The TOWNSHIP of NORTH DUMFRIES

PD Report No. 17-2024

COUNCIL MEETING
April 22, 2024

DISCUSSION PAPER: BILL 185 *Cutting Red Tape to Build More Homes Act, 2024*

RECOMMENDATION

The Chief Administrative Officer recommends:

1. **THAT PD Report No. 17-2024 be received;**

2. **AND THAT Staff be directed to submit as Township Council's comments on Bill 185 *Cutting Red Tape to Build More Homes Act, 2024* to the Province for their review and consideration as follows:**

   i) **To reverse the course of action proposed through the draft Legislation as it pertains to limiting appeal rights to municipally approved official plans, official plan amendments, zoning by-laws and zoning by-law amendments;**

   ii) **To reverse the appeal right limitations introduced through Bill 23 *More Homes Built Faster Act, 2022* as an earlier amendment to the *Planning Act* as it relates to plans of subdivision / condominiums, consents and minor variances and to restore Public appeal rights in the draft Legislation;**

   iii) **To reverse the course of action proposed through the draft Legislation as it pertains to pre-consultation applications or meetings. The current provisions requiring pre-consultation on *Planning Act* applications for site plans, plans of subdivision/condominium, consents, Official Plan Amendments and Zoning By-law Amendments has proven to be successful if undertaken in a meaningful way. Rather than making the pre-consultation process optional and at the desire of the applicant, Municipalities should establish clear and focussed objectives to inform the pre-consultation program through their respective Official Plans; and,**

   iv) **The advancement of "bonussing" or similar incentive program to be introduced under the auspices of Bill 185 be deferred pending the release of the proposed Regulations to be issued by the Province and further consultation / engagement of Municipalities.**

3. **AND THAT a copy of this Report circulated to Brian Riddell, MPP Cambridge, for his review and consideration.**

1. PURPOSE

The purpose of this Report is to:

i) provide an overview to Township Council on the first draft of Bill 185 *Cutting Red Tape to Build More Homes Act, 2024* on important aspects relevant to the Township; and,

ii) provide for Council's consideration items that they may wish to submit to the Province as part of the on-going public consultation phase associated with the draft Legislation.

2. BACKGROUND

2.1 Context and Overview

The Province of Ontario released Bill 185 *Cutting Red Tape to Build More Homes Act, 2024* on April 10, 2024 for public comment. Bill 185 represents an omnibus Bill in that in amends a series of inter-related pieces of Legislation, including the *Municipal Act*, *Planning Act, City of Toronto Act* and the *Development Charges Act.*

Bill 185 is posted for public review and comments with a submission deadline of May 10th, 2024.

In the preparation of this Report, Staff are focussing on contents within Bill 185 that would effect the land use planning program of North Dumfries.

3. OPTIONS AND ANALYSIS

In this context of all of the Provincial changes since October 2022 to the present time period associated with the land use planning and decision making processes, there has been a seismic shift in how development is to be considered and the framework of decisions.

Almost fifty years of evolving land use planning principles and practices has been re-written. The Province has articulated consistently and loudly that going forward there is an emphasis on establishing a clear decision making model with the objective of leveraging housing supportive policies, removing barriers and continuing to protect the environment through a streamlined Province-wide land use planning policy framework.

3.1 Amendments to the Planning Act

Further Elimination of Third-Party Appeal Rights

Bill 23 introduced into the *Planning Act* the concept of a "specified person" which is defined to mean a list of entities that includes utilities, pipeline and rail operators, and other similar public/private entities. Bill 23 further revised the *Planning Act* to limit the right to appeal the approval of a minor variance, a draft plan of subdivision / condominium, or a consent to sever to the applicant, the municipal authority, the Minister or a "specified person." In doing so, the Province eliminated appeals by third-party landowners, ratepayers and other members of the public.

Bill 185 proposes to extend the same limitation on appeal rights to municipally approved official plans, official plan amendments, zoning by-laws and zoning by-law amendments. Subsections 17(24), 17(36) and 34(19) are proposed to be amended to limit third-party appellants to specified persons who made written or oral submissions and public bodies who made written or oral submissions.

In addition, Bill 185 proposes transitional rules that would apply these new appeal limits to existing appeals that are not already scheduled for a merits hearing before the Ontario Land Tribunal, with the cut-off for such transition being April 10, 2024.

