# More Homes Built Faster Act, 2022 Proposes Significant Changes to Legislation

By: Laura Dean, Eileen P. K. Costello, Matthew Helfand, Alexander J. Suriano, John George Pappas , Jasmine C. M. Fraser and Maggie Bassani

## Overview

On October 25, 2022, Ontario's Minister of Municipal Affairs introduced the much-anticipated Bill 23, *More Homes Built Faster Act, 2022* ("**Bill 23**") for first reading. As of October 26, 2022, the bill was brought forward for a second reading.

Bill 23 is intended to support Ontario's Housing Supply Action Plan, with a stated aim of increasing housing supply in the Province. The bill proposes to introduce various amendments to multiple statutes including:[1]

1. *City of Toronto Act, 2006/Municipal Act, 2001*
2. *Conservation Authorities Act*
3. *Development Charges Act, 1997*
4. *Ontario Heritage Act*
5. *Ontario Land Tribunal Act, 2021*
6. *Planning Act*

Bill 23 will be subject to committee review and further readings by the legislature and may be amended through that process. However, many of these proposed legislative changes are highly consequential, and will be of great interest to the development community, municipalities and landowners. Highlights from Bill 23 are discussed below.

### 1. *City of Toronto Act, 2006* and *Municipal Act, 2001*

Schedules 1 and 4 of Bill 23, respectively, introduce the potential for new regulations which will impact the municipal powers to regulate the demolition and conversion of rental units provided under the *City of Toronto Act, 2006* and *Municipal Act, 2001* .

#### Rental Replacement Regulations

Section 111 of the *City of Toronto Act, 2006* and companion section 99.1 of the *Municipal Act 2001* authorize Council to regulate the demolition and conversion of residential rental properties. For example, in the City of Toronto, Section 111 of the *City of Toronto Act, 2006* allows the City to require a permit for the demolition and conversion of buildings where there are six or more dwelling units on a site or within a related group of buildings, of which at least one unit has been used, or intended for use, for residential rental purposes.

In practice, the authority exercised under section 111 of the *City of Toronto Act, 2006* and section 99.1 of the *Municipal Act 2001* has been very open-ended. These sections are now proposed to be amended to give the Minister the authority to make regulations imposing limits

and conditions on the powers of a local municipality to prohibit and regulate the demolition and conversion of residential rental properties under that section.

**Site Plan Control**

Bill 23 also amends section 114 of the *City of Toronto Act, 2006* dealing with the City's site plan control authority. These changes mirror those made to the related section 41 of the *Planning Act* described below and remove the power for the City to regulate exterior design and the appearance of elements, facilities and works on adjacent municipality owned land through the site plan control process. In the case of exterior design, matters relating to exterior access to a building that contains affordable housing units can still be reviewed. Similarly, the appearance of the elements, facilities and works on adjacent municipality owned land can still be reviewed to the extent that the appearance impacts matters of health, safety, accessibility or the protection of adjoining lands.

For a more detailed description of the changes to municipal site plan control powers, see the commentary on the changes to the *Planning Act* below.

**2. *Conservation Authorities Act***

Schedule 2 of Bill 23 proposes multiple changes to the *Conservation Authorities Act, R.S.O. 1990, c. C.27* ("**CA Act**") which, if enacted, will significantly change the role that Conservation Authorities play in the planning process.

**Removal of Ability to Review and Comment on Development Applications**

Sections 21.1.1 (municipal programs and services) and 21.1.2 (other programs and service) of the CA Act currently authorize a Conservation Authority to provide, within its area of jurisdiction, programs and services that it agrees to provide on behalf of a municipality under a memorandum of understanding in respect of the programs and services.

These sections are proposed to be amended by adding a new subsection (1.1) to clarify that Conservation Authorities may not provide a program or service that is related to reviewing and commenting on a proposal, application or other matter made under a "prescribed Act."[2]

The effect of this amendment is anticipated to be that a Conservation Authority will no longer be able to review and comment on development applications and supporting studies received under the prescribed Acts on behalf of a municipality, and to collect fees for that service.

A new section 21.3 is also proposed to be added to the CA Act authorizing the Minister to direct Conservation Authorities not to change the fees it charges for a program or service for a specified period of time.

