

**From:** Kyle Bentley  
Director, City Development & CBO

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**Subject:** Environmental Registry Posting 019-2811  
Comments on the Minister of Municipal Affairs and Housing's authority to address site plan matters and apply inclusionary zoning as part of a ministerial zoning order  
- File: L-1100-054

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**Recommendation:**

1. That the comments in Report PLN 06-21 on Environmental Registry Posting (ERO) 019-2811 regarding certain legislative provisions in the *Planning Act* that enable the Minister of Municipal Affairs and Housing to address site plan matters and apply inclusionary zoning as part of a ministerial zoning order, be endorsed;
2. That the Province repeal recent changes through Bill 197 which provide enhanced powers that enable the Province to address site plan matters as part of a ministerial zoning order on the basis that:
  - a. municipalities are better positioned to carry out this function;
  - b. the site plan control process administered by the local municipality provides the best and only mechanism for ensuring the public and community interest is maintained and upheld where the land use zoning for a development is approved through a ministerial zoning order;
  - c. the Province does not have the local or technical expertise (engineering, urban design, landscaping, transportation, and fire), processes, or the same established working relationships to replace or fulfill these functions, which may result in delays or longer processes; and
  - d. exemption from or uploading of these functions may also result in many practical challenges in terms of how detailed conditions will be formulated, finalized, and implemented in co-ordination with local municipal planning staff and various service agencies;
3. That the Province repeal recent changes through Bill 197 which provide enhanced powers that enable the Province to apply inclusionary zoning as part of a ministerial zoning order on the basis that:
  - a. municipalities are better positioned to administer inclusionary zoning;
  - b. inclusionary zoning should not be arbitrarily administered in the absence of a required analysis and where associated municipal planning policies and regulations are not in place; and

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- c. requiring the provision of affordable housing without the necessary supportive tools, financing, policy, and regulatory framework, may result in projects not being viable or appropriately located or sized, among other issues;
  4. That should these enhanced powers around site plans and inclusionary zoning be maintained:
    - a. consideration be given to scoping these powers to certain areas of the province or jurisdictions that are not well equipped to handle these functions in an expeditious manner;
    - b. municipalities be consulted extensively when the Province is considering exempting a project from site plan approval and/or assuming oversight for the process and when implementing inclusionary zoning requirements;
    - c. stringent criteria be developed in consultation with municipalities as to which specific projects qualify to be exempt from local site plan control;
    - d. details be provided on how these procedural and logistical matters would be addressed; in particular, clarification should be provided around who will be responsible for handling ongoing implementation matters after the approvals are in place such as necessary changes and inspections;
    - e. the proponent be required to complete and/or satisfactorily address the necessary technical studies, agreements, and matters of interest that are ordinarily addressed through the City's site plan control process to ensure there will not be any unacceptable impacts on or off the site or to the municipality as a result of the development; and
    - f. provision be made for financial compensation to municipalities and, where applicable, conservation authorities, by the proponent or the Province for time spent by staff on reviewing and commenting functions on these applications to offset the foregone planning application/review fee revenue that would otherwise have been collected by the municipality;
  5. That the Province provide further clarification on how exactly the enhancements related to site plan matters and inclusionary zoning support:
    - a. the delivery of transit station infrastructure
    - b. optimization of surplus lands and what is meant by the term "surplus lands" in this context; and,
    - c. what constitutes a strategic project in this context;
  6. That staff be directed to respond to ERO posting 019-2811 with a copy of Report PLN 06-21 and Council's resolution thereon, and that a copy of Report PLN 06-21 be forwarded to the Minister of Municipal Affairs and Housing, MPP Peter Bethlenfalvy, the Regional Municipality of Durham, and other Durham Area Municipalities.

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**Executive Summary:** On December 16, 2020, the Ministry of Municipal Affairs and Housing posted a proposal on the Environmental Registry of Ontario (ERO) for a 45-day commenting period, to seek input on provisions that were recently added to the *Planning Act* through the passing of Bill 197, the *COVID-19 Economic Recovery Act, 2020*. Those provisions granted the Minister enhanced authority to address certain matters as part of a Minister's Zoning Order, in particular, site plans and inclusionary zoning. Comments are requested by January 30, 2021. City staff have prepared comments on behalf of the City and are seeking Council's endorsement of these comments.

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**Financial Implications:** The effect of the legislation could have the potential of reducing revenue from development applications due to developers not having to submit applications for Site Plan Approval.

