



SUBJECT: Bill 109 “More Homes for Everyone Act” – Staff Comments for ERO

TO: Mayor and Members of Council

FROM: Community Planning Department

Report Number: PL-47-22

Wards Affected: All

Date to Committee: N/A

Date to Council: April 19, 2022

Recommendation:

Receive and file Community Planning department Report PL-47-22 regarding the City of Burlington Submission on Bill 109, the “More Homes for Everyone Act”, 2022; and

Direct the Director of Community Planning to submit Report PL-47-22 as the City of Burlington Submission on Bill 109, the “More Homes for Everyone Act”, 2022 by the comment submission deadline of April 29, 2022; and

Direct the Director of Community Planning to provide any additional comments to the Province, if any, upon Council approval on April 19, 2022.

PURPOSE:

To provide Council with an overview of proposed Bill 109, the “More Homes for Everyone Act”, 2022 and associated modifications to Ontario Regulations. The report then provides Council with staff’s comments regarding the proposed changes. The report is recommended to be forwarded to the Province by the deadline of April 29, 2022 and is to be considered the City’s submission.

Vision to Focus Alignment:

- Increase economic prosperity and community responsive city growth
- Support sustainable infrastructure and a resilient environment
- Deliver customer centric services with a focus on efficiency and technology transformation

Background and Discussion:

In December 2021 the Provincial government struck a nine-member Housing Affordability Task Force ('the Task Force'), consisting of representatives of the development industry, the real estate industry, professional planning consultants, financial institutions and housing advocates. The Task Force did not contain any representation from local government or public sector professional planners. On February 8, 2022 the Province released the report of the Task Force, containing 55 recommendations that were intended to accelerate progress in closing the housing supply gap to improve housing affordability throughout the Province.

On March 1, 2022 Community Planning staff presented Report [PL-27-22](#) which provided an overview of the Task Force's recommendations and highlighted the recommendations which staff found to have merit, those which had potential for staff support if additional information was provided and/or measures included, and those which staff identified as having concerns. Report PL-27-22 also highlighted other matters that the Province could consider to improve housing affordability, but were not considered by the Task Force. On March 22, 2022 Council directed the Director of Community Planning to submit Community Planning Department Report PL-27-22 to the Provincial Ministry of Municipal Affairs and Housing as the City of Burlington's response to the Task Force's report and directed the Director of Community Planning to monitor any actions emerging from the Task Force's report.

On March 30, 2022 the Provincial government released its "More Homes for Everyone Plan" and Bill 109, the "More Homes for Everyone Act", which it has described as a first step in implementing the recommendations of the Task Force. The Provincial government has stated that it is committed to prioritizing implementation of all of the Task Force's recommendations over the next four years, with a housing supply action plan every year, starting in 2022/2023.

The Province is consulting the public on its proposed changes as follows:

Ontario's Regulatory Registry Postings:

- [Proposed Regulatory Changes \(amendments to O. Reg. 509/20 Community Benefits Charges and Parkland\)](#) (comments closed April 6, 2022);
- [Proposed Regulatory Changes \(amendments to O. Reg. 82/98\) of the Development Charges Act, 1997](#) (comments closed April 6, 2022);
- [Proposed Regulatory Changes – Condominium Cancellations](#) (comments close April 22, 2022);

- [Proposed Planning Act Changes](#) (comments close April 29, 2022);
- [Proposed Development Charges Act changes](#) (comments close April 29, 2022);
- [Proposed New Home Construction Licensing Act, 2017, changes](#) (comments close April 29, 2022);
- [Proposed Ontario New home Warranties Plan Act changes](#) (comments close April 29, 2022);
- [Access to Provincial Financing for Not-for-Profit Housing Providers](#) (comments close April 29, 2022);

Environmental Registry of Ontario Postings:

- Consultations on the More Homes for Everyone Plan, [ERO # 019-5283](#);
- Proposed *Planning Act* Changes – The Proposed *More Homes for Everyone Act, 2022*, [ERO # 019-5284](#);
- Community Infrastructure and Housing Accelerator – Proposed Guideline, [ERO # 019-5285](#);
- Opportunities to increase the missing middle housing and gentle density, including supports or multigenerational housing, [ERO # 019-5286](#);
- Housing Needs in Rural and Northern Municipalities (comments close April 29, 2022), [ERO #019-5287](#).