**Development Approvals Exempt from Certain Prohibitions on Activities**

Currently, subsection 28(1) of the CA Act provides a blanket prohibition on certain activities (such as certain development activities and activities that would interfere with a watercourse or a wetland, etc.) without a permit. Subsections (2) through (4) set out the exceptions to this prohibition for activities approved under the *Aggregate Resources Act*, as well as other activities and areas prescribed by regulation.[3]

Bill 23 proposes to add a further exception, new subsection (4.1), to the general prohibition. The proposed exception would apply to a prescribed activity if the following two criteria are met: (1) the activity is part of development authorized under the *Planning Act*, and (2) the conditions and restrictions, which may be prescribed by the regulations, are satisfied. In other words, the proposed updated section 28 of the CA Act would provide the ability to exempt development authorized under the *Planning Act* from requiring a permit under the CA Act. This exemption would apply in the municipalities set out in regulation and could be subject to certain conditions also set out in regulation.

Consequential regulation-making powers are proposed to be added under subsection 40(1) of the CA Act to govern exceptions under new subsection 28(4.1), including allowing the Lieutenant Governor in Council to prescribe municipalities to which the exception applies, to impose conditions or restrictions on the exception, and to govern transitional matters, among others. This proposed exception will have the effect of further limiting the regulatory powers of the CAs by empowering the Minister to make exceptions specifically for development approvals.

**Consideration of Control of Pollution and Conservation of Land Removed**

Currently, several factors must be considered by the Conservation Authority when making decisions relating to a permission to carry out a development project or a permit to engage in otherwise prohibited activities. These factors include the possible effects on the control of flooding, erosion, dynamic beaches, pollution or the conservation of land. This list of factors is proposed to be amended by removing the last two factors (i.e., pollution and land conservation) and adding a new factor, namely, the control of unstable soil or bedrock when making such decisions.

**Time Frame To Appeal a Non-Decision Shortened**

Under subsection 28.1(22), the time frame for an applicant to appeal a non-decision of the Conservation Authority to the Ontario Land Tribunal is reduced from 120 days to 90 days after the application for a permit is made.

**Obligations Regarding Land Disposition Subject to Minister's Grant**

Under the current regime, if the Minister has made a grant of land to a Conservation Authority under section 39 in respect of land, subsection 21(2) of the CA Act requires the CA to obtain the Minister's approval prior to selling, leasing or otherwise disposing of such land. Bill 23 proposes to repeal and re-enact subsections 21(2) and (3) of the CA Act so that a disposition of certain land requires the Conservation Authority to provide a *notice* of the proposed disposition to the Minister, rather than obtaining the Minister's *approval*.

Bill 23 also proposes to require that Conservation Authorities conduct public consultations (to last for a minimum of 45 days) before disposing of certain lands (e.g., areas of natural and scientific interest, lands within the Niagara Escarpment Planning Area, certain wetlands, or the habitat of threatened or endangered species). Notice of the public consultation must include a

description of the type of land that is proposed to be disposed of, the proposed date of the disposition, and the proposed future use of the lands, if known.

As with the existing framework, these requirements (i.e., notice, consultation, and posting) are exempted, however, if the disposition of land is for provincial or municipal infrastructure and utility purposes, the public entity affected by the disposition has approved it, and the authority informs the Minister of the disposition.

The Minister may direct the Conservation Authority to apply a specified share of the proceeds of the disposition to support programs and services provided by the authority under section 21.1 of the CA Act.

Section 24 is proposed to be amended by adding a provision that allows the Minister to impose terms and conditions on an approval given with respect to a project that involves money granted by the Minister under section 39.

**Development for Which a Minister's Order Is Issued**

Sections 28.0.1 and 28.1.2 of the CA Act, which include provisions to require a Conservation Authority to issue a permission or permit where an order has been made under section 47 of the *Planning Act* (e.g., Minister's zoning order), are amended to also apply to orders made under section 34.1 (Minister's order at request of municipality) of the *Planning Act.*

Section 28.0.1 applies to an application submitted to an authority for permission to carry out a development project if a Minister's zoning order is made under section 47 of the *Planning Act*. A new provision, subsection (26.1), is proposed to be added to prohibit a person from continuing to carry out a development project if they have not entered into an agreement by the timeline prescribed in the regulations.

The regulation-making powers under section 28.0.1 are expanded to include the powers to make regulations with respect to limiting the types of conditions that may be attached to a permission or permit and exempting lands or development projects from the requirement for the holder of the permission to enter into an agreement with the Conservation Authority.

**3. *Development Charges Act, 1997***

Schedule 3 of Bill 23 proposes to make various amendments to the *Development Charges Act, 1997* ("**DCA**"). Below is a high-level summary of some of the more consequential proposed changes to the DCA.

