

From: Kyle Bentley
Director, City Development & CBO

Subject: Environmental Registry Postings 019-5284 and 019-5285
- Comments on proposed Bill 109, More Homes For Everyone
- File: L-1100-057

Recommendation:

1. That Council endorse the comments prepared by staff in Report PLN 22-22; and
 2. That Council authorize staff to respond to Environmental Registry of Ontario numbers 019-5284 and 019-5285 with a copy of Report PLN 22-22 and Council's resolution thereon, and that a copy of Report PLN 22-22 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 March 30, 2022, the Ministry of Municipal Affairs and Housing posted two proposals on the Environmental Registry of Ontario (ERO), numbers 019-5284 and 019-5285, for a 30-day commenting period, to seek input on proposed changes to a number of pieces of legislation, including the *Planning Act*. These changes are intended to streamline the development approvals process and increase housing supply in Ontario.

This report contains comments on, and an assessment of, possible implications of the proposed legislative changes. Comments are requested by April 29, 2022. City staff are seeking Council's endorsement of these comments, and authorization to submit them to the ERO.

Financial Implications: This report has no direct financial implications for the City. However, Section 2 of the report outlines impacts to the City's application revenues, should the proposed Provincial legislation proceed.

1. Background

On March 30, 2022, the government released its More Homes for Everyone Plan, that proposes targeted policies and initiatives to address market speculation, protect homebuyers, and increase housing supply. Bill 109 – the *More Homes for Everyone Act*, 2022, was introduced as part of this initiative, and the City has an opportunity to offer feedback on the changes proposed under the legislation. The due date for municipalities to comment on the draft bill is April 29, 2022.

The More Homes for Everyone Plan was preceded by:

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- the Province's Housing Affordability Task Force's report released on February 8, 2022;
 - the Ontario-Municipal Housing Summit and Rural Housing Roundtable; and
 - feedback from municipalities and meetings with the leaders of municipal organizations.

The two key messages received by the Provincial government were: streamline the development approvals process; and increase housing supply.

The following sections detail the proposed changes in Bill 109, that are expected to be of greatest interest to the City, followed by staff's recommendations in bold.

2. Proposed Changes

2.1 Site Plan Control

The Province is proposing to extend the site plan application review timeframe from 30 to 60 days. The review time referenced is the one that allows an applicant to appeal the municipality's failure to approve the submitted plans and drawings to the Ontario Land Tribunal 30 days after the application is deemed complete. Based on many years of experience, it is the opinion of staff that 30 days is completely unrealistic to achieve site plan approval, and that 60 days is equally unrealistic. The City has not had any appeals of this nature in the past 20 years.

Approval timeframes depend on many things, including response times from commenting agencies, and staffing resources to process the volume of applications, that are not always within the City's control. Some of the agencies with the longest response times are Provincial (such as the Ministry of Transportation). In addition, applicant response time to address missing or required material is definitely not within the control of the municipality, and has a major impact on timeframes.

In 2020, the Planning & Design Division converted to electronic submission, and circulation of planning applications. The City is continuously improving its development review process, with the goal of efficiently facilitating development, including that of quality, and location-appropriate, new housing supply.

Staff recommend that the site plan application review timeframe be based on realistic timeframes experienced by municipalities across the Province.

2.2 Refund Application Fee

The Province is proposing to require municipalities to refund site plan control application fees and zoning by-law amendment application fees, on a graduated scale, if a decision on an application has not been made within the required timeframes.

Requiring the City to refund application fees unfairly places the responsibility for delays exclusively on municipalities. Commenting agencies that also require a review fee (i.e., Durham Region, conservation authorities) are not being required to refund the fees they collect. It also absolves applicants of responsibility when sub-par studies and application materials results in multiple resubmissions.

In the case of zoning by-law amendments, this requirement would unfairly penalize the City for responding to new information brought forward at the public meeting, which requires further review or analysis.

Development is intended to pay for development. Despite this principle, application fees only reflect a portion of the overall costs incurred by the City to review applications. The threat of refunding development application fees will not lead to faster decision making by municipalities. Instead, it will shift the full cost of municipal review onto the existing tax payers.

