



Attachment A - District of Muskoka and Participating Area Municipal Joint Response to Bill 97 and draft PPS, 2023

Supported Proposed Amendments

1. Re-instating Site Plan Control in Certain Instances

Schedule 6 of Bill 97 (in conjunction with a proposed regulation) proposes to make changes to the less-than-10-unit exclusion from site plan control that was introduced through Bill 23. This change would allow site plan control for developments of less than 10 residential units where the development is proposed within 120 metres of a shoreline or within of 300 metres of a railway line, provided the approval of these site plans is delegated to Staff. This change is much needed as it would enable the Area Municipalities to re-instate the implementation of the Lake System Health approach to water quality protection that has been in place across Muskoka for decades. As there is some uncertainty surrounding whether the use of this tool needs to be prescribed or not, we would recommend that a formal request to the Province be made to include all Area Municipalities within the District of Muskoka without an approved Community Planning Permit System (CPPS) currently in place, as Prescribed Municipalities for use of site plan control in certain instances.

2. Parking Requirements for Primary Residence

Bill 23 introduced restrictions on the ability to require more than one parking space where additional residential units are permitted as of right. While the reduction or elimination of parking requirements is widely seen as one way to facilitate more housing, in Muskoka's context it raises a number of challenges, as public transportation is not widely available and residents typically are required to drive to work, school and doctor's appointments, etc., making cars more relied upon than in more densely population part of the province. However, Bill 97 proposes to clarify that official plans and zoning by-laws can still require more than one parking space for the primary residential unit. This change is beneficial in that it will provide some additional flexibility for Area Municipalities to determine the appropriate number of parking spaces within their local context.

Proposed Amendments of Concern

1. Settlement Areas and Settlement Area Boundary

Most notably, the amended settlement area policies of the PPS, 2023 represent the largest and most significant paradigm shift from the policies of the PPS, 2020. The amendment of concern would see the removal of the current requirement for planning authorities to establish and implement minimum targets for intensification and redevelopment within built-up areas.

The second, and arguably the most impactful change is that the PPS, 2023 would permit a planning authority to identify a new settlement area or allow a settlement area boundary to be expanded at any time. Currently, a new or expanded settlement area can only be considered

at the time of a comprehensive review and only where very specific conditions have been demonstrated. While we appreciate the flexibility to allow municipalities to be able identify a new settlement area or expand a boundary outside of the comprehensive review process, decisions of this magnitude should not be driven by external stakeholders (i.e. developers and landowners). The negative impacts that this policy shift could create cannot be overstated for small and medium sized towns like those across Muskoka.

This change will undoubtedly result in the value of land surrounding urban boundaries to increase exponentially, due to the sudden increase in their viability for greenfield development far beyond the services and amenities that are provided in currently built up areas of our towns, and will likely lead to one of the following two situations occurring: these lands being brought into settlement boundaries at the request of a developer or land speculator only to sit undeveloped and not providing any housing to the local economy because the cost of the land has now dramatically increased due to the development approvals that have been put in place, not to mention the costs associated with extending and/or installing services and infrastructure and land preparation (among other matters) has made the proformas for housing construction so astronomical that it sits undeveloped on the resale market for decades; or two: because the cost of the land is now so great, the most economical proforma for the land is to develop it with large single family homes which will sell well in excess of what the average local home buyer could afford.

Across Muskoka there are 90 active draft approved plans of subdivisions containing a total of 5843 residential units, many of which are located at the edge of our current urban settlement boundaries that have sat dormant for decades with all the approvals in place, but no development has occurred. Additionally, there are currently 2822 vacant lots located within the Urban Centres and while it is recognized that there may be constraints which prevent some of these from being built upon (i.e. lot size, topography, existing zoning), these lots in combination with the existing draft approved units amount to a considerable land supply inventory within our existing settlement boundaries. Allowing for the further expansion of settlement boundaries is counterproductive as it simply increases speculation and has yet to result in any meaningful housing development in our communities. The draft approved plans of subdivision that have started to come online during the recent housing boom we have seen over the last two years are mainly located in close proximity or directly within the built-up areas of our towns, which is the type of housing that is needed by our residents to make our communities complete.

Permitting new or expanded settlement area boundaries at the request of external stakeholders, without the need for a comprehensive review is shortsighted and counterproductive if the goal is facilitating the development of more attainable and well-planned housing that meets the actual needs of residents across our communities. The language used in this section has also shifted from stating what matters “shall” be considered (compulsory language) to what “should be” (discretionary language) which ultimately renders the statement ineffective and unenforceable. The Province is strongly urged to clarify the proposed amendment to ensure that only municipalities are able to initiate this process outside of a comprehensive review and protect our ability to plan for land use, programs and services.