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## 1. Purpose

The purpose of this report is to obtain Council's endorsement of staff's comments to the Province on Environmental Registry of Ontario (ERO) posting 019-2811, regarding changes to certain legislative provisions in the *Planning Act*, that enable the Minister of Municipal Affairs and Housing (MMAH) to address site plan matters and apply inclusionary zoning as part of a zoning order. This report contains an assessment of possible implications and comments on the ERO posting.

## 2. Background

Section 47 of the *Planning Act* gives the Minister of Municipal Affairs and Housing the authority to zone any property in Ontario by issuing a Ministerial Zoning Order (MZO). This tool allows the province to enact zoning regulations on lands without any public notice, public meetings, consultation, or right of appeal. MZOs override the underlying official plans and zoning by-laws. When an MZO is enacted, it quickly advances a development proposal to the site plan and building permit stage, or possibly straight to the building permit stage of development (if the project is exempt from site plan control). Currently, there is no established process or criteria that the Minister is required to follow to enact a MZO.

As part of the economic recovery from the effects of the current pandemic, the Province has been making frequent use of MZOs to enable certain development projects to proceed more quickly. With the increasing number of MZO requests, many municipalities, including the Region of Durham, have expressed concerns and suggested that further clarification or criteria around the use of MZOs and their implementation might be appropriate.

Within the City of Pickering, there are four MZOs, but only one has been issued as part of the recent actions to expedite development projects. Two of these orders were issued in the 1970s and are in the rural area near the federal airport lands. The purpose of these orders was to restrict land uses by preventing noise sensitive uses from being developed in the future flight paths to and from the future airport site. The third zoning order was passed in 2003 for the lands in the Duffins-Rouge Agricultural Preserve. The purpose of this zoning order was to restrict land uses to agricultural uses. Earlier this year, the Province issued an MZO to permit a variety of uses in association with the Durham Live development including apartment buildings, supermarkets, offices, film studios and warehousing.

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## 2.1 Site Plan Control

Prior to the *Planning Act* being amended, when a zoning order has been issued by the Minister, and where a municipality has enacted a Site Plan Control By-law, local approval authorities would apply site plan control prior to a building permit being issued.

Site plan control is an optional tool under the *Planning Act* that allows the council of a local municipality to control certain matters on and around a site proposed for development. This control over detailed site-specific matters, such as access (for pedestrians and vehicles), walkways, lighting, waste facilities, landscaping, drainage, and exterior design, ensures that a development proposal is properly planned and designed, fits in with the surrounding uses, and minimizes any negative impacts.

Municipalities also have the ability to require applicants to enter into appropriate site plan and development agreements, and provide securities to ensure required works are completed in accordance with the approved plans.

The City of Pickering has enacted a Site Plan Control By-law and implemented an effective and efficient site plan control process, which includes a pre-consultation meeting informing developers of submission requirements and identifies high level issues and concerns at the outset and prior to submission of the application. The Delegation of Site Plan Approval to the Director, City Development & CBO also expedites the process. The City has well established relationships and circulation protocols with key stakeholders and public agencies and requires comments be delivered in a timely manner.

Pickering's Site Plan Committee, consisting of the three City Councillors, helps to ensure that local issues and matters within a particular neighbourhood or area are considered in the review process. Further, through the site plan approval process, the City encourages and enables concurrent reviews of other applications such as minor variances and building permits, lessening development review timelines for applicants. Timelines for site plan applications are largely dependent on the development proponent's capacity to address and respond to matters.

## 2.2 Inclusionary Zoning

Introduced in 2018, inclusionary zoning is a land-use planning tool that may be used by municipalities to require affordable housing units to be included in proposed developments. Bill 108 limited the use of inclusionary zoning by municipalities to Major Transit Station Areas.

In order for a municipality to utilize the inclusionary zoning provisions enabled through the *Planning Act*, they must undertake an "assessment report" to inform the development of appropriate official plan policies and zoning by-law provisions. In accordance with Ontario Regulation 232/18, this assessment report must include an analysis of municipal demographics and population, household incomes, housing supply by type (current and planned), housing types and sizes that might be needed to meet anticipated demand for affordable housing, and current average market price/rent by housing type across the municipality.

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Currently, there are no policies in the Pickering Official Plan that enable the use of inclusionary zoning. The City's ongoing Housing Strategy Study will be examining the merits of utilizing inclusionary zoning. In addition, the Region of Durham has indicated that they are exploring the possibility of preparing an assessment report for their jurisdiction. This would enable the local municipalities, including the City of Pickering, to use this information in establishing inclusionary zoning, official plan policies, and zoning by-law provisions should they choose to do so. The Region is exploring this and other ways to enhance the affordable housing policies within its Official Plan through their municipal comprehensive review, Envision Durham.

