

Subject: Proposed Changes to *Planning Act* and Provincial Planning Statement

Recommendation:

BE IT RESOLVED THAT Council approve Report #2023-0121 – Proposed Changes to *Planning Act* and Provincial Planning Statement;

AND THAT this report be forwarded to the Ministry of Municipal Affairs and Housing as Pelham’s comments on the proposed changes to the *Planning Act* through Bill 97, regulation regarding site plan requirements for residential developments of 10 units or fewer and the draft new Provincial Planning Statement.

Background:

On April 6, 2023, the provincial government released proposed changes to:

- the *Planning Act*, through Bill 97
- regulation under the *Planning Act* regarding site plan requirements for residential developments of 10 units or fewer
- a draft new Provincial Planning Statement (PPS) 2023 that will replace the existing Provincial Policy Statement 2020 and the Growth Plan for the Greater Golden Horseshoe

The opportunity to provide comments on these proposed changes to planning legislation and planning policy is very tight. No public consultation is being proposed and the only means to provide comments is through submission of written comments on the Environmental Registry of Ontario. The deadline to submit written comments is as follows:

- deadline to provide comments on the proposed changes to the Planning Act is May 6th, 2023, i.e., 30 days and can be made at the following link: <https://ero.ontario.ca/notice/019-6821>
- deadline to provide comments on the proposed regulation regarding site plan requirements for residential developments of 10 units or fewer is May 21st,

2023, i.e., 45 days and can be made at the following link:

<https://ero.ontario.ca/notice/019-6822>

- deadline to provide comments on the draft new PPS is June 5th, 2023, i.e., 60 days and can be made at the following link:

[https://ero.ontario.ca/notice/019-](https://ero.ontario.ca/notice/019-6813?utm_source=newsroom&utm_medium=email&utm_campaign=%2Fen%2Frelease%2F1002910%2Ffontario-introduces-next-steps-to-support-housing-supply-growth&utm_term=public)

[6813?utm_source=newsroom&utm_medium=email&utm_campaign=%2Fen%2Frelease%2F1002910%2Ffontario-introduces-next-steps-to-support-housing-supply-growth&utm_term=public](https://ero.ontario.ca/notice/019-6813?utm_source=newsroom&utm_medium=email&utm_campaign=%2Fen%2Frelease%2F1002910%2Ffontario-introduces-next-steps-to-support-housing-supply-growth&utm_term=public)

Analysis:

Planning Act Changes through Bill 97

Several amendments are proposed to the *Planning Act* through Bill 97 including a delay in the requirement for municipalities to refund zoning by-law and site plan application fees if decisions are not made in a specified time frame, i.e., 90 days for zoning by-law amendment applications, 60 days for site plan applications. The requirement to refund fees was introduced in Bill 109 and was to take effect on January 1, 2023, Bill 97 proposes to delay this so that it only applies to applications submitted on or after July 1, 2023. The Town and other area municipalities in Niagara along with the Region of Niagara have implemented changes to processes that are aimed at meeting the processing timelines in the *Planning Act*, however, it should be noted that the municipalities have no control over the time required for the development industry to respond to comments and resubmit applications. Often, the time required for applicants to respond to comments as part of a resubmission process leads to the inability to meet timeframes as stipulated under the *Planning Act*, however it is the municipality that is now penalized. The outcome will be there will be an increase in conditional approvals vs. final approval and/or an increase in the number of recommendations to refuse development applications as there has not been adequate time provided for applicants to respond to comments to resolve issues. In addition, the ability for Council to request additional information will be curtailed as there is no flexibility in the process to request additional information and still meet the timeframes.

There is a proposed amendment to the *Planning Act* that will provide for Minister to be able to exempt municipalities from the fee refund provisions in the future if needed (no exemptions are being proposed at this time), subject to regulation. No information has been provided under what conditions would the Minister allow for such exemption from refunding fees therefore it is difficult to comment on this proposed change. However, it should be noted that all municipalities should be treated fairly, and development application fees only cover a portion of the development review functions of a municipality and refunding fees will transfer the

burden onto the taxpayer vs. the developer, doing nothing to address housing affordability or building houses faster.