This new legislation, if passed, would make a number of significant legislative changes, in particular with respect to the *Planning Act*, in an effort to, among other goals, incentivize the timely processing of certain applications to bring housing to market and increase transparency. A list of key proposed changes by theme is provided below:

Changes to the Site Plan Control process

- Require decisions on site plan applications to be delegated to staff for applications made on or after July 1, 2022;
- Extend site plan application review from 30 to 60 days;
- Establish regulation-making authority to prescribe complete application requirements for site plan applications;

Incentives for Municipalities to decide upon *Planning Act* applications

- Require municipalities to partially refund 50% of application fees to applicants who do not receive a decision on *Planning Act* applications within the legislated timelines and on a graduated basis of refunding fees thereafter for applications made on or after January 1, 2023;
- Establish regulation-making authority to require public reporting on development applications / approvals;

Changes to the Subdivision approval process

- Establish regulation-making authority to prescribe what cannot be required as a condition of subdivision approval;
- Establish a one-time discretionary authority of approval authorities to reinstate draft plans of subdivision that have lapsed within the past five years, subject to consumer protection provisions;

Changes to Community Benefits and Parkland Dedication

- Require municipalities with a community benefits charge (CBC) by-law to undertake and complete a review, including consulting publicly, on their by-law at least once every five years;
- Implement a tiered alternative parkland dedication rate for Transit-Oriented Communities (TOCs) to provide increased certainty of parkland requirements:
 - For sites less than or equal to five hectares, parkland would be dedicated up to 10% of the land or its value;
 - For sites greater than five hectares, parkland would be dedicated up to 15% of the land or its value;
- Encumbered parkland in TOCs could be identified through an order by the Minister of Infrastructure and would be deemed to count towards any municipal parkland dedication requirements;

Changes regarding the Ontario Land Tribunal (OLT)

- Provide the Minister of Municipal Affairs and Housing with new discretionary authorities when making decisions to:
 - Allowing the Minister to pause the 120-day decision-making timeline on official plan decisions being made by the Minister, to "Stop the clock" if more time is needed to decide on all official plan matters subject to Minister's approval (with transition for matters that are currently before the Minister);
 - Refer Municipal Comprehensive Reviews (MCRs) Official Plan Amendments (OPAs), or new Official Plans (new OP), to the OLT for

either a recommendation on whether the Minister should approve or modify the OPA/new OP or for a final decision from the OLT on whether the OPA/new OP should be approved or modified;

- Provide additional funding of the OLT to fund new adjudicators and mediators to reduce back-log;
- Creating a new tool (which is being called the “Community Infrastructure and Housing Accelerator”) for a municipality to request that the Minister provide land use approvals outside of normal processes, similar to a Ministerial Zoning Order (MZO);

Changes to the collection of Securities

- Establish regulation-making authority to authorize landowners and applicants to stipulate the type of surety bonds and other prescribed instruments to be used to secure obligations in connection with land use planning approvals;

Pending changes to the Ontario Building Code

- Allow 12-storey mass timber buildings;
- Streamline modular multi-unit residential building approvals;
- Potentially allow for single means of egress in four to six storey residential buildings; and,
- Potentially allow residents and commercial tenants of the lower floors of super-tall buildings under construction to move into their units earlier.

Other effects of Bill 109 include changes the Landlord and Tenant Board to increase decision making timelines; developing a process to streamline access to surplus provincial lands for housing providers; improvements to data collection across all levels of government; increases to the Non-Resident Speculation Tax to prioritize Ontario homebuyers over non-residents; and increased protections for new homebuyers who face cancelled or delayed projects.

The Province is also establishing a Housing Supply Working Group to monitor progress on the municipal implementation of provincial initiatives. The working group will engage with municipalities, the federal government, various provincial ministries, industry partners and associations to assess progress and determine improvements to annual housing supply action plans.

The government is seeking feedback on the changes proposed under the legislation as well as on a number of other initiatives intended to increase housing supply.

Discussion

Changes to the Site Plan Control process

The City of Burlington (the City) has already delegated authority of the site plan control process to the Director of Community Planning or their designate. Staff interpret the proposed change to require municipalities to delegate the site plan control process as removing the ability of City Council to undelegate a site plan application. Currently, under Section 41 of the *Planning Act* site plan applications are not a public process. This change may provide clarity of the public's role in site plan applications, as set out in the *Planning Act*, and has the effect of aligning the process more closely with that of building permits.

The proposal to increase the statutory timeline of site plan applications from 30 to 60 days is welcome by staff, as this allows for more time to evaluate technical matters associated with the site plan review process.

The proposal to establish complete application requirements for site plan applications is received with cautious support, as it has the potential to improve the quality of some submissions and aligns site planning with other *Planning Act* applications. Staff suggest that the Province include qualitative criteria of completeness to improve the City's ability to efficiently consider applications without disruptions commonly created by inaccurate or missing information. This is a significant challenge in current completeness criteria for applications for Zoning By-law Amendments, Official Plan Amendment and Subdivision. Staff would also suggest that any standard list of reports and studies establish flexibility for studies and/or reports that affect local circumstances, such as environmental noise, area-specific by-laws and guidelines, to name some examples.

Incentives for Municipalities to decide upon *Planning Act* applications

As previously noted, the current standard for municipalities to deem an application complete does not permit qualitative criteria. The result is often that submission contain a complete list of submitted materials, but that the content contained within includes errors and lacks critical detail that would otherwise allow the City to efficiently consider applications. Under current procedures, applicants commonly engage with the City in a productive iterative process that requires additional time but leads to successful outcomes.

Further, external agencies over which the City has no control, including Provincial ministries, often take significant time to review development applications that have been circulated to them by the City.

Further, the legislated timelines do not address periods of time in which the City is unable to make *Planning Act* decisions, such as periods when City Council is not meeting due to municipal elections taking place.

These areas of impact represent “uncontrollable time” in the processing of *Planning Act* applications for which the City will have been given sole responsibility and risk.

The severe financial risk that the proposed legislation would place on the City will have an unintended effect of more OLT appeals as the City will be forced to refuse applications before the refund deadline, if they have not been perfected at the time of submission. Alternatively, the City could be forced to issue superficial approvals, entailing detailed Holding zone provisions and/or site plan approval with conditions requiring significant details of the proposed development to be revised. Thus, the applicant is no closer to obtaining a building permit. This legislation removes the ability of the City to collaborate with an applicant to get to a good outcome as it will force decisions to avoid financial risks.

If the City was unable to mitigate the processing timeline of an application, the result of the proposed change is that the City may be forced to refund some, or all of the fees paid on a planning application. Section 69 of the *Planning Act* allows municipalities to impose fees through a by-law for the purpose of processing planning applications, and those fees must be designed to only meet the anticipated costs of processing those applications. The City has recently approved updates to By-law 61-2021 through Report [PL-07-22](#), designed to recover costs associated with the processing of planning applications. The effect of any refunded fees would be that the costs of processing the application would be borne by taxpayer funded revenue sources. The proposal that would require municipalities to refund fees if the legislated timeline has been exceeded appears to contradict the purpose of Section 69 of the *Planning Act* to ensure that planning applications are funded by the proponents of those applications.

Alternatively, mitigation measures that the City may take to achieve the legislated timelines and avoid the refunding of fees may require the City to hire more staff. This means more costs to the City, either leading to an increase of tax-payer subsidized development, or to higher application fees as the City will seek to recover costs. These higher application fees will likely be transferred to home purchasers. The City does not have the ability to manage staff resources of external review agencies, including the Conservation Authority, Halton Region, Provincial Ministries, and others, so it is not clear how the City is able to fully manage the processing timeline of planning applications.

The effects of increased time in subsequent planning processes or at the OLT, and increased costs resulting from staff-resource demands of the City, review agencies and at the OLT, are counter to what this legislation is trying to achieve.

If these changes are enacted, the importance of having a detailed, accurate and thorough application submission will become paramount. To that end, it is recommended that municipalities be given additional, stronger tools to determine whether an application submission is complete, in that it contains accurate, detailed and

appropriate supporting information to allow for efficient processing of *Planning Act* applications.

Proposed changes to reporting about planning matters lack detail for staff to provide comment on. In general, staff support transparency on municipal and applicant accountabilities, and are working towards systems and technology to make information about real-time status of *Planning Act* applications easily available to the public and to the development community.

Changes to the Subdivision approval process

Standardization of conditions of draft approval for plans of subdivision may provide some level of certainty to the development industry. However, staff suggest that the Province allow for flexibility for the City to include area-specific matters, such as groundwater, stormwater management, parking assessments, to name some examples.

Staff support the discretionary ability to reinstate lapsed draft approved plans. This option should include the ability to update the conditions of the lapsed draft approved plan to appropriately reflect current policies, regulations and standards. This would still allow for the efficient extension of a previous approval without having to start the review process from the beginning, while ensuring current protections of the public.

Changes to Community Benefits and Parkland Dedication

If passed, staff will act in accordance with the proposal to require municipalities with a community benefits charge (CBC) by-law to undertake and complete a review, including consulting publicly, on their by-law at least once every five years and will refer that review to Council for resolution. Failure to undertake a review and pass a Council resolution declaring whether a revision to the by-law if necessary will result in the automatic deeming of the by-law expired on the date of the fifth anniversary.

The Province has identified that Transit Oriented Communities (TOCs) are areas that can be established to support greater intensification of land uses. It is unclear to staff whether TOCs would automatically include the City's Major Transit Station Areas, and/or whether the City's bus routes would be considered TOCs by the Province. The proposal to restrict parkland dedication to a percentage of land or its value is not conducive to Provincial policy regarding complete and healthy communities. The more intensively a parcel of land is developed, the greater the need will be for green space that supports a variety of uses, to support mental, physical and social health within walkable distance to where people live and work. The proposed change to parkland dedication in TOCs will result in significantly reducing the amount of parkland, or parkland dedicated fees that the City is currently entitled to collect, while simultaneously

increasing the need for more parkland by intensifying the number of residents and or occupants of new development located within TOCs. For this reason, parkland dedication should be related to the intensity of use that is to be developed on a parcel of land.

Staff have concern with the broad requirement for the City to accept encumbered land as part of the required parkland dedication in TOCs. Some forms of encumbrances may render land unusable for residences impacting the quality of recreational experience for safe recreational purposes. As a result, employing encumbered land as parkland for use by the public may expose the City to various liabilities. Additionally, encumbrances have the potential to impact the City's ability to install recreational infrastructure, allow trees to reach maturity and limit other public facilities which are critical to supporting park uses. New parks on encumbered land will require lengthy agreements and long-term monitoring to maintain public access throughout the lifespan of underground infrastructure. Park land must be free and clear of above and underground encumbrances. The *Planning Act* defines the conveyance of land to municipalities, not a partial interest in land.

Changes regarding the Ontario Land Tribunal

As noted previously, proposed changes that introduce increased financial risk to the City for exceeding the legislated timeline for *Planning Act* applications is likely to lead to an increase in refusal recommendations, and ultimately to an increase in the number of appeals heard at the OLT. As such, proposed increases in funding to the OLT for the purposes of hiring additional adjudicators and mediators is unlikely to achieve the stated purpose of clearing the back-log of hearings, while other proposed changes will lead to an increase in the burden of appeals that the OLT receives. Redirecting that funding to establishing quality-based criteria to complete applications, predictability and stability in Provincial legislation and supporting municipalities in establishing permissive regulations would likely be a more effective approach to reducing the OLT burden.

Staff have concerns about the proposal to enable the Minister to refer Official Plans and Amendments to Official Plans to the OLT for a decision where the Minister is the approval authority. Currently the OLT severely impacts the public's ability to engage in the development of their community when applications are appealed to the OLT. Issues of public engagement and transparency will be exacerbated as the amendments do not require the OLT to hold a hearing prior to issuing a decision. Where a hearing is not held, the perception will be that decision making occurs behind closed-doors by unelected individuals. Conversely, where a hearing is held, it will likely introduce lengthy delays in rendering a decision on the instrument in question as the hearing process unfolds. While this will not directly impact amendments to the City's Official Plan (as the Region is the approval authority for the City's Official Plan), it may introduce delays in

the approval of the Region's Official Plans, which may cause subsequent delays in the City implementing and relying on those Regional amendments at the local level. Staff want to further acknowledge that the Regional comprehensive growth management official plans take years to develop and are based on rigorous background study, policy analysis and extensive public and stakeholder consultation. These proposed changes will not speed up the process to advance housing supply, which is contrary to the premise of Bill 109.

