

The Corporation of the Town of Niagara-on-the-Lake Information Report to Council

SUBJECT: Bill 23 *More Homes Built Faster Act* – Changes to Various Acts
DATE: 2022-12-13
REPORT #: CDS-22-105
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BACKGROUND INFORMATION

The purpose of this report is to provide information to Council on the recent approval of the Province's Bill 23 - *Build More Homes Faster Act* ("the Bill"). The Bill was released on October 25, 2022, for a 30-day commenting period, ending November 24. On November 23, the commenting period was extended to December 9.

The Province introduced Bill 23 immediately following the local municipal elections. No Council meetings were scheduled within the commenting period. Staff prepared comments on behalf of the Town for the proposed amendments. Staff submitted these comments to the various ERO postings prior to the original commenting deadline.

The comment letter is included as **Appendix I**. A list of the various Environmental Registry of Ontario (ERO) postings is included as **Appendix II**.

Bill 23 makes changes to 10 Acts in total. Most significant to the Town include changes to:

- *Conservation Authorities Act, 1990*
- *Development Charges Act, 1997*
- *Municipal Act, 2001*
- *Ontario Heritage Act*
- *Ontario Land Tribunal Act, 2021*
- *Planning Act, 1990*

The Town recognizes that Bill 23 was introduced to address the housing crisis. It was implemented to facilitate the construction of more homes through streamlined development approvals, reducing the costs/fees associated with development, addressing intensification and housing targets, and changing the Ontario Land Tribunal (OLT) process.

The Province has passed a number of aggressive legislative changes in recent years to address the crisis, including:

- Bill 108 (approved June 6, 2019) which shortened Council decision timelines for planning applications to allow appeals for non-decision sooner.
- Bill 109 (approved April 14, 2022) which applied a punitive scale of refunds for development application processing that goes beyond the *Planning Act* timelines and delegated certain responsibilities to local staff in an effort to expedite approval processing.
- Bill 23 (approved November 28, 2022) builds on the Province's strategy to construct 1.5 million homes by 2031. Many significant changes to the several Acts and Regulations that will impact the Town.

This report provides a general overview of the Bill 23 changes most relevant to the Town. It is recognized that the Province may release additional regulations and bulletins to implement aspects of Bill 23. This additional information will help implement the changes and Staff will keep Council apprised this information as it becomes available.

1.0 Planning Act

The Bill made many significant changes to the *Planning Act* and how municipalities will undertake planning process going forward.

1.1 Planning Responsibilities

Bill 23 removes planning responsibilities from seven upper-tier municipalities, including Niagara Region. Previous upper-tier responsibilities for planning review and approvals will be downloaded to the local municipalities. Niagara Region may continue to support the Town, but their role is limited to providing advice.

The Region has coordinated several meetings to discuss this transition and how to ensure that Niagara's local municipalities continue to be supported. Many local municipalities do not have the in-house expertise (i.e. environmental planning review, urban design, etc.) that the Region provides. Discussions are underway to establish the Region's role in light of these changes.

With removal of upper-tier planning responsibilities, the Minister of Municipal Affairs and Housing becomes the approval authority for all lower tier Official Plans (OP) and Official Plan Amendments (OPA), and Minister's decisions are not subject to appeal. It is expected further direction will be provided from the Province.

Effective Date: To be determined

1.2 Site Plan Control and Subdivision Approvals

Bill 23 changes the requirements for Site Plan Control by exempting aspects of this process for residential development up to 10 units.

Initially the Bill limited the scope of site plan control by removing the ability for municipalities to regulate architectural details, exterior design, character and landscape design for development. Following submissions to the Standing Committee, the Bill was amended to re-introduce the ability for site plans to apply to:

- matters related to green roofs;

- building construction requirements related to environmental conservation, where permitted, under the *Building Code Act*; and,
- the appearance of building elements if it impacts health, safety accessibility or sustainable design.

The Bill has eliminated the requirement for public meetings for the approval of a draft plan of subdivision. Comments would still be collected through prescribed agency circulation. Public meetings continue to be required for other applications, such as OPAs and Zoning By-law Amendments.

Effective Date: November 28, 2022

1.3 Additional Residential Units

Although the *Planning Act* permitted additional residential units, Bill 23 made further changes to allow “as-of-right” up to three units per lot in most existing urban residential areas. The term “urban residential area” is now a defined term in the *Planning Act*. This change allows up to three units in the primary dwelling, or up to two units allowed in the primary dwelling and one unit allowed in an ancillary building. The Act now directs that Official Plans and Zoning By-laws cannot prohibit these additional residential units on any parcel of land where residential uses are permitted in settlement areas with full municipal water and sewage services (except for legal non-conforming uses such as existing houses on hazard lands).