If the Province chooses to move forward with this change, the City could choose to review and update the Fees By-law by instituting a resubmission fee that is equal to the amount of the initial application fee. If the City must forfeit the original application fee due to required revisions to the application materials, the applicant should be held responsible for the lost revenue and increased timeframes. However, this will still not address the scenarios, where delays are caused by late responses from public agencies.

Staff strongly recommend that the Province not proceed with this change.

2.3 Plans of Subdivision

The Province is proposing to establish a regulation-making authority to determine what can and cannot be required as a condition of a draft plan of subdivision approval, with the goal of preventing scope creep.

It is unclear at this time what conditions will be included within/excluded from subdivision approvals. Some standards could be Province-wide but others may not be appropriate since standards should be tied to local context, and specific issues identified during the review of the subdivision. For example, stormwater management controls differ across various parts of the municipality, or a condition may be imposed to address a community or neighbourhood concern.

Staff recommend that the Province not proceed with this change.

In addition, the Province is proposing to grant municipalities a one-time discretionary authority to reinstate draft plans of subdivision that have lapsed within the past five years in the cases where units have not been pre-sold.

Staff supports this change, as long as the decision of whether or not to reinstate the recently lapsed draft plans of subdivision remains at the municipalities' discretion, and that such plans still constitute good planning. There may be circumstances where the underlying conditions have changed since the original approval, that would require a revision to the original plan of subdivision.

Staff recommend that the Province proceed with this change, provided that municipalities have the authority to choose whether or not to use it.

2.4 Development Securities

The Province is proposing to establish regulation-making authority to authorize landowners and applicants to stipulate the type of surety bonds used to secure obligations in development agreements.

The City currently accepts surety bonds issued by financial institutions that have a credit rating of “A”, as measured by AM Best rating agency. As part of the rating process undertaken by the rating agency, a comprehensive analysis is completed, consisting of quantitative and qualitative evaluation of balance sheet strength, operating performance, business profile, and enterprise risk. However, a rating of a company is a point in time measurement, and it cannot be considered as a fact or guarantee of future credit quality and/or future financial solvency. When a rating agency provides its opinion, it is provided on an “as is” basis without any expressed or implied warranty. Although the City tries to mitigate its risks, by only accepting surety bonds issued by highly rated financial institutions, the surety bond does not provide the same level of guarantee or financial security as a “Letter of Credit”. If the Province adopts legislation to compel municipalities to accept surety bonds over letter of credits, the Province should be the guarantor of last resort to mitigate the financial risk for the City.

Staff recommend that the Province not proceed with this change. If the Province chooses to proceed with this change, then staff recommend that the Province be the guarantor of last resort for these bonds.

2.5 New Reporting Requirements

The Province is proposing that the annual treasurer's statement should set out whether the municipality still anticipates incurring the capital costs projected in the municipality's DC background study for a given service. If not, an estimate of the anticipated variance from that projection would be provided along with an explanation for it.

The major concern is what is meant by the term “variance” and “service”. If the terms encompass detailed analysis, including specific project timing or cost changes, the reporting could become burdensome.

Staff recommend that the Province release a full draft of the regulation change so that staff can provide robust feedback.

The Province is proposing that municipalities report on how the municipal need for parks, set out within their parks plans, is being addressed through the parkland dedication levies they are collecting.

The need for outdoor amenity space to serve the residents of our City is not being fully met through the amount of public parkland being acquired from parkland dedication or equivalent cash contribution. Similar to Development Charges, the City currently reports the activity for our Parkland Dedication Reserve Fund on our annual Treasurer's Statement. If required, the City can also provide a listing of committed and forecasted projects to give full transparency on how Parkland Dedication levies are being utilized.

Staff have no objection to the Province proceeding with this change.

2.6 Development Related Charges

The Province is proposing to require municipalities to post annual financial reports for development-related charges on their websites. Since this is already being done by the City, **staff recommend that the Province proceed with this change.**

The Province is also proposing to mandate a five-year review cycle of community benefit charges (CBCs) for municipalities that have implemented them, with a requirement that councils pass a by-law to indicate if changes are required.