Public consultation / engagement, and, the ability to appeal matters to the OLT or other similar Tribunals / Courts is part of a democratic society. By limiting members of the Public to have the ability to appeal a Decision of Council related to a land use matter where there are credible items of concern runs contrary to this principle.

Recommendation*:*

It is recommended to Council that:

i) Bill 185 be amended to reverse the course of action proposed through the draft Legislation as it pertains to limiting appeal rights to municipally approved official plans, official plan amendments, zoning by-laws and zoning by-law amendments; and,

ii) The Province be requested to include in Bill 185 the appropriate elements to reverse the position taken under Bill 23 and to allow for members of the Public to appeal plans of subdivision / condominium, consent and minor variance applications to the OLT where credible land use items of concern are identified.

New Appeal Rights for Settlement Area Expansion Applications

The *Planning Act* currently provides that an applicant cannot appeal an official plan amendment or a zoning by-law amendment application that would expand or alter an in-force settlement area boundary. Bill 185 proposes a change that would allow a private applicant to appeal the approval authority's refusal or non-decision so long as the proposed boundary expansion does not include any lands within the Greenbelt area.

As the Township is not affected by the Greenbelt Legislation, this in effect would open to challenge any settlement area expansion proposal within the Municipality.

This new appeal right for the applicant is paired with new criteria for the assessment of proposals for settlement area boundary expansions as set out in the draft Provincial Planning Statement 2024. The draft statement also does not propose size limitations for boundary expansion proposals.

The implications of this aspect of the draft Legislation in Bill 185 is that it could remove local and provincial politics from important decisions on boundary expansions. Such decisions could now be made by the Ontario Land Tribunal after a full merits hearing.

Servicing Capacity - Use It or Lose It

A frequent criticism of local government has been that servicing allocation (water and sanitary capacity) has been conferred to a development upon approval, however, the lands have remained idle and have effectively usurped in short of supply servicing capacity.

To address this concern, Bill 185 proposes to expand on the existing municipal authority to attach lapsing provisions to approved site plans and draft plans of subdivision / condominium. While imposing this type of "use it or lose it" tool would be new for site plan approvals, the change for draft plan of subdivision approvals is that it would become mandatory.

Under the Province's proposal, approval authorities would provide for the lapsing of a site plan or a draft plan of subdivision / condominium at the end of a specified time period. The prescribed time period shall not "be less than" or "exceed such" a time period as "may be applicable to the development" or be less than three years. In instances where there is an appeal, the lapsing of the approval would not begin until the Ontario Land Tribunal has issued its decision. Further, where a draft plan of subdivision was approved on or before March 27, 1995, the approval will lapse on the third anniversary of the changes coming into effect.

While one of the key aims of this proposal would be to ensure that housing starts match municipal efforts to create the enabling infrastructure, it will also cause development proponents to have a better understanding of their anticipated timeline between *Planning Act* approvals and building permit applications.

Ending the Pre-Consultation Applications

Recent years have seen many municipalities passing by-laws requiring pre-application consultation meetings for planning applications. This corresponded with the general shortening of the non-decision appeal timelines as well as Bill 109's imposition of mandatory application fee refunds for zoning, site plan and combined official plan/zoning amendment proposals.

The ability to appeal and/or get a refund was tied to the clock starting on a complete application. Municipalities accordingly front-ended their pre-consultation and complete application requirements so that they could be in a position to meet the *Planning Act* timelines.

As a direct response, Bill 185 proposes to remove the municipal authority's **ability to require** pre-consultation for applications for official plan amendments, zoning by-law amendments, site plan approval and draft plans of subdivision. Instead, the *Planning Act* would be amended to **simply permit applicants to seek pre-consultation**. What is currently mandatory would become entirely optional at the choice of the applicant.

Further, under the current regime, after a municipality has deemed a planning application to be incomplete, the applicant has 30 days to make a motion to the Ontario Land Tribunal to dispute the determination. Bill 185 proposes to remove this deadline, instead allowing applicants to bring a motion to determine the requirements for a complete application at any time after the application fee has been paid or pre-consultation has begun.

Finally, Bill 185 proposes to amend the *Planning Act* to erase the Bill 109 fee refund requirements, which will likely result in a precipitous and immediate drop in notices of incomplete application being issued. While applications filed after July 1, 2023, and before the deletion date of the fee refund requirements may still be eligible for a fee refund, the deletion date of the fee refund requirement stops the clock on these refunds.