The Town cannot impose development charges, parkland dedication or cash-in-lieu requirements for the construction of these units. Further the municipality cannot apply a minimum unit size or require more than one parking space per additional unit.

Effective Date: November 28, 2022

The Bill also introduces a category of “attainable housing.” Further information on this will be provided in a regulation that is yet to be released.

Effective Date: To be determined

1.4 Parkland

The ability for a municipality to collect and use parkland dedication, both land and cash-in-lieu, has changed.

The Town currently does not have alternative parkland rates within the Official Plan policies. Previously a Parks Plan was required to be prepared for the municipality prior to establishing an alternate (higher) rate. Now a Parks Plan is required prior to the passing of any future parkland dedication by-law. The Town will have to prepare a Parks Plan.

The *Planning Act* now directs a maximum amount of land that can be conveyed or paid for parkland. For sites that are larger than 5 hectares (ha), no more than 15% of the amount of developable land could be required. For sites smaller than 5 ha, no more than 10% of land or its value.

Parkland dedication rates will be frozen as of the date that the relevant planning application is approved. The freeze will remain in effect for two years. This freeze will affect the value of the

land at the time of building permit as the Town will not be able to apply any increase in value over that two years.

The Bill also requires municipalities to allocate or spend at least 60% of their parkland reserve balance at the start of each year. This will impact longer term park planning efforts to acquire larger area for park amenities. For the 2023 budget year, this is potentially upwards of \$300,000 which will need to be allocated to potential projects.

Effective Date: November 28, 2022

Further, in terms of the location of parkland dedication, the Bill adds language that allows developers to identify the location of land, including encumbered land and privately owned public spaces, that would count towards municipal parkland dedication. In cases where disputes arise about the suitability of land for parks, the matter can now be appealed to the OLT.

Effective Date: To be determined

1.5 Elimination of prohibiting amendments

Previously the *Planning Act* included language that prohibited an application to amend new Official Plans, secondary plans, and allow minor variances within two years of a zoning by-law amendment without approval of local Council. This prohibition has been eliminated.

Effective Date: November 28, 2022

1.6 Additional Changes

Bill 23 also made changes to inclusionary zoning, community benefits charges and zoning in major transit station areas. Currently these changes will not affect the Town at this time.

Conservation Authorities Act

The Bill impacts the role Conservation Authorities (CA) play in the local planning process. Changes focus on supporting faster approvals and streamlining processes to assist in the goal of making more land suitable and available for housing development.

The Niagara Peninsula Conservation Authority (NPCA) utilizes O. Reg. 155/06 to regulate development within the Niagara Peninsula, including any interference with wetlands and alterations to shorelines and watercourses. The Province is proposing to create a single regulation document for all 36 Conservation Authorities in Ontario, which would replace NPCA O. Reg. 155/06. The regulation is yet to be released; however, it is expected that the language will have flexibility to recognize local context.

Effective Date: To be determined

The Bill provides clear limits on the CA's authority to comment on planning applications as part of the approvals process. These limits would focus CA review to only natural hazards and flooding, instead of their previous review function which included control of flooding, erosion, dynamic beaches, pollution and the conservation of land. The reduction of the NPCA's role in planning approvals, to remove the responsibility for pollution and conservation of land, could be detrimental to the Town's efforts to mitigate the effects of climate change and the health

and wellbeing of the community. These key roles would be transferred to the Town for incorporation into the approval process; this is significant as the Town does not have expertise in house to perform this review function.

The Bill adds a review function for CA's to consider the effects on the control of unstable soil or bedrock.

Effective Date: January 1, 2023

The Bill limits the ability of a CA to appeal a land use planning decision under the *Planning Act*. Appeals from a CA are permitted, when acting as a public body, for matters only related to natural hazard policies in the Provincial Policy Statement. As noted above, the Town does not have expertise in house regarding applying and evaluating Town environmental policies, and the NPCA will function solely as a commenting agency on planning applications.

Effective Date: January 1, 2023

The Bill allows for CA's to dispose of any land they have acquired, in an effort to streamline administrative land disposition and create an easier process for CA's to dispose of excess lands that may be suitable for housing or other types of development. Lands may be disposed of that are suitable for provincial or municipal infrastructure and utility purposes. Previously, CA's required approval from the Ministry of Natural Resources and Forestry prior to disposing of lands. Disposal of these lands within the Niagara Peninsula could result in fragmentation of environmental features and watersheds, and reduced ability to maintain important corridors.

