REPORT

Development Services - Planning

TO: Mayor and Members of Council

FROM: Kyle Rainbow, Director of Development Services

DATE: November 28, 2022

REPORT: **DS-63/22** **FILE NO.**

SUBJECT: Bill 23 (More Homes Built Faster Act, 2022)

BACKGROUND:

The purpose of this report is to provide an overview of proposed changes recently introduced by the Minister of Municipal Affairs and Housing through the "More Homