontario Heritage Act and its regulations: Bill 23 (Schedule 6) - the Proposed More Homes Built Faster Act, 2022, ERO 019-6196</u>	Ministry of Citizenship and Multiculturalism

APPENDIX "1" TO ADMINISTRATIVE REPORT PDS-72-2022, DATED NOVEMBER 21, 2022

<u>Seeking Feedback on Municipal Rental Replacement By-Laws 22-MMAH017</u>	Ministry of Municipal Affairs and Housing
<u>Proposed Planning Act and City of Toronto Act Changes (Schedules 9 and 1 of Bill X - the proposed More Homes Built Faster Act, 2022), ERO 019-6163</u>	Ministry of Municipal Affairs and Housing
Due November 25, 2022	
<u>Proposed Amendments to the Ontario Land Tribunal Act, 2021, 22-MAG011</u>	Ministry of the Attorney General
<u>Proposed legislative amendments to the Ontario Underground Infrastructure Notification System Act, 2012 under the More Homes Built Faster Act, 2022, 22-MGCS022</u>	Ministry of Public and Business Service Delivery
Due December 9, 2022	
<u>Proposed Changes to Ontario Regulation 299/19: Additional Residential Units, ERO 019-6197</u>	Ministry of Municipal Affairs and Housing
<u>Proposed Changes to Sewage Systems and Energy Efficiency for the Next Edition of Ontario's Building Code, ERO 019-6211</u>	Ministry of Municipal Affairs and Housing
<u>Proposed Amendment to O. Reg 232/18: Inclusionary Zoning, ERO 019-6173</u>	Ministry of Municipal Affairs and Housing

APPENDIX "1" TO ADMINISTRATIVE REPORT PDS-72-2022, DATED NOVEMBER 21, 2022

<u>Seeking Input on Rent-to-Own Arrangements, 22-MMAH018</u>	Ministry of Municipal Affairs and Housing
<u>Amendments to the New Home Construction Licensing Act, 2017 to protect purchasers of new homes, 22-MGCS021</u>	Ministry of Public and Business Service Delivery
<u>Proposed Building Code Changes to Support More Homes Built Faster: Ontario's Housing Supply Action Plan: 2022-2023 (Phase 3 - Fall 2022 Consultation for the Next Edition of Ontario's Building Code), 22-MMAH016</u>	Ministry of Municipal Affairs and Housing
Due December 30, 2022	
<u>Review of A Place to Grow and Provincial Policy Statement, ERO 019-6177</u>	Ministry of Municipal Affairs and Housing
<u>Proposed Revocation of the Parkway Belt West Plan</u>	Ministry of Municipal Affairs and Housing
<u>Proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario, ERO 019-2927</u>	Ministry of Natural Resources and Forestry
<u>Conserving Ontario's Natural Heritage, ERO 019-6161</u>	Ministry of Natural Resources and Forestry