Recommendation*:*

It is recommended to Council that:

i) Bill 185 be amended to maintain the principle of mandatory pre-consultation applications for Consents, plans of subdivision / condominium, site plans, Official Plan Amendments and Zoning By-law Amendments; and,

ii) Bill 185 provide direction to establish objectives / principles to be incorporated into a Municipality's Official Plans that outlines the expectations and role of the pre-consultation application process.

Upper-Tier Planning Responsibilities

Bill 23 created the concept of an "upper-tier municipality without planning responsibilities" and defined it to include the County of Simcoe as well as the Regional Municipalities of Durham, Halton, Niagara, Peel, Waterloo and York.

The idea was that these upper-tier municipalities would no longer exercise approval authority over their lower-tier's planning decisions, nor would they maintain a separate, governing upper-tier official plan. While the concept has formed part of the *Planning Act* for the last two years, it has yet to be proclaimed into effect.

Under Bill 185, the upper-tier municipalities of Peel, Halton and York will no longer have planning responsibilities as of July 1, 2024. Simcoe County and the regions of Durham, Niagara and Waterloo will continue to be listed as "upper-tier municipalities without planning responsibilities," but the in-force date for their loss of planning responsibilities remains to be determined.

Broadening of Regulations for Additional Residential Units

Currently, subsection 35.1(2) of the *Planning Act* authorizes the Minister to make regulations establishing requirements and standards with respect to a second or third residential unit in a detached house, semi-detached house or rowhouse and with respect to a residential unit in a building or structure ancillary to such a house. These are often referred to as additional residential units (ARUs).

Bill 185 proposes to re-enact subsection 35.1(2) to authorize regulations establishing requirements and standards with respect to any ARUs in a detached house, semi-detached house or rowhouse, a residential unit in a building or structure ancillary to such a house, a parcel of land where such residential units are located or a building or structure within which such residential units are located. This provision, if passed, would widen the scope of the Minister's ability to regulate not only a second or third residential unit but any ARUs in a house, as well as the land on which such ARUs are located and the building or structure within which such ARUs are located.

Proposal to Exempt ARUs from Planning Act Requirements

Part V of the *Planning Act* contains the basic tools to control land use including zoning by-laws, minor variances, site plan control, community benefits charge, parkland conveyance, among others. Section 70.2 of the *Planning Act* pertains to the regulation of a community planning permit system (formerly known as a development permit system).

Bill 185 proposes to add a new section 49.3 to the *Planning Act*, which would authorize regulations that provide for the non-application of any provision of Part V of the *Planning Act* or a regulation under section 70.2 of the *Planning Act*, or that set out restrictions or limitations with respect to its application, to ARUs that meet prescribed criteria.

Corresponding changes to the general regulation-making powers of the Province under section 70 of the *Planning Act* are also proposed.

Proposal to Exempt Community Service Facilities from Planning Act Requirements

Bill 185 proposes to add a new section 62.0.3 to the *Planning Act*, to authorize regulations that provide for the non-application of any provision of the *Planning Act* or a regulation made under section 70.2, to prescribed classes of community service facilities that meet prescribed requirements. Community service facilities currently being contemplated for such exemptions include schools, hospitals and long-term care homes.

Proposal to Exempt Post-Secondary Institutions from Planning Act Requirements

Bill 185 proposes a new section 62.0.2 to the *Planning Act* to exempt undertakings of certain classes of post-secondary institutions from the requirements of the *Planning Act*. These classes of post-secondary institutions include publicly assisted universities, as well as colleges and universities federated or affiliated with a publicly assisted university. However, this exemption will not be available for any lands within the Greenbelt area.

3.2 Amendments to the Municipal Act, 2001

New Exception to the Anti-Bonusing Rule

Section 106 of the *Municipal Act, 2001* sets out a broad prohibition against municipal bonusing. A municipality is prohibited from directly or indirectly providing assistance to any manufacturing business or other industrial or commercial enterprise (i.e., for-profit entities). Assistance is generally defined to include the lending of money or municipal property, guaranteeing borrowing, leasing or selling municipal property at below fair market value or giving a full or partial exemption from any municipal levy, charge or fee.