**Exemptions from Development Charges**

New sections are proposed to be added to fully exempt the following from development charges:

- affordable residential units and attainable residential units;
- non-profit housing developments; and
- inclusionary zoning residential units.

The criteria for what constitutes an "affordable residential unit," an "attainable residential unit" and a definition of "non-profit housing development" are set out in proposed section 4.1. Future regulations will prescribe developments or classes of developments that will be considered "attainable housing units."

Various amendments are also proposed to exempt from development charges, subject to certain limitations set out in the Act, the creation of additional residential units in existing rental residential buildings, existing houses and new residential buildings.

**Reduction in Development Charges Following the Enactment of a Development Charges By-law**

The DCA would also be amended to require a reduction in the maximum development charge that could otherwise be charged for the first four years a development charge by-law is in force. Specifically, any development charge imposed during the first, second, third and fourth years that the development charge by-law is in force could be no more than 80, 85, 90 and 95 per cent, respectively, of the maximum development charge that could have otherwise been charged. Bill 23 also makes these reductions applicable to development charges imposed pursuant to development charge by-laws passed on or after June 1, 2022, and before the day subsection 5(4) of Schedule 3 of the bill comes into effect.

**Cap on Interest Charged by Municipalities**

A new section 26.3 would be added to the DCA to include provisions for determining the "maximum interest rate" municipalities can charge in certain circumstances. Specifically, the DCA requires development charges for institutional development and rental housing development to be paid in instalments and permits municipalities to charge interest on the instalments from the date the development charge would have been payable for other types of development and the date the instalment is paid. Municipalities are also permitted to charge interest from the date the site plan application or, if site plan approval does not apply, a zoning by-law amendment application is made, to the date the development charge is payable. The proposed amendments would cap the interest municipalities can charge at the prime rate plus one per cent.

**Reduced Development Charges for Rental Housing Development**

Bill 23 proposes to reduce development charges for rental housing development. Specifically, the total development charge determined under the development charge by-law for a residential unit intended for use as a rented residential premises with three or more bedrooms is proposed to be reduced by 25 per cent, reduced by 20 per cent for two bedroom units and reduced by 15 per cent for all other residential units intended for use as a rented residential premises.

A definition of "rental housing development" is also proposed to be added to the DCA. Rental housing development is to be defined as, "development of a building or structure with four or more residential units all of which are intended for use as rented residential premises."

**Requirement to Spend Accounts**

The DCA would also be amended to require municipalities, beginning in 2023 and each calendar year thereafter, to spend or allocate at least 60 per cent of the monies that are in a reserve fund for the following services at the beginning of the year: water supply services, including distribution and treatment of services, waste water services, including sewers and treatment services and services related to a highway as defined in the *Municipal Act, 2001* or the *City of Toronto Act*, *2006*, as the case may be.

**Expiration of Development Charge By-law**

Currently, the DCA provides that, unless it expires or is repealed earlier, a development charge by-law expires five years after it comes into force. The subsection is proposed to be amended to extend this period to 10 years.

**4. *Ontario Heritage Act***

Schedule 6 of Bill 23 makes several changes to the *Ontario Heritage Act* (the " **OHA**"), which follow on the heels of other recent amendments by this government aimed at improving the statutory process and permitting appeals of certain municipal decisions under the OHA.

- **Listing of Properties on Municipal Heritage Register**

Bill 23 makes changes to a municipality's authority to use a "municipal heritage register." The current section 27 of the OHA permits a municipality to maintain a register of properties in the municipality with cultural heritage value or interest. The listing of a property on the municipal heritage register does not impose the same legal restrictions as a "designation" under section 29 of the OHA. However, a listing is still significant as the property owner is required to give 60 days' written notice of their intent to demolish or remove the building. In some cases, this may trigger a responsive designation by the municipality. When a property is listed on the register, a property owner may object to the listing, but has no right to appeal.

In addition, in recent years, some municipalities have utilized an exercise referred to as "batch listing," an omnibus listing of properties to the municipal heritage register to provide interim protection while further study is undertaken. In addition to the restrictions of the OHA, this step would also subject these properties to official plan policies dealing with conservation of built heritage resources listed on the register. Bill 23 introduces new requirements aimed at focusing the use of the listing process.

**Listing Must Meet Prescribed Criteria**

Bill 23 introduces a new threshold test for listing a property. Previously, the only requirement was that council believed the property to have "cultural heritage value or interest." Bill 23 will require that in order to list a property, that property must also meet certain prescribed criteria for determining whether the property is of cultural heritage value or interest.