Effective Date: January 1, 2023

The Bill will exempt certain development authorized under the *Planning Act* from the requirement to obtain a conservation permit, provided that certain conditions and restrictions are satisfied. The regulation containing the conditions and restrictions is forthcoming. The use or modification of watercourses, wetlands, erosion and other matters, as part of a development application under the *Planning Act*, will be permitted subject to the conditions and restrictions. This will impact and may result in the degradation of regulated areas within the Niagara Peninsula, including wetlands.

Effective Date: To be determined

Development Charges Act

Development charges (DCs) are fees collected from a developer as a result of development and redevelopment, at the time of building permit, to recover the capital costs associated with growth and development in a municipality. As a principle, development charges generated from growth are used to pay for future growth and provide benefits to the community. The Town utilizes development charges to fund services such as water, sewer, roads, fire facilities, library facilities and materials, parkland and recreation.

The Bill implements a number of exemptions that will shift the cost of certain new development from the developer to the taxpayer. Town Staff are estimating this could shift \$925,000 to \$1.3 million in lost development charges revenue to the tax base over a 5-year time frame.

The Bill exempts second and third residential units (see Additional Residential Units above) from development charges. As a result of increased residential development (i.e. more residents living within a smaller area), the demand on Town services, including their capacity, will increase. Costs to increase capacity of Town services may fall largely on the taxpayer.

Effective Date: November 28, 2022

The Bill provides an exemption to, or reduction in the rate of, DCs for affordable housing, attainable housing, and purpose-built rental housing. Affordable housing units must remain affordable for at least 25 years to be exempt from DCs. Regulations regarding DC exemptions for attainable housing, and their exemption of parkland dedication, have not yet been released. DCs for purpose-built rental housing may be reduced by up to 25 percent. Reducing this revenue source will impact capital improvement project funding that is a consequence of new growth. Without private sector funding, any supplement is expected to come primarily from the tax base through increased levies. Further, exempting certain development from the requirement to provide parkland will decrease the amount of open space provided within the Town, which has proven positive impacts on community health and wellbeing.

Effective Date: To be determined

For larger purpose-built rentals, the Bill provides for further discounts of DCs on top of the existing DC freeze and deferral of payments over five years.

Effective Date: November 28, 2022

The Bill excludes the cost of studies (including background studies) from recovery through DCs. Studies related to capital growth planning, such as the Development Charges Study and secondary plan studies, would no longer be eligible. With the proposed shift and downloading of responsibility from the Region, the Town will face financial risk without the ability to rely on funding from DCs to complete additional studies. The Town will need to consider a restructuring of revenue to support future studies and service levels. The Town currently has \$80,000 budgeted in 2023 for a Development Charge Background Study update. Staff will be confirming whether this project can still be funded through Development Charges or if it will be required to now be funded through an alternate source, despite having the funds available.

Effective Date: November 28, 2022

The Bill requires that DC By-laws will expire every ten (10) years, instead of every five (5) years. The current 5-year cycle provides the Town with greater flexibility to respond to changing economic climates. The Town's current DC By-law (No. 5972-18) was approved in 2018. Under these provisions, an update to the DC By-law would not be required until 2028. Once updated, any DC imposed during the first, second, third and fourth years that the By-law is in force can be no more than 80, 85, 90, and 95 percent of the maximum DC that could otherwise be charged. This will result in a decrease in DCs collected over the first four years once the Town's DC By-law is updated. The five-year phase-in period for development charge increases now applies to by-laws passed after January 1, 2022 (the original date had been June 1).

Effective Date: November 28, 2022

The Bill requires municipalities to spend at least 60% of DC reserves for priority services at the beginning of each year, to start in 2023. These services include water, wastewater, and roads.

Due to project timing and management, including procurement, contract awards, and scheduling, the Town may face challenges in ensuring that at least 60% of DCs are spent or allocated at the beginning of each calendar year. Further, it is unclear as to what qualifies as the “beginning” of the year under the amendments to the *Development Charges Act*. This will require the Town to allocate upwards of \$2.5 million in Development Charge Reserves to potential projects.

Effective Date: November 28, 2022

The Bill imposes a cap on interest that can be paid on phased DCs for rental, institutional and non-profit housing to a maximum interest rate of prime plus 1%.

Effective Date: November 28, 2022

Bill 23 has changed the historical service level used to calculate capital costs eligible for recovery through DCs from the current 10 years to 15 years. This is applicable to the passage of all new DC By-laws, with an exception for transit. Capital costs for each service are reduced by the costs associated with a service level great than a 15-year historical average to ensure that new residents do not receive a service level greater than that provided to current residents.