There is a proposed amendment to the *Planning Act* that clarifies that existing provisions regarding parking spaces for additional residential units apply only to the second and third units on a property and not to the principal dwelling. This clarification is helpful and is supported.

Another amendment provides for the opportunity for the Minister to create a regulation to prescribe specific circumstances where site plan control could be used for residential developments of 10 units or less. It is noted that recent changes to the *Planning Act* exempt site plan control for residential developments less than 10 units. The proposed regulation is discussed separately below. However, it is noted that when municipalities are dealing with residential development of 10 units or less matters such as grading, drainage, stormwater management and land use compatibility matters related to buffer requirements adjacent to natural heritage features or other sensitive land uses, building orientation, potential road widenings or other land dedications required for servicing easements, hazard land requirements, are examples of other important considerations which should also be part of site plan approval and control for 10 residential units or fewer.

Exempting residential developments of 10 units or fewer from site plan control will lead to development that creates unintended consequences and adverse impacts on adjacent land uses and a municipality's ability to ensure appropriate protections are in place for future residents of the development from unintended consequences. Exempting residential developments of 10 units or less from site plan control is not supported.

There are proposed amendments to the *Planning Act* that would now allow for the appeal rights of an individual to appeal an interim control by-law when it is initially passed, not just only at the time of extension. In addition, there is a proposed amendment that revises the appeal timelines from 20 days vs. the current 30 days and for appeals to be made within 50 days vs. the current 60 days from when the by-law is passed. Allowing for an appeal of the initial passing of an interim control by-law can create additional challenges and delay for a municipality in dealing with issues when time is needed to study an issue and develop appropriate resolutions to the issue through official plan policy or zoning by-law amendments. It is recognized that interim control by-laws are a blunt instrument that are judiciously used to put a pause in place to allow municipalities the necessary time to address issues and appeals can only lead to further delays and distractions which is not helpful in giving a municipality time to address the issue. Allowing for initial appeals

of interim control by-law is not supported. The proposed amendments to the appeal timeframes can be supported.

There is a proposed amendment to the Act that provides a new authority for the Minister to exempt certain subsequent approvals required to establish uses permitted by Minister's zoning orders from having to align with provincial plans or policies or official plans when other planning approvals are required. This is contrary to Section 5 of the *Planning Act*, that requires a decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the Tribunal, in respect of the exercise of any authority that affects a planning matter, to be consistent with the policy statements that are in effect on the date of the decision and to conform with the provincial plans that are in effect on that date, or shall not conflict with them. This proposed amendment to the Act has the potential to create uncertainty in the planning system and process which is not supported and can provide unfair advantages to those property owners that receive Minister's zoning approval.

This potential change gives the Minister the ability to approve Minister zoning orders for residential use where such uses are not permitted by official plan policies for example. Decisions that align with provincial plans and policies and official plans, including Minister's zoning orders, are critical to achieving fairness and ensuring there is reasonable expectations of what is required for development approval and alignment with provincial plans, policies and official plans are what is expected for every other type of development and should be required for Minister zoning orders as well.

Another proposed amendment to the Act will provide the Minister with the authority to require landowners to enter development agreements in relation to lands that have been assigned to the Provincial Land and Development Facilitator. There are no details provided with this proposed amendment with regards to the nature of the development agreements, however if the intention is that there is the requirement for development agreements to address servicing and infrastructure requirements, land dedications and easements, agreements with utility providers, etc. then this proposed amendment is supported.