This new requirement would align the listing process with the process for designating an individual property under section 29 of the OHA, which requires the consideration of the criteria in O. Reg. 9/06, "Criteria for Determining Cultural Heritage Value or Interest." It remains to be seen if a new regulation will be published outlining the criteria for listing a property or if the existing criteria for designation in O. Reg. 9/06 will be utilized. Of note, Bill

23 does not add any new statutory appeal rights to section 27 and it is unclear what recourse a property owner may have if they disagree with the application of the criteria, other than objecting to the listing.

**Time Limits, De-listing of Properties**

Bill 23 also provides new rules that require the de-listing of properties. New subsection 27(14) would require that a municipality remove a property from the register if it gives notice of intention to designate the property under subsection 29(7) and any of the following occur:

- the council withdraws the notice of intent to designate the property;
- the council does not pass the designating by-law within 120 days of publishing its notice of intent to designate; or
- the council passes the designating by-law, but an appeal of the designation to the Ontario Land Tribunal results in the repeal of the by-law.

Bill 23 imposes a new time limit for how long a property may be listed on the heritage register. Previously, properties could remain listed on the heritage register indefinitely, whether or not they were ever designated under section 29. However, under Bill 23, a municipality would have two years from the date the property is listed to initiate the designation process under section 29 of the OHA by publishing its notice of intention to designate the property. If the municipality fails to do so within this time, it will be required to remove the property. For properties that were listed before Bill 23, the two-year limitation period starts to run when this provision of Bill 23 comes into force and effect.

Further, if a property is removed from the municipal heritage register as a result of the municipality's non-action, the municipality would be prohibited from listing that property again for a period of five years.

**Freeze on Designation Process in Response to 'Prescribed Event'**

In recent years, some municipalities have initiated the designation process under section 29 of the OHA in response to development proposals on properties considered to have heritage value. Recent amendments to the OHA through Bill 108 created a statutory right to appeal such designations to the Ontario Land Tribunal. Bill 23 goes one step further step and introduces a new provision aimed at eliminating this dynamic altogether.

New subsection 29 (1.2) would act as a "freeze" on the designation processes once a "prescribed event" occurs. Although a draft regulation has not yet been published, it is expected that the list of "prescribed events" will include the submission of some or most development applications under the *Planning Act*.

If a "prescribed event" occurs on or after the day this provision comes into force, a council may only give notice of its intent to designate a property if the property is already listed on the municipal heritage register. In other words, if the property is not listed on the register by the time the "prescribed event" occurs (e.g., submission of an application for a zoning by-law amendment), the council is prohibited from designating the property in response to the event.

In addition, if a municipality is in a position to designate the property (i.e., the property is already listed), the council will only have a period of 90 days to publish its notice of intent to designate. This rule may be subject to exceptions which will be set out in a forthcoming regulation.

**Heritage Conservation Districts**

Lastly, Bill 23 introduces new rules regarding the creation of a "heritage conservation district" ("**HCD**") under Part V of the OHA, which is a larger geographic area with multiple heritage properties or distinct heritage character. In order to establish an HCD, a municipality must first undertake a study of the area to ascertain the heritage character it seeks to protect, and subsequently, by by-law, establish the HCD, and adopt an HCD Plan setting out, among other things, the heritage attributes to be protected. Subsequent to the adoption of an HCD Plan, council may not carry out any municipal works or pass any by-laws affecting the geographic area of the district which are contrary to the objectives set out in the HCD Plan and most development activities would require a heritage permit.

**Designation Must Meet Prescribed Criteria**

Under the current version of the OHA, the only threshold requirement for establishing an HCD was that the municipality have official plan policies relating to the establishment of such districts. Bill 23 proposes to add an additional requirement to bring this process in line with the current approach to the designation of properties under section 29 of the OHA and Bill 23's proposed approach to listing properties under section 27. Bill 23 will require that, in order to designate an HCD, the defined area must meet certain prescribed criteria for determining whether the area is of cultural heritage value or interest. In addition, an HCD Plan would have to explain how the cultural heritage value or interest of the HCD meets the prescribed criteria.

A regulation is expected to be published outlining the criteria for designating an area under Part V.

**Repeal, Amendment of HCD, HCD Plan**

In addition, if a council wishes to amend or repeal a by-law establishing an HCD or adopting an HCD Plan, Bill 23 would require it to do so in a process that may be prescribed in a regulation. A regulation has not yet been published describing what this process would entail.

- **5. *Ontario Land Tribunal Act, 2021***

- Schedule 7 of Bill 23 makes several changes to the *Ontario Land Tribunal Act, 2021*, respecting the dismissal of appeals, cost awards, and the prioritization of certain proceedings.

**Dismissal of Appeals**

Under both the *Ontario Land Tribunal Act* and the *Planning Act*, the Ontario Land Tribunal currently possesses the power to dismiss appeals without a full hearing for various reasons. Bill 23 proposes to further expand the Tribunal's authority to dismiss proceedings without a hearing. Subsection 19(1) will now allow the Tribunal to dismiss a proceeding without a hearing on the basis that:

- the party who brought the proceeding has contributed to undue delay; or
- if the Tribunal is of the opinion that a party has failed to comply with a Tribunal order.

**Cost Awards**

Cost awards against parties to Ontario Land Tribunal appeals are typically viewed as the exception, and not the rule. The Ontario Land Tribunal currently possesses the authority to award costs against a party where "the conduct or course of conduct of a party has been unreasonable, frivolous or vexatious or if the party has acted in bad faith." (See OLT Rule 23.9) Section 20 of the *Ontario Land Tribunal Act* is proposed to be amended to specify that the Tribunal may "order an unsuccessful party to pay a successful party's costs." It is unclear whether this proposed amendment obviates the requirement for the Tribunal to make a finding that the parties' conduct meets the threshold of "unreasonable, frivolous or vexatious or bad faith" in order to be subject to a cost award.

**Prioritizing Resolution of Certain Proceedings**

The Lieutenant Governor in Council's regulation-making authority in section 29 is proposed to be amended. Bill 23 proposes to introduce new authority to the Lieutenant Governor to make regulations requiring the Tribunal to prioritize the resolution of specified classes of proceedings.

Complementary regulation-making authority is proposed to be given to the Minister to prescribe timelines that would apply to specified steps taken by the Tribunal in specified classes of proceedings. What sort of projects will constitute "specified classes of proceedings" has not yet been promulgated.

The failure to meet a ministerial timeline will not invalidate the proceeding, and is expressly not a ground for an order or decision of the Tribunal to be set aside on an application for judicial review or appeal.

- **6. *Planning Act***

Schedule 9 of Bill 23 proposes to introduce several amendments to the *Planning Act*, including in respect of limiting third-party appeal rights, planning powers of upper-tier municipalities, community benefits charges, and parkland dedication.

**Third-Party Appeals**

The *Planning Act* currently includes extensive third-party appeal rights in respect of local land use planning decisions, such as adoption of official plans and amendments, passing of zoning by-laws and amendments, and the granting of minor variances and consents.

Bill 23 proposes to significantly curtail all third-party appeal rights. Amendments to subsections 17(36) (official plans), 34(19) (zoning by-laws), 45(12) (minor variances) and 53(19), (27) (consents) will add the requirement that the prospective appellant be a "specified person" in order to qualify for appeal rights. "Specified persons" are proposed to be limited to public bodies such as Ontario Power Generation Inc., Hydro One Inc., operators of railway lines, and telecommunication infrastructure providers. These "specified persons" are still required to

satisfy the oral/written submission requirements in order to gain standing to appeal a planning decision. This limit on third-party appeal rights also extends to appeals of municipally initiated instruments.

The proposed limit on third-party appeal rights will have retroactive effect to appeals that have not had a hearing on the merits scheduled before October 25, 2022.

**Two-Year Moratorium on Seeking Official Plan Amendments and Zoning By-law Amendments Lifted for Aggregate Projects**

The *Planning Act* currently provides for a two-year "moratorium" on private applications to amend a new official plan, secondary plans (subsections 22(2.1) and (2.1.1)), or comprehensive zoning by-laws (subsection 34(10.0.0.1), unless the private application is expressly permitted to proceed by a resolution of municipal council.

Bill 23 proposes that an exception to this moratorium will apply to private applications related to pits and quarries. The moratorium would continue to apply for other types of planning applications.

**Ministerial Amendment of Official Plan**

Currently under section 23 of the *Planning Act*, where the Minister is of the opinion that a matter of provincial interest as set out in a policy statement issued under section 3 of the *Planning Act* (such as the Provincial Policy Statement, 2020), is, or is likely to be affected by an official plan of a municipality, the Minister may:

- request that the council adopt certain amendments; or
- directly make the specified amendment to the official plan.

On proposing to make such an amendment to an official plan, the Minister may, and on request of any person or municipality must, request the Tribunal to hold a hearing on the proposed amendment.