Bill 185 proposes to add a new section 106.1, which if passed, would allow the Province to make regulations authorizing a municipality to grant assistance, directly or indirectly, to a specified manufacturing business or other industrial or commercial enterprise during a specified period if the Province considers that it is necessary or desirable in the provincial interest to attract investment in Ontario.

This regulation-making power would also allow the Province to set out the types of assistance that may be granted as well as impose restrictions, limits or conditions on the granting of the assistance. The Province may also specify conditions that must be met before the assistance may be granted.

Recommendation:

It is recommended to Council that:

i) **The advancement of "bonussing" or similar incentive program to be introduced under the auspices of Bill 185 be deferred pending the release of the proposed Regulations to be issued by the Province and further consultation / engagement of Municipalities.**

Municipal Policy on Servicing Allocation

Section 70.3 of the *Planning Act* currently allows all municipalities to pass by-laws establishing a system for allocating sewage and water services to land that is the subject of an application under section 51 (draft plan of subdivision / condominium). Such by-laws are to reflect conditions as may be set out by provincial regulation.

Under Bill 185, section 70.3 of the *Planning Act* is proposed to be repealed. In its place, Bill 185 proposes to add a new section 86.1 to Part III (Specific Municipal Powers) of the *Municipal Act, 2001*. This new section proposes that a municipality may, by by-law, adopt a policy providing for the allocation of water supply and sewage capacity. Such a policy may include (1) a system for tracking the water supply and sewage capacity available to support approved developments (which is proposed to be defined as a development application which has been given *Planning Act* approval), and (2) criteria respecting the allocation of water supply and sewage capacity to development applications, including the criteria used to determine the circumstances for when the allocation is assigned, withdrawn or reallocated, if previously withdrawn to an approved development. Such by-laws may provide that the municipal allocation policies apply to the entire municipality or differently to different geographic areas within the municipality.

Where a municipal allocation by-law is passed, the administration of the allocation policy must be assigned to an officer, employee or agent of the municipality, and any decision made by that person under the allocation policy is to be treated as final. There is no proposed appeal route from an allocation decision made under an approved allocation by-law. However, the Minister may, by regulation, exempt an approved development or a class of approved developments from any and all provisions of a municipal allocation by-law.

3.3 Amendments to the Development Charges Act, 1997

Eligible Capital Costs

Subsection 5(1) of the *Development Charges Act, 1997* establishes rules that must be followed when calculating a proposed development charge. One of those rules, Rule 7, provides that "the capital costs necessary to provide the increased services must be estimated." What may be included as a "capital cost" is then set out in subsection 5(3) of the legislation.
In 2022, Bill 23 amended subsection 5(3) to exclude certain study costs, as well as the cost of undertaking the development charge background study itself, from the list of eligible capital costs. Bill 185 proposes to reverse that deletion, thereby allowing municipal authorities to include study costs in the calculation of their development charge rates.

Expiry of Frozen Rates

The concept of a statutory "freeze" of a development charge rate was introduced by Bill 108. Subsection 26.2 of the *Development Charges Act, 1997* currently allows for an applicant's development charge rate to be "frozen" as at the date a complete application for zoning by-law amendment or site plan approval (whichever occurs later) is filed. This "freeze" would apply notwithstanding that the relevant development charge by-law for which the rates are frozen is no longer in effect.

Currently, the freeze applies so long as building permits are pulled (and relevant development charges are paid) within the "prescribed amount of time," which is presently set at two years from the approval of the relevant planning application. Bill 185 proposes to reduce the "prescribed amount of time" to 18 months.

Repeal of Mandatory Phase-In

Bill 23 previously amended the *Development Charges Act, 1997* to require a reduction in the maximum development charge that could be imposed in the first four years that a new development charge by-law is in force. Specifically, any development charge imposed during the first, second, third and fourth years that the development charge by-law is in force could be no more than 80, 85, 90 and 95 per cent of the charge imposed. This mandatory "phase in" applied to all development charge by-laws passed on or after January 1, 2022.
Bill 185 proposes to delete the above-summarized "phase in" requirements and proposes transition rules for development charge by-laws impacted by this change.

4. FINANCIAL IMPLICATIONS

There are no implications arising from the consideration of this Report on the 2024 Budget.

5. ATTACHMENTS

None

For further information on the contents of this Report, please contact Andrew McNeely, Chief Administrative Officer, at (519) 632-8800 or via email at amcneely@northdumfries.ca

Report Prepared By and Respectfully Submitted:

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