Bill 97 also proposes to give the Minister authority to make regulations providing for transitional matters relating to the applicability of the proposed new Provincial Planning Statement (or other new policy statements issued under the *Planning Act*). While there are no details provided on the proposed regulation, transitional requirements that provide guidance on how applications that are in process prior to the new PPS coming into effect could be a benefit.

While not part of Bill 97, the government proclaimed in force a section that was part of Bill 23, effective April 6, 2023, which gives the Minister the power to amend municipal official plans if the Minister is of the view that a matter of provincial interest could be adversely affected. There is no process set out in the Act for notice or consultation prior to making such a decision. As such, this appears to be the official plan equivalent of a Minister's zoning order and is now in effect.

Regulation Regarding Site Plan Requirements for 10 Residential Units or Fewer

Recent changes made to the *Planning Act* (Bill 23) exempt residential development of 10 units or fewer from site plan control approval. The proposed new regulation would however require site plan control approval for 10 residential units or fewer if any part of the proposed development was located within 120m of a shoreline or 300m of a railway line. While development proposals in proximity to shorelines and railways do warrant site plan control approvals given environmental, noise and vibration issues, there are also other locations that are equally important for consideration of site plan control approval such as where any part of the development is within proximity of an airport, 400 series highways, in proximity to significant natural heritage features and hazard lands, and in proximity to employment lands. The proposed regulation should be modified to provide for broader considerations to require site plan control approval for residential developments of less than 10 units as discussed in the section above.

Proposed Provincial Planning Statement 2023

The changes proposed in the PPS 2023 represent significant changes in how growth planning will be carried out in the province. The repeal of the Growth Plan for the Greater Golden Horseshoe and the elimination of density and intensification targets, in conjunction with the ability to expand settlement areas at any time will shift how, where and when municipalities grow. The proposed new PPS is a regression in planning policy and sets the province back approximately 20+ years from a policy planning perspective.

The language in the proposed PPS is less prescriptive than the PPS 2020 which weakens the policy direction and provides language that encourages municipalities rather than requiring municipalities to achieve certain elements of the PPS. This has the effect of creating ambiguity, less clarity and watering down policy direction which is not helpful and is not supported.

With the proposed repeal of the Growth Plan, municipalities will no longer be required to plan to specific population, density, intensification targets and employment targets for a horizon year. After almost 20 years of being required to plan for growth with specific targets and land need decisions having been driven by those targets, this basic approach to

growth planning in the Greater Golden Horseshoe will end. This will lead to more ad hoc decisions being made about where to grow and how, and less coordination around the requirements to accommodate growth. This has the potential to lead to development that is not transit supportive and does not make efficient use of land and infrastructure which in turn increases the burden on the taxpayer. Initially the province expects municipalities to continue to use the 2051 population growth targets at a minimum. However, over time, municipalities will be expected to carry out their own growth forecasting. This will lead to municipalities competing for growth across regions and less coordination of growth and infrastructure requirements between municipalities.

When updating official plans, municipalities will be required to have enough land designated for at least 25 years, a change from up to 25 years, with planning expressly allowed to extend beyond this horizon for infrastructure, employment areas and strategic growth areas. Planning for a longer time horizon can be supported, however with the repeal of the Growth Plan for the Greater Golden Horseshoe the requirement for land needs assessments and a consistent approach to land needs assessments will no longer exist. This has the potential to lead to inconsistent approaches in decision making regarding land needs requirements.

The concept of strategic growth areas is proposed to be integrated into the PPS from the Growth Plan however the density targets of these strategic growth areas has been removed. They are to be identified in official plans and are to be the focus of growth and support the achievement of complete communities and include major transit station areas. Large and fast-growing municipalities (identified as Ajax, Barrie, Brampton, Brantford, Burlington, Caledon, Cambridge, Clarington, Guelph, Hamilton, Kingston, Kitchener, London, Markham, Milton, Mississauga, Newmarket, Niagara Falls, Oakville, Oshawa, Ottawa, Pickering, Richmond Hill, St. Catharines, Toronto, Vaughan, Waterloo, Whitby and Windsor) will be required to identify these areas in their official plans, along with minimum density targets. The lack of policy guidance on the minimum density targets will lead to inconsistencies from one municipality to another.