Section 23 is proposed to be entirely repealed and replaced with a much more streamlined process to enable the Minister to make amendments to an official plan. Under proposed section 23, the Minister may simply order an amendment to an official plan if the Minister is of the opinion that the plan is likely to adversely affect a matter of provincial interest. The Minister's order will have the same effect as an amendment to the plan adopted by the council and approved by the appropriate approval authority.

**Cap on Community Benefit Charges Contribution**

Subsection 37(32) of the *Planning Act* currently provides that the amount of a community benefits charge payable in any particular case shall not exceed an amount equal to four per cent (as prescribed by O. Reg. 509/20) of the value of the land as of the valuation date.

Bill 23 proposes to repeal and replace subsection 37(32) to introduce a "cap" on the total amount of a community benefit charge that may be payable in any given case. The "cap" will be calculated as follows:

The amount of a community benefits charge payable in any particular case shall not exceed an amount equal to the prescribed percentage of the value of the land, as of the valuation date, multiplied by the ratio of "A" to "B" where,

- "A" is the floor area of any part of a building or structure, which part is proposed to be erected or located as part of the development or redevelopment; and
- "B" is the floor area of all buildings and structures that will be on the land after the development or redevelopment.

**Site Plan Control**

Section 41 of the *Planning Act* sets out a municipality's powers to regulate development through site plan control. In an area designated as a site plan control area, no person can undertake any development unless the municipality (or the Tribunal in the case of an appeal) approves certain plans and buildings showing the proposed new buildings and structures and the design of the site.

**New Forms of Development Excluded**

The type of development that can be subject to site plan control is defined in subsection 41(1) of the Act and broadly includes, "the construction, erection or placing of one or more buildings or structures on land or the making of an addition or alteration to a building or structure that has the effect of substantially increasing the size or usability thereof…"

Bill 23 now expands the list of exempted forms of development that are not subject to site plan control. Previously, only the placement of portable classrooms on school sites that existed prior to January 1, 2007, were excluded from the need to obtain site plan approval. Now, new subsection 41(1.2) also exempts any residential development that contains no more than 10 residential units. Another new subsection 41(1.3) was added to clarify that a land lease community home with any number of residential units is a form of development subject to site plan control.

**Exterior Design of the Building No Longer Regulated**

The type of plans and drawings that can be reviewed through the site plan control process are set out in subsection 41(4). Previously, drawings showing the exterior design of a new building, include its character, scale, appearance, and design features, were required to be submitted for approval. Bill 23 proposes to delete paragraph 2.(d) of subsection 41(4) and remove the requirements to provide drawings showing matters of exterior design. The new legislation goes further by adding exterior design to the list of matters expressly excluded from site plan control under subsection 41(4.1). However, matters relating to exterior access to a building that contains affordable housing units can still be reviewed.

The proposed Act also expands the list of exclusions by adding new subsection 41(4.1.1), which states that the appearance of the elements, facilities, and works on municipality owned lands or highways adjacent to the development site are not subject to site plan control unless their appearance impacts matters of health, safety, accessibility, or the protection of adjoining lands.

## Transition

Transition provisions are included as part of the proposed legislative changes to the site plan control powers. Subsection 41(15.3) provides that a site plan control application submitted for approval prior to the date that Bill 23 comes into force is not subject to the new exclusions for matters of exterior design and features on adjacent municipally owned lands and highways discussed above. It should be noted that the new exception for site plan control for residential developments that contain no more than 10 residential units is not included in the transition provision.

## Appeals of Zoning By-laws to Implement PMTSA Policies

Proposed new subsection 16(20) of Bill 23 requires local municipalities that adopt official plan policies regarding protected major transit station areas ("**PMTSAs**") to amend all zoning by-laws in effect within the municipality to conform to those policies no later than one year after they come into effect.

Currently, the *Planning Act* prohibits appeals of any portion of a municipal zoning by-law that implements official plan PMTSA policies by establishing permitted uses and minimum or maximum heights and densities within the delineated areas. However, subsection 34(19.5) of the proposed new legislation would limit this protection from zoning appeals. In order to enforce compliance with the new subsection 16(20) described above, implementing zoning for PMTSAs is not protected from appeal if the updated zoning by-law is passed more than one year after the official plan policies for the PMTSA come into effect, or where an amendment to those PMTSA policies comes into effect.

## Parkland Dedication Requirements

Bill 23 proposes a number of changes to the existing parkland dedication requirements found in section 42 of the *Planning Act*.

## Changes to the Maximum Parkland Rates

Firstly, subsection 42(1.1) of the new legislation changes the calculation of the amount of parkland to be conveyed for developments or redevelopments if they include certain defined classes of affordable units. In such cases, the parkland contribution shall not exceed five per cent of the land multiplied by the ratio of the number of affordable units to the total number of units in the development.