2. Multi-lot residential development in the Rural Area

Directing the majority of residential growth and development to settlement areas is one of the most impactful ways planning authorities can ensure that our communities are complete, development is sustainable, and the natural environment surrounding these built-up areas is

protected. To this end, the PPS, 2014 clearly stated that on rural lands, only “limited residential development” is permitted. However, when this policy document was updated in 2020, the Province opened the door to rural development by stating that residential development “including lot creation, that is locally appropriate” is permitted. Now, in the draft PPS, 2023, the Province has stated that “multi-lot residential development, where site conditions are suitable for the provision of appropriate sewage and water services” is now permitted across rural lands. While we would not object to some limited, locally-appropriate rural residential development for permanent housing (ie. in more rural townships across the province), careful consideration should be given to the wider implications of this type of development.

Across the rural areas of Muskoka, there are already 7702 vacant lots on year-round, municipally maintained roads and an additional 3188 on private and seasonal roads. Planning authorities know that residential development that is spread out across vast rural lands is more costly to provide services to, increases dependency on personal transportation to get to town, work, doctors appointments etc, can lead to social isolation as residents age in place, and does not align with the Province’s stated goal of building and sustaining complete communities. The Province is strongly urged to reinstate firm limits on rural residential development, depending on local context.

Also of concern is the emphasis placed on the use of private communal water and sewage treatment systems to service rural residential development. While this servicing option has always been included in the servicing hierarchy of the PPS, 2020, there appears to now be a stronger emphasis placed on permitting and even so far as encouraging the use of these systems. Through the Safe Drinking Water Act and Ministry of the Environment Guideline D-5-2, the Province stipulates that municipalities are ultimately responsible for ensuring that these systems remain operable and safe. Due to the environmental, financial, engineering and legal risks associated with private communal servicing and in order to minimize District and taxpayer liability, this type of servicing has been limited in the Muskoka Official Plan (MOP) to resort commercial development where a registered condominium corporation is responsible for the establishment and maintenance of a reserve fund and ongoing maintenance program. While there are a wide range of approaches to private communal services utilized across Ontario, they generally provide services to relatively small-scale developments where discharges are not to a surface waterbody. Given the size and importance of the watershed in Muskoka, permitting private communal systems for residential development would be a significant concern. Should the Province wish to pursue these changes, they are urged to first contemplate legislative changes to the Safe Drinking Water Act and MOE Guideline D-5-2 that would shift this responsibility from municipal governments to the appropriate Ministry or another funded legislative body who would ensure the safe operation of these systems or, at the very least, undertake an analysis of the greater liability being placed on municipalities.

3. Conversion of Commercial and Institutional Buildings to Residential

Proposed policy 2.2.1(b)2 of the PPS, 2023 would require planning authorities to permit and facilitate the conversion of existing commercial and institutional buildings for residential use, development and the introduction of housing options within previously developed areas and redevelopment which results in a net increase in residential units in accordance with other policies of the PPS, 2023. While we appreciate the need for a range of housing options, particularly in proximity to downtown, commercial and retail areas, this change could have significant negative impacts on the vibrancy and vitality of the downtown core of many small to medium sized communities. Maintaining ground level commercial, retail and service

industry uses in downtown areas is critical to building and sustaining complete communities, which happens to be a newly defined term in the PPS, 2023. The Province is strongly urged to remove this amendment from the PPS, 2023 or make revisions to ensure that commercial and institutional uses in downtown areas are maintained.

4. Employment Lands

As proposed, Schedule 6 of Bill 97 would narrow the scope of what constitutes an “area of employment” (or what is commonly referred to as Designated Employment Lands). Currently, the Planning Act defines areas of employment as lands designated in an official plan for clusters of business and economic uses including (but not limited to) manufacturing, warehousing, office, associated retail uses and ancillary facilities. Bill 97 would expressly exclude institutional uses (such as hospitals, education campuses and government offices) and commercial uses (such as tourist and recreation establishments and resorts) from being identified as “employment lands” and no longer subject to employment area policies, particularly those dealing with conversions to non-employment uses (such as to residential). In the Muskoka context, large-scale warehousing, manufacturing and heavy industry do not represent our largest employers. However, given that most Muskoka municipalities have lands designated for such purposes. The conversion of such lands will also limit the ability to support the types of businesses that operate in our communities. Commercial, retail and institutional uses, particularly in the downtown cores and serviced settlement areas as well as tourist and recreation establishments along the waterfront continue to be very important to smaller urban and rural municipalities across Muskoka (and other similar locations across the province). The Province is urged to reconsider this change in definition, particularly for those municipalities outside the Greater Golden Horseshoe Area.