Other municipalities, such as Pelham, are only encouraged to establish density targets for new settlement expansion areas and no longer have intensification targets to support the achievement of complete communities and planning for the range and mix of housing, rather these

municipalities only should support general intensification and redevelopment. The concept of greenfield and delineated built up areas and density and intensification requirements for these areas has been eliminated. Again, the lack of guidance with regards to minimum density targets and intensification targets will lead to inconsistent decision making and less certainty for public regarding what the expectations are and is a regressive policy approach. It will also lead to more sprawl which increases the tax burden on the taxpayer and creates adverse impacts on agricultural lands and uses. The elimination of the density and intensification targets is not supported.

The proposed PPS will no longer require settlement area expansions as part of a municipal comprehensive review. Municipalities will have the ability to consider settlement area expansions at any time. The tests proposed for settlement area expansions are less stringent as they are in the PPS 2020, and require consideration of adequacy of servicing, phasing, and agricultural issues, such as the minimum distance separation formula. There is also no limitation on the ability of landowners from applying for an expansion, although the *Planning Act* continues to limit the ability to appeal the refusals of any such applications. This will lead to continued pressure on local municipalities to consider settlement area boundary expansions without the comprehensive review that has traditionally been used to identify the need for the expansion and best location for the expansion vs. the desire for the expansion by a landowner. The lack of protection of prime agricultural areas will also lead to more land speculation of farmland which adversely impacts the economics of farming and will have significant impact on the agricultural economy of an area. The elimination of the municipal comprehensive reviews and less stringent tests for settlement area expansions is not supported.

Also telling is the removal of any reference to the need to provide affordable housing as part of the range and mix of housing that support the development of complete communities. The term 'affordable' and definition of 'affordable' has been removed from the proposed PPS 2023. This is surprising as the most critical issue with regards to the housing crises in Ontario is the supply of affordable housing, both affordable ownership and affordable rental housing. Rather the PPS 2023 proposes to include the term 'housing options,' and the definition of this term does reference affordable housing at all. The proposed change to the PPS 2023 to remove any reference to the need to provide affordable housing is not supported.

In addition to proposed changes to the *Planning Act*, the PPS 2023 proposed to change to the definition of employment areas with the focus being on uses that cannot locate in mixed use areas such as heavy industry, manufacturing, and warehousing. This proposed change, along with the elimination of employment targets will impact those areas that have defined employment areas. It is noted that while Pelham does not have an employment area, the proposed changes to the PPS will affect other municipalities in Niagara. Other proposed changes to the PPS will allow for the conversion or removal of land from employment area and less stringent tests applied to those conversions. This has the potential to adversely affect those municipalities with designated employment areas. Provincial significant employment zones will also be removed with the repeal of the Growth Plan for the Greater Golden Horseshoe.

Another significant change proposed by the PPS is the ability to create three new residential lots from a parcel that existed as of January 1st, 2023 in prime agricultural areas, but outside of specialty crop areas provided the lots comply with the minimum distance separation (MDS) formulae, are limited in size needed to accommodate servicing requirements, have access on a public road and are adjacent to existing non-agricultural uses or consists of lower priority agricultural lands. This has the potential to create rural strip development and remove land from agricultural production. While the lots are required to meet MDS requirements, the new lots will limit the ability of a farmer to expand livestock operation in the future due of the introduction of these new non-farm residential lots as farmers are required to meet MDS as well when they expand their operations. New non-farm residential uses cause other impacts on agriculture areas, i.e., increase conflicts with moving farm equipment, and can create unnecessary restrictions on farm operations which adversely impact on farming operations and the agricultural economy of an area. The ability to permit residential severances in prime agricultural area will increase land speculation of farmland which adversely impacts on the ability of farmers to acquire land and does not support the agricultural economy of an area. Also, the introduction of new rural non-farm development in prime agricultural areas increases the demand on municipalities to provide municipal services in areas that are not planned for municipal services. The policy direction to permit new residential lots in prime agricultural area is a regressive policy and is contrary to the policy direction of the last 30 years that is aimed at protecting agricultural land for agricultural uses and supporting the viability of farming. Over the long term, the proposed new policy direction will directly impact the ability of the farmers to