Similarly, proposed amendments to subsections 42(3) and (6.0.1) will reduce the maximum alternative parkland dedication rate for both conveyances of land and cash-in-lieu payments. For conveyances of land, the maximum alternative rate is reduced from one hectare for each 300 dwelling units to one hectare for each 600 net residential units. For cash in lieu, the maximum alternative rate is reduced from one hectare for each 500 dwelling units to one hectare for each 1,000 net residential units. The number of net residential units used for the purpose of the alternative rate calculation is defined in the legislation to exclude any existing residential units on the lands and any proposed affordable residential units.

It should be noted that the maximum amount of land or value of the land that can be required by applying an alternative rate remains limited to 10 per cent for developments that are less than five hectares and 15 per cent for developments over five hectares. A new transition provision added as subsection 42(3.5) by Bill 23 clarifies that these upward limits do not apply to developments or redevelopments where a building permit was issued prior to the day the bill comes into force, except where the lands are designated as a transit-oriented community under the *Transit-Oriented Communities Act, 2020.*

**New Exceptions for Non-Profit Housing and Additional Residential Units**

Proposed subsections (1.2) and (1.3) of Bill 23 provide new exceptions to parkland dedication requirements for non-profit housing developments as defined in the *Development Charges Act, 1997*. The proposed legislation also exempts up to two additional residential units within a detached, semi, or row house, or ancillary building on the same lot.

**New Timing for Calculation of Parkland Contribution**

Subsection 42(2.1) of the proposed legislation now sets out timing for the calculation of the required park contribution amount of land or payment in lieu. The parkland contribution is calculated on the day the related site plan application was submitted or the zoning by-law amendment is passed, whichever is later. In cases where both a rezoning and site plan application are not required, the parkland contribution is calculated on the day the first building permit was issued. Parkland contribution amounts calculated at the rezoning and site plan stage are only valid for two years from the date of approval. If two years have passed since the parkland contribution amount was calculated at the rezoning or site plan stage, the initial contribution value is considered stale and the contribution value will then be calculated based on the applicable rate on the day of the first building permit.

**Park Plan Required Prior to Parkland By-law**

The proposed Act also amends subsection 42(4.1) to require the municipality to prepare and make available to the public a parks plan prior to the passing of a parkland dedication by-law. Previously, a parks plan was required to be undertaken by the municipality prior to adopting official plan policies regarding parkland dedication and the use of the alternative rate.

**Proposed Identification of Parkland and Appeals to Tribunal**

A significant new feature of the proposed bill is the ability of owners to propose portions of their land for parkland conveyance to a municipality and the ability to appeal refusals of such proposals to the Ontario Land Tribunal (the "**OLT**" or "**Tribunal**").

New subsection 42(4.30) allows owners to identify at any time before obtaining a building permit the portions of their development lands that they propose to be conveyed to the municipality in full or partial satisfaction of their parkland dedication requirement. The identification of these lands will be subject to prescribed requirements in a future regulation to this proposed legislation. However, the Act states that these lands can include stratified parcels, lands encumbered with easements or below-grade infrastructure, and non-fee simple interests such as privately owned publicly accessible spaces ("**POPS**"). In the case of non-fee simple

interests and POPS, the proposed legislation gives municipalities the ability to require owners enter into agreements registered on title securing the public use of those spaces.

Subsection 42(4.35) of the proposed legislation also establishes new rights of appeal to the Tribunal from a municipality's refusal to accept parkland identified by an owner as described above. Within 20 days of receiving notice of a municipality's refusal to accept conveyance of parkland identified by the owner, the owner may appeal the municipality's refusal to the OLT. Upon an appeal, the Tribunal will hold a hearing and determine whether the parkland identified by the owner meets prescribed criteria, which will be set out in a future regulation. In cases where the OLT determines that the parkland proposed by the owner meetings the requisite criteria, the Tribunal shall order the identified lands to be conveyed to the municipality and require those lands be credited towards the parkland contribution requirement for the related development.

**Requirement to Spend Parkland Monies**

Subsection 42(15) of the *Planning Act* requires that all monies received by a municipality as payment in lieu of parkland, along with all proceeds from the sale of lands received as a parkland dedication, are held by the municipality in a special account. Bill 23 requires that from 2023 onward, a municipality must spend or allocate at least 60 per cent of the money in the special account at the beginning of that year annually.