5. Appeals of Interim Control By-laws

Section 38 of the Planning Act enables a municipality to pass an interim control by-law (ICBL). An ICBL can be passed that prohibits the use of land, a building or structures for the purpose(s) and period of time set out in the ICBL (not exceeding two years). This power is undoubtedly an extraordinary one, however municipalities typically only use it in situations where an unforeseen issue arises within the terms of an existing zoning permission (typically related to an established land use, built form context or infrastructure capacity) within which Council wishes to hit the “pause button” to give Municipal Staff time to assess the matter within the context of its land use priorities. In 2017, Bill 139 removed all appeal rights within the first year of the ICBL, other than those of the Minister. This was a welcomed amendment as it allowed municipalities to study the issue at hand and determine the appropriate planning policy and control necessary to address the matter outside a rapidly changing and sometimes volatile planning environment.

Schedule 6 of Bill 97 would amend the Planning Act to shorten the period of time within which notice of the ICBL must be sent (from 30 days to 20 days) and would reinstate appeal rights to anyone who receives that notice. This amendment appears to be counterproductive to stated Provincial goals of streamlining the land use planning process and supporting local decision making. The Province is urged to remove appeal rights within the first year of an ICBL.

6. Land Use Compatibility

Proposed changes to the land use compatibility policies of the draft PPS, 2023 would make it easier to establish sensitive land uses in the vicinity of existing or planned industrial,

manufacturing or other “major facilities” that are vulnerable to encroachment. “Major facilities” include airports, rail facilities, sewage treatment plants, energy generation facilities and transmission systems among others. Draft section 3.5.2 would eliminate current requirements to demonstrate an identified need for the proposed use, that alternative locations have been evaluated and there are no reasonable alternative locations, and that adverse effects to the proposed sensitive land use are minimized and mitigated. Instead, where it is not possible for major facilities and sensitive land uses to avoid potential adverse effects, the proposed adjacent sensitive land use would only be required to demonstrate that potential impacts to the facility are minimized and mitigated. This shifts the emphasis to the long-term protection of the facility and reduces the requirement to protect the sensitive land use from adverse effects. This unfortunately also shifts the responsibility to municipalities to then address ongoing complaints and ratepayer concerns about adverse effects such as odour, noise and other contaminants that can have significant effects on quality of life. It is recommended that the Province ensure that policies exist to ensure that both land uses are adequately protected at the time of approval.

7. Planning Application Fee Refunds

While we do not object to the proposed implementation delay to July 2023, we would again reiterate our opposition to recently imposed fee refund provisions in the Planning Act and suggest alternatively that they be removed entirely. Planning processes which exceed legislated timelines are predominantly for reasons outside of municipal control and often as a result of addressing legitimate concerns raised through the public process. These measures will not act to create more housing, but only add to the administrative and financial burden of municipalities which in turn will likely only aggravate the housing affordability issue further. The Province is strongly urged to reconsider this matter. Should the Province decide not to, the Muskoka Area Municipalities formally request to be included in the proposed Regulation exempting certain municipalities from this provision.

8. Agricultural Lands

Proposed changes to the agricultural policies of the draft PPS, 2023 (Section 4.3) are also of quite concerning. While no Prime Agricultural areas exist within the boundaries of the District, it will be considerably difficult to defend against proposals which may lead to the fragmentation of existing farmland across Muskoka as a result of the proposed changes. If the Province sees fit to allow up to three new lots to be created and two additional secondary dwelling units in Prime Agricultural areas, which the latter can subsequently be severed from the lot containing the principal dwelling, little argument will exist to prohibit similar proposals on non-prime farmland in Muskoka. As it relates to the severance of secondary dwelling units, this is particularly troublesome, as it runs completely counter to the concept that these units are secondary and subordinate to the primary dwelling. Should severances be allowed of these units as a separation of uses, these policy changes in essence double permitted density throughout the Rural area and raises the question of how often the process of building secondary dwelling units followed by another severance, could be repeated. The Province is urged to remove this change from the proposed PPS, 2023.

9. Rural Lands in Municipalities

Section 2.6.1 of the draft PPS, 2023 appears to introduce uncertainty surrounding what types of dwellings are permitted on Rural Lands within municipalities. In 2.6.1.b), it seems that an attempt has been made to clarify that recreational dwellings that are not intended as permanent residences are considered a permitted use. However, 2.6.1.c) now states that

multi-lot residential development is permitted. It is not clear what the difference between these two types of uses is, nor is it clear how municipalities are to implement or enforce whether someone lives in a dwelling year-round or not.

Lastly, Section 1.1.5.3 of the PPS, 2020 re-enforces the notion that recreational, tourism and other economic opportunities should be promoted on Rural Lands. This policy has been deleted from the draft PPS, 2023 and it is not clear why this has been done. The Province should re-insert this policy, as the Rural areas, which includes the Waterfront areas of our municipalities, represent a significant contribution to our local economies and a large portion of our workforce is dedicated to the recreation, tourism and seasonal residential construction industries.