The perception that the Province is disinterested in engaging the public is increased by the indication that the OLT may implement financial penalties, such as increased fees, and awarding of penalties against any appeals brought forward by third parties. The effect of such measures will be to deter third-party appeals.

Staff note that proposals that allow the Minister to 'stop the clock' in making decisions on official plan matters stand in contrast with the stated objective to accelerate planning decisions. It is unclear why the Minister would require additional time for consideration, while municipalities are being faced with financial penalties if timelines are exceeded.

Changes to the collection of Securities

Staff acknowledge that the proposal to authorize landowners and applicants to use surety bonds and other prescribed instruments to be used to secure obligations in connection with planning approvals may benefit the ease of providing such securities. However, staff have concerns regarding the ability to access these financial assurances in instances where deficient works or breach of contract need to be addressed under urgent circumstances. The current process of requiring applicants to give the City a letter of credit allows the City to draw down funds as necessary, including in emergency situations.

Pending changes to the Ontario Building Code

Staff do not have any concerns regarding the proposal to allow 12-storey mass timber buildings.

The proposal to streamline modular multi-residential residential building approvals does not address the construction process and how field inspections will take place for these types of buildings. These multi-unit buildings contain different regulatory building systems in comparison to typical single unit residential buildings such as fire separations, fire stopping and sound transmission ratings. It is unclear how these types of building systems will be verified for building code compliance.

The proposal to potentially allow for single means of egress in four to six storey residential buildings should not be contemplated unless there is a thorough

collaborative undertaking with Chief Building Officials, Fire Officials, and Ministry staff. The current Ontario Building Code requirements exist to ensure the safe passage of occupants when the building is under an emergency situation. These exiting provisions are based on the size of the building and how the exits are designed to handle the imposed occupant loads. Compromising exits to allow for an increase in usable floor area does not meet the intent of the Ontario Building Code and the foundational basis that the health and safety of the public is paramount. This proposal has not been deliberated among Chief Building Officials, Fire Officials and the MMAH.

The proposal to potentially allow residents and commercial tenants of the lower floors of super-tall buildings under construction to occupy units earlier is not supported by staff. The City's Chief Building Official has formally responded to the Ministry on this proposed code change to express serious health and safety concerns in allowing partial occupancy of super-tall buildings. This could potentially allow occupants to be on a site where there is live construction. Further collaboration is warranted between building, fire, safety and regulatory officials (CBO's, Fire Chiefs, MOL, TSSA, TARION) to rationalize the anticipated risks and contemplate how they can be possibly addressed such as:

- Overhead works including live crane works;
- Prescriptive OBC requirements to ensure consistency across the Province (authority not delegated to the CBO);
- Auditing of any proposed regulatory requirements (who conducts the audits, how often, documentation);
- Risks to occupants (access to/through the building including balcony access); and,
- Risks to occupant tenant space and the ingress of noise, dust, water, etc and how claims will be handled.

Matters not addressed by Bill 109

Housing affordability is a complex matter, that is impacted by supply, as well as by factors such as land speculation, investment purchasing, and the financialization of housing generally, among other things. Staff see potential for the Housing Supply Working Group to engage in these broader issues to propose mechanisms that could have a positive impact on the ability for everyone to have more access to homes that suits their needs in Ontario.

Financial Matters:

Not applicable

Other Resource Impacts

Not applicable

Climate Implications

Not applicable

Engagement Matters:

This report is informed by comments from all City departments who participate in all stages of development review.

Conclusion:

Bill 109, the “More Homes for Everyone Act”, 2022, proposes changes to multiple legislative documents. Some changes have the potential to support the objective to increase the supply of housing. However, a number of proposed changes introduce significant risks to the City and will likely cause an increased burden of appeals at the OLT. These impacts may have the opposite effect of that which is intended by the Province, resulting in development processes that are delayed by an over-burdened OLT process, and creating the perception that the Province has established a decision-making process that lacks transparency.

Respectfully submitted,

Brynn Nheiley

Manager of Development and Design

905-220-4386

Notifications:

Hon. Steven Clark, Ministry of Municipal Affairs and Housing
Halton Region

Town of Oakville

Town of Milton

Town of Halton Hills

Report Approval:

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Counsel.