### 3. **Bill 197, the *COVID-19 Economic Recovery Act, 2020 (Bill 197)***

Bill 197 received Royal Assent on July 21, 2020. Changes to Section 47 of the *Planning Act* were set out in Schedule 17 of Bill 197, and came into force on the same date.

Prior to the enactment of Bill 197, the Minister's authority to zone land did not include the authority to address site plan matters, or to require affordable housing units through inclusionary zoning. These recent amendments to Section 47 of the *Planning Act* give the Minister enhanced powers to:

- require affordable housing (through inclusionary zoning);
- remove municipal use of site plan control and require agreements between the municipality and development proponent (or landowner) concerning site plan matters; and
- make amendments to Minister's Zoning Orders that use any of these enhanced authorities without giving public notice beforehand.

This enhanced authority does not apply within the Greenbelt Area (i.e., lands in the Oak Ridges Moraine Conservation Plan, Greenbelt Plan Protected Countryside and Urban River Valleys).

The Province has indicated that an enhanced MZO could help overcome potential barriers and development delays, and that this proposed new authority could be used to support the delivery of transit station infrastructure and the optimization of surplus lands (e.g., affordable housing and long-term care homes), provide increased certainty for strategic projects, remove potential approvals delays, increase the availability of affordable housing, and provide additional value capture to enable economic recovery.

This authority to address site plan matters, if utilized by the Minister, would supersede municipal site plan authority, where the Minister so provides in a zoning order. Through the MZO, the Minister could require a municipality and a development proponent (or landowner) to enter into an agreement dealing with matters related to site plan control (i.e., the same matters that may be addressed through a typical site plan control process). However, the Minister will be able to give binding direction concerning the agreement (outside the zoning order) to scope the matters that need to be addressed, or to specify how the matters are to be addressed.

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#### 4. ERO Proposal 019-2811

On December 16, 2020, the MMAH posted a proposal on the ERO for a 45-day commenting period, to seek input on the proposed implementation of provisions in the *Planning Act*, as a result of the passing of Bill 197. Comments are requested by January 30, 2021.

The MMAH is inviting public comment on the use of the enhanced powers regarding site plan control and inclusionary zoning in ministerial zoning orders. In particular, the Ministry is interested in hearing feedback with regard to:

- whether the legislative changes made in this regard by Bill 197, should be expanded, repealed or otherwise adjusted;
- how this enhanced authority, subject to any potential changes that might be made to it, ought to be used;
- circumstances where this enhanced authority could be particularly helpful; and
- circumstances where this enhanced authority may be better not used.

The feedback received will assist the Ministry in determining whether changes should be made to the provisions of Section 47 of the *Planning Act* enacted by Bill 197 and, if the provisions are maintained, at least in part, whether there are best practices that might be articulated to guide the implementation of this enhanced ministerial authority.

#### 5. Staff Comments

City staff have undertaken a detailed review of the ERO proposal and provide the following comments. Key issues, comments, and concerns are outlined below and form the recommendations of this report.

The Province has indicated that an enhanced MZO could help to overcome potential barriers and development delays and that the proposed enhanced powers could be used to support the delivery of transit station infrastructure and the optimization of surplus lands (e.g., affordable housing and long term care homes), provide increased certainty for strategic projects, remove potential approvals delays, increase the availability of affordable housing, and provide additional value capture to enable economic recovery. **It is unclear how the enhancements could be used to support the delivery of transit station infrastructure, what is meant by “surplus lands”, and what constitutes a “strategic project”. Staff are requesting that the Province provide clarification.**

**Staff are recommending repeal of recent changes through Bill 197 which provide enhanced powers that enable the Province to override site plan control from the local municipality, and apply inclusionary zoning as part of an MZO.** These additional powers may be appropriate or desirable to be applied for development proposals in smaller and/or rural municipalities in Ontario that do not have the resources, technical expertise or formalized processes that the City of Pickering has in place to support expeditious processing of these kinds of applications. Currently, the City acts as an intermediary between the proponent and key stakeholders, and as a coordinating body. **Should these powers around site plans and inclusionary zoning be maintained, consideration**

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**should be given to scoping these powers significantly. Further, MMAH should consult extensively with the relevant municipalities when considering exempting a project from site plan approval and/or assuming oversight for the process and when implementing inclusionary zoning requirements.**

## 5.1 Site Plan Control Exemption

Exempting development from site plan control, or directing a scoped site plan control process be undertaken, poses a serious risk that various design and detailed site specific matters that are integral to the City's vision for the community and for public safety are overlooked. Guidance for site development is detailed through official plan policies, zoning by-laws and urban design guidelines, master drainage plans, watershed specific controls for stormwater quantity and quality management, fire safety route requirements, and municipal and regional development standards.