The City's Finance Department has undertaken work, with the assistance of a consultant, to develop a CBC strategy by September 2022. Given the dynamic nature of city development and factors impacting growth, it would be appropriate to mandate a periodic review of CBCs.

Staff recommend that the Province proceed with this change.

2.7 Parkland Dedication

The Province is proposing to implement a tiered alternative parkland dedication rate, that would only apply to Transit-Oriented Community developments. For smaller sites that are 5 hectares or less, the parkland dedication would be up to 10 percent of the land or equivalent value. For sites larger than 5 hectares, parkland dedication would be up to 15 percent of the land or its equivalent value. This change is intended to provide certainty to developers about the parkland commitment/costs associated with development.

This provision applies only to lands designated, by a Provincial Order in Council, as Transit Oriented Community land, under the *Transit Oriented Communities Act, 2020*. At this time, no parts of Pickering have been designated Transit Oriented Community.

The proposed change would reduce the overall amount of parkland provided at these high density locations. Currently, municipalities have the ability to request a parkland ratio of 1 hectare of parkland for every 300 units (or part thereof). The proposed method for calculating parkland would result in the same amount of parkland being provided whether the site was developed for 50 units or 500 units.

Staff recommend that the Province not proceed with this change.

In addition, the Province is proposing that a Minister's order could identify that encumbered land could be used as part of the parkland dedication requirements provided to a municipality. This provision is also only for lands designated, by a Provincial Order in Council, as Transit Oriented Community land, under the *Transit Oriented Communities Act, 2020*. Encumbered lands would include lands above servicing easements which would limit tree plantings and other recreational infrastructure. In addition, this land may not be appropriately sized or located to provide effective park space (i.e., long and narrow strips of land).

Staff recommend that the Province not proceed with this change.

2.8 Community Infrastructure and Housing Accelerator

The Government of Ontario is introducing the Community Infrastructure and Housing Accelerator (CIHA) tool which would allow municipalities to submit a request to the Minister of Municipal Affairs and Housing to expedite approvals for local priorities such as market-rate housing, non-profit housing, and long-term care facilities. Local councils would be required to pass a council motion, and to host a public meeting to discuss the use of a CIHA for each project. Finally, a municipality would submit a request to the Minister of Municipal Affairs, who could impose conditions on the CIHA. The order, however, is not required to comply with the Provincial Policy Statement, Provincial Plans (except the Greenbelt Plan) or official plans.

The new CIHA tool resembles municipally requested Minister's Zoning Orders (MZOs), but with added public consultation requirements to ensure that residents have an opportunity to provide feedback on such requests. This approach provides more transparency to the MZO process that has been applied over the last several years. While the City can still advocate to the Province for rapid approval of development with high community benefits, this new tool would formalize a process for public engagement that may resemble a traditional rezoning.

While not needing to comply with higher order provincial planning documents and official plans, staff caution that any such requests should be located where appropriate services, facilities, servicing capacity, and other amenities are available. Further, the location should represent logical and orderly development, and good planning.

Staff recommend that the Province proceed with this change.

2.9 Data Collection

Planning Act amendments are being proposed to require public reporting by planning authorities on development applications that have been submitted, are deemed complete, are under review, and approved.

Staff recommend that the Province proceed with this change as this is already being done by the City.

In addition, the Province is proposing to create a "development approvals data standard" to ensure a more efficient and streamlined approvals process and coordination between municipalities and the development industry.

In 2020, the City installed Bluebeam Revu software for the review of building permit applications. This software and standard practice improvement has facilitated the electronic submission, circulation, and review of building permit applications, which has made the overall process more convenient for customers (i.e., submissions can be made remotely rather than in-person). While it has taken time to establish templates and processes to support paperless plans review, and to train staff, the move to electronic markup has proven to be an improvement to operations.

With the support of the Provincial Streamline Development Approval Fund, staff are in the midst of pursuing an expansion of the digital application system to include a public portal, with user dashboard functionality, which will further integrate processes and improve the customer experience.

Staff recommend that the Province proceed with this change as this is already being done by the City.

2.10 Ontario Land Tribunal and the Landlord and Tenant Board

The Province of Ontario is investing \$19 million to reduce the backlog of cases and increase the decision-making speed at the Ontario Land Tribunal (OLT) and Landlord and Tenant Board.

Any additional investment to the OLT and Landlord and Tenant Board will provide benefit to resolving outstanding land use matters and encouraging private investment in housing and, in particular, the rental market.

Staff recommend that the Province proceed with this change.

2.11 Regional Official Plan Amendments

Amendments are being proposed that allows the Minister, where they are the approval authority for Regional/Upper tier Official Plans and amendments thereto, to suspend the 120-day approval period, after which the municipalities would be able to appeal the failure to make a decision. Also, it allows the Minister to refer these approvals to the OLT for a recommendation and/or a decision.

The ability of suspending the 120-day approval period, in essence suspending the ability of the municipality to appeal, is an admission that the planning review and approval process is complex and time consuming.

It appears that this proposed change will add an additional layer of litigation to the approval process for Regional Official Plans and Amendments. This change would be counter-productive to the goal of speeding up the approval of new housing approval. Further details are required to understand the full implications of this change.

Staff recommend that the Province not proceed with this change.

2.12 Planning For Future Growth

The Province is proposing to connect transit ridership forecasts to growth of housing and employment. In principle, connecting transit investments with population growth makes sense. However, it is unclear how transit and land use planning will be impacted by this change.

Staff recommend that the Province provide further information about this change.

2.13 Ontario Homebuyer and Renter Protections

The Province of Ontario is also introducing new provisions to protect residents who buy, own, and rent homes. This includes:

- increasing the non-resident speculation tax rate from 15% to 20%, and the expansion of this tax across Ontario;
- establishing a province-wide working group with municipalities who intend on establish a vacant home tax, where best practices can be shared;
- working to establish measures relating to land speculation, such as construction shutdowns, which can be used to drive up housing costs;
- amending the *New Home Construction Licensing Act, 2017* and the *Ontario New Home Warranties Plan Act* to increase the fines and administrative penalties;
- empowering the new home building industry regulator, the Home Construction Regulatory Authority, with a mandate to address “unethical builder and vendor conduct”;
- requiring a condominium information sheet for pre-construction units, and increasing the amount of interest that is payable on new construction units in situations such as when a project is cancelled, to benefit new homebuyers.

These changes could help prevent land speculation that inflates housing prices, and could also increase protection of homeowners from unethical practices within the building industry.

Staff recommend that the Province proceed with these changes.

2.14 Using Surplus Provincial Lands

The Province is proposing a Centre of Realty Excellence (CORE) that would determine how Ontario could better utilize its portfolio of surplus land for projects, such as long-term care and non-profit housing. This would include developing a process to streamline access to these lands for housing providers.

Staff recommend that the Province proceed with this change. The Province may also consider issuing proposal calls for these lands.

3. Conclusion

The legislation introduced on March 30, 2022 has been posted to the Environmental Registry of Ontario for a 30-day comment period which closes on April 29, 2022. According to the current standing orders of the legislature, the final day that the House may meet before the Provincial election is May 4, 2022.

Staff are doubtful that the changes proposed by Bill 109 will lead to more rapid development approvals. Simply saying it must be done faster, and imposing financial penalties directly affecting the funding of staff to process such applications, does not mean it can be done faster, given the number of applications and the number of stakeholders who must contribute to the planning approval process. Further, the

proposed changes do not directly provide for the creation of affordable housing or high quality urban design. Municipalities are being asked to make a number of compromises, in favour of the idea of accelerated development approvals.

Staff recommend that Council endorse the comments contained within Report PLN 22-22 and direct staff to respond to ERO postings 019-5284 and 019-5285 with a copy of Report PLN 22-22 and Council’s resolution.

Prepared By:

Approved/Endorsed By:

Original Signed By

Original Signed By

Paul Wirch, RPP
Principal Planner, Policy

Catherine Rose, MCIP, RPP
Chief Planner

Original Signed By

Original Signed By

Déan Jacobs, MCIP, RPP
Manager, Policy & Geomatics

Kyle Bentley, P. Eng.
Director, City Development & CBO

PW:ld

Recommended for the consideration
of Pickering City Council

Original Signed By

Marisa Carpino, M.A.
Chief Administrative Officer