produce food for our growing population and significantly impact the agricultural economy. In addition, the rural non-farm residential uses tend to be 'estate' type housing which does not address the housing crisis. This proposed change to the PPS 2023 to permit new residential lot creation in prime agricultural areas is not supported and will create much harm to the agricultural areas across the province.

With regards to natural heritage, the province has yet to release the proposed amendment to the PPS to address natural heritage considerations, so it is unknown what the proposed policies for natural heritage system protection may be. The province has indicated that these policies will be released through separate posting on the Environmental Registry. As a result, there is no ability to comment on the proposed changes to the natural heritage policies.

Conclusion

The government has advised that it expects the new PPS to come into force in the fall of 2023, despite a complete policy document having not been released. While generally it is expected that decisions will be required to be consistent with the new PPS as of its effective date, Bill 97 does allow for the minister to make regulations which could address different transition rules. At this time those regulations have not been released and it is unknown what the transition provisions may be.

The changes proposed in the PPS 2023 represent significant changes in how growth planning will be carried out in the province. The repeal of the Growth Plan for the Greater Golden Horseshoe and the elimination of density and intensification targets, in conjunction with the ability to expand settlement areas at any time will shift how, where and when municipalities grow. The ability to permit residential severance in the prime agricultural areas is a regressive policy approach and does not represent good land use planning. Overall, the proposed new PPS is a regression in land use planning policy and sets the province back approximately 20+ years from a land use planning perspective and will create inconsistent decision making which will cause more unpredictability for the development community and the public. Further the proposed new PPS 2023 does not advance the need to provide affordable housing or address the housing crises of the province. Advancing the supply of low-density market housing does not address the housing crisis and will only lead to more sprawl which is not sustainable for municipalities.

The proposed changes to the *Planning Act* through Bill 97 provide some clarity which is helpful and supported, while others have the potential to create delay, unfair advantages for some, and more uncertainty in the planning process. The regulation regarding site plan requirements for residential developments consisting of 10 units or more should be broadened as discussed in this report.

Financial Considerations:

Not applicable.

Alternatives Reviewed:

Not applicable.

Strategic Plan Relationship: Community Development and Growth

The proposed changes to the *Planning Act*, the repeal of Growth Plan for the Greater Golden Horseshoe and the proposed new PPS will have significant and lasting impacts on community development and growth for Pelham. Many of these impacts will not be positive as the policy approach is regressive and focused only on building homes faster and fails to recognize the need to plan for planned growth, density, and intensification to provide for complete communities. There is nothing in the proposed changes that addresses the real need of housing affordability and continuing to build low density market housing at the expense of building complete communities will not solve the housing crisis. Rather, the proposed changes will lead to a loss of prime agricultural lands, adverse impacts on agriculture and the agricultural economy, more sprawl and greater tax burden to the taxpayer due to the inefficient use of land and infrastructure that will result.

Consultation:

The Director has had consultation with Planning Directors for other municipalities in Niagara and they consistently have raised the same concerns regarding the proposed changes to the *Planning Act*, proposed new regulation under the *Planning Act*, proposed new Provincial Planning Statement and repeal of the Growth Plan for the Greater Golden Horseshoe.

Other Pertinent Reports/Attachments:

Proposed 2023 Provincial Planning Statement comparison with 2020 Provincial Policy Statement by Osler, Hoskin & Harcourt LLP.

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