Documents regarding land use and design are prepared with public engagement and stakeholder input, and represent the community vision for new development. Technical requirements, such as stormwater management, fire safety, and municipal design standards are prepared to mitigate risk to persons and property and municipal liability. There is a strong concern that if the Minister has the ability to exempt developments from site plan control, or to only apply certain elements of site plan control, that the resulting development could fail to mitigate negative impacts to existing neighbourhoods, may not achieve desired patterns of development, and may result in risks to persons and property.

**The site plan control process administered by the local municipality provides the best and only mechanism for ensuring the public and community interest is maintained and upheld.** Staff at local municipalities have an intimate knowledge of local issues and are more familiar with the technical issues that are typically identified by key stakeholders and with the site-specific context. Removal of municipal site plan approval has the potential of resulting in decisions that may not serve the public interest and which could diminish transparency and accountability.

**The Province does not have the local or technical expertise (engineering, urban design, landscaping, transportation, and fire), processes, or the same established working relationships to replace or fulfill these functions, which may result in delays or longer processes.** If the role of a local municipality is relegated to a commenting agency in instances where the Province utilizes this enhanced authority through Bill 197 related to site plan control, it would add an additional layer of bureaucracy.

Through a Provincially directed scoped site plan control process, it appears that there would still be some form of ministerial approval and conditions of approval to secure the agreements between the owner and the municipality in relation to the critical matters that are typically addressed through site plan control. However, in the absence of regulations, there is a lot of uncertainty as to how this would be implemented.

Uploading of these detailed local functions may not only undermine the local planning process, but may also result in many practical challenges in terms of how detailed site plan conditions will be formulated, finalized and implemented in co-ordination with local

municipal planning staff and various service agencies. It is unclear how changes and implementation would be handled after the agreement is in place. If the Province decides to maintain these powers, **details should be provided on how these procedural and logistical matters would be addressed. In particular, clarification should be provided around who will be responsible for handling ongoing implementation matters after the approvals are in place, such as for necessary changes and inspections.**

Should the Province exercise these enhanced powers to exempt development from site plan control or to restrict the scope of a Provincially directed site plan review, **stringent criteria needs to be developed in consultation with municipalities to determine which specific projects may be exempt from site plan control, or to which matters would be addressed through a scoped site plan review**, to ensure arbitrary proposals/projects that have no provincial interest are not exempt from site plan control. Prior to the issuance of any approval by the Province, **the proponent should be required to complete and/or satisfactorily address the necessary technical studies, agreements, and matters of interest that are ordinarily addressed through the City's site plan control process to ensure there will not be any unacceptable impacts on or off the site or to the municipality as a result of the development.**

Further, **provision should be made for financial compensation to municipalities and, where applicable, conservation authorities, by the proponent or the Province, for time spent by staff to undertake reviewing and commenting functions on these applications.** A significant amount of staff time may still be required to assist the Province in considering these requests and in these cases, compensation should be provided to offset the foregone planning application/review fee revenue that would otherwise have been collected by the municipality.

## 5.2 Application of Inclusionary Zoning

With regard to enhanced authority to apply inclusionary zoning through MZOs, while staff strongly support the provision of affordable housing, **staff do not support arbitrary application of inclusionary zoning by the Province through the issuance of MZOs, particularly where the necessary assessment has not yet been undertaken and associated planning policies and regulations are not in place.** It is unclear how the Province would determine an appropriate amount and/or requirement for affordable housing in the absence of this requisite information.

Further, Bill 108 limited the use of inclusionary zoning by municipalities to only Major Transit Station Areas (MTSAs). It appears through this enhanced authority, that the Province can choose to apply inclusionary zoning anywhere with the exception of lands within the Greenbelt. It is not clear why, if Bill 108 limited the use of inclusionary zoning to MTSAs, the Province would deem it to be appropriate or how they would consider when to apply inclusionary zoning outside of MTSAs.

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Government funding programs, incentives, and stronger regulations that are equitably administered across the province are needed to support affordable housing. **Requiring the provision of affordable housing without the necessary supportive tools, financing, policy, and regulatory framework, may result in projects not being viable or not being appropriately located or sized, and could cause other related issues.**

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