**Transition**

The proposed legislation includes transition provisions for some of the parkland dedication amendments described above.

The timing for determining the value of land or payment in lieu of newly proposed subsection 42(2.1) does not apply where an application for rezoning or site plan approval was made prior to the day Bill 23 comes into force.

Similarly, the new alternative parkland rates for land and payment in lieu proposed in subsections 42(3) and (6.0.1) do not apply to developments or redevelopments where a building permit has issued prior to the day the bill comes into force. In such cases, the current alternative rate provisions would continue to apply.

**Public Meeting for Subdivision Applications**

Section 51 of the *Planning Act* currently requires that a public meeting be held by an approval authority for the purpose of giving the public an opportunity to make representations in respect of a proposed subdivision. This requirement is proposed to be wholly removed.

**Planning Responsibilities for Upper-Tier Municipalities**

The proposed bill makes significant changes to the structure of planning authorities across upper-tier and lower-tier municipalities in the province.

Upper-tier municipalities are now categorized in section 1 of the Act as either an "upper-tier municipality with planning responsibilities" or an "upper-tier municipality without planning responsibilities." Those upper-tier municipalities without planning responsibilities are listed as

being the County of Simcoe and the Regions of Durham, Halton, Niagara, Peel, Waterloo, and York. Additional upper-tier municipalities can be added to the list of those without planning responsibilities through regulation pursuant to the newly proposed subsection 1(6).

Pursuant to the new subsection 1(4.3), upper-tier municipalities without planning responsibilities are now proposed to no longer constitute a "public body" and no longer have the rights of appeal regarding Official Plans, Zoning By-laws, Interim Control By-laws, Minor Variances, Draft Plans of Subdivision, and Consents. However, as a matter of transition, an upper-tier municipality without planning responsibilities can continue as a party to an appeal if that upper-tier municipality was a party before the proposed new Act comes into force and if a hearing of the appeal was scheduled before October 25, 2022, or the appeal was filed by a person or public body who otherwise would have standing under the amended Act.

As part of these changes proposed in the new legislation, various amendments have been made to give lower-tier municipalities that form part of an upper-tier municipality without planning responsibilities planning functions and approval authority similar to those of single-tier municipalities.

Finally, given the extent of the changes to the existing upper-tier and lower-tier municipal authority proposed, a number of transition provisions are included in the newly proposed section 70.13 of the Act. These transition provisions state that the portions of any in force official plan of an upper-tier municipality without planning responsibilities is now deemed to be an official plan of the lower-tier municipality to which that part applies. In such cases, the policies of the upper-tier official plan prevail in the event of a conflict with the policies of the lower-tier municipality's own official plan.

In the case of official plans or amendments that are not yet in effect, the approval process for those instruments continues in accordance with the Act and the lower-tier municipality is deemed to have adopted the portions of the plan or amendment that apply to it. Similarly, if the upper-tier municipality without planning responsibility had commenced proceedings to adopt an official plan, or an amendment or an application to amend the official plan was made, then the lower-tier municipality to which those plans and amendments apply may elect to continue with the approvals process for those instruments.

Similar to the above, the proposed transition provisions also provide that any ongoing applications for draft plans of subdivision and consents that were submitted to an upper-tier municipality without planning responsibility are forwarded to the lower-tier municipality to which they apply to be dealt with.

Further transitional matters may also be set out in future regulation under this section.

[1] Proposed amendments to the *New Home Construction Licensing Act, 2017*, *Ontario Underground Infrastructure Notification System Act*, and the newly enacted *Supporting Growth and Housing in York and Durham Regions Act, 2022,* are not discussed in this article.

[2] The Minister has concurrently posted a new regulation (ERO No. 019-6141) that is subject to public comment. This draft regulation proposes to prescribe the following Acts under which a Conservation Authority may not perform this review and commenting role as a "municipal" or "other" program or service under sections 21.1.1 and 21.1.2 of the CA Act:

- *Aggregate Resources Act;*
- *Condominium Act*;
- *Drainage Act*;
- *Endangered Species Act*;
- *Environmental Assessment Act*;
- *Environmental Protection Act*;
- *Niagara Escarpment Planning and Development Act*;
- *Ontario Heritage Act*;
- *Ontario Water Resources Act*;
- *Planning Act.*

The comment period for the proposed regulation is set to close on November 24, 2022.

[3] The Minister has posted a regulatory proposal that describes the types of activities and areas that may be exempted (see ERO No. 019-2927 and the Regulatory Proposal Consultation Guide). The comment period is set to close on December 30, 2022.