Effective Date: November 28, 2022

The Bill states that a new regulation authority will set services for which land costs would not be an eligible capital cost recoverable through DCs.

Effective Date: To be determined

Ontario Heritage Act

Bill 23 has made some changes to the *Ontario Heritage Act* regarding listing properties, designations and heritage conservation districts.

Most significant for the Town is the change made to the requirements for listing properties on the Municipal Register. The threshold of information required to list a property is now similar to the designation process and the property will have to meet prescribed criteria.

Properties will no longer be allowed to remain indefinitely on the Register. The Bill now allows properties to be listed on the Municipal Register for a period of two years. Within these two years, the municipality will need to pursue a heritage designation. Should the designation not advance within this timeframe, the listed property will be removed from the Register and could not be listed again on the register for a period of 5 years.

Previously, to remove a listed property, consultation with a Municipal Heritage Committee was required. However, this consultation is not required if a property is removed due to the lapse of the two-year time period.

Through Bill 23, municipalities would not be permitted to issue a notice of intention to designate a property under the *Ontario Heritage Act* unless the property is already on the heritage register when the *Planning Act* application timeline is triggered. A notice of intent to designate may only be issued if the property was already included in the Municipal Register as a non-designated property on the date of the prescribed event.

Heritage standards and guidelines may not apply if provided an exemption by order of the Lieutenant Governor in Council for a specific property to advance one or more provincial priorities including transit, housing, health and long-term care, other infrastructure, or such other priorities as may be prescribed.

A regulation is expected to be released outlining elevated criteria for designating a heritage conservation district. This will set a higher bar for designation to establish that the area is of cultural heritage value or interest.

Effective Date: To be determined

Ontario Land Tribunal

The changes made to the Ontario Land Tribunal Act focus on rapid processing of OLT appeals and shielding them from nuisance appeals. The Bill expands the Tribunal's powers to dismiss a proceeding without a hearing on the basis of undue delay.

Originally the Bill proposed changes to the *Planning Act* to eliminate the ability for third party appeals. Further the legislation would deem all third party appeals already filed to have been dismissed if a hearing was not scheduled as of October 25, 2022. Through submissions at the Standing Committee, the elimination of all third party appeals was changed to continue to allow the ability to appeal OPAs and Zoning By-law Amendments. The Bill did eliminate the ability for third party appeals for the approval of minor variances or consent.

Effective Date: November 28, 2022

Changes to the *Ontario Land Tribunal Act* enhance the Tribunal's ability to order an unsuccessful party to pay the successful party's costs as a deterrent to frivolous appeals.

Regulations are forthcoming which will allow for prioritization of specified classes of appeals. It is expected that less complex appeals with the greatest impact for additional housing, would be heard first. Further, the Tribunal is also given the power to dismiss a proceeding entirely.

OLT resourcing will be assessed to ensure appropriate capacity to process appeals and set hearings at an acceptable rate. This measure demonstrates the Province's commitment to expediting the process and eliminating undue delay, should an application end up before the OLT.

Effective Date: To be determined

NEXT STEP / CONCLUSION

Despite the commenting period being extended, Bill 23 received Royal Assent on November 28, 2022. Although the Bill was passed quickly, it did undergo some important changes following comment submissions and debate at the Standing Committee on Heritage, Infrastructure and Cultural Policy. These changes are noted throughout this report.

The Greenbelt ERO posting for comments recently closed on December 4. Planning staff reviewed the posting and determined that the mapping changes proposed did not impact the Town. No comments were submitted.

The Province has also released an ERO posting for review which includes merging the Provincial Policy Statement and A Place to Grow: Growth Plan for the Greater Golden Horseshoe as a single Provincial planning document. Comments on this posting is due at the end of the month.

The Province has issued aggressive timelines for much of their recent changes (Bill 109 and Bill 23) to which local and regional governments will be required to comply and adapt procedurally in an expeditious manner. Information released by AMO last week alluded to the introduction of legislation that, if passed, would extend the start of Bill 109 refund timelines.

The Province has released a number of ERO postings and proposed a number of changes in a short period of time. Staff continue to monitor the changes and discuss potential implications with our municipal partners. Additional information on the changes will be provided as staff tackle the implementation of these changes.

ATTACHMENTS

- **Appendix I** – NOTL Written Submission on Bill 23 – *More Homes Built Faster Act. 2022*
- **Appendix II** – Bill 23 ERO List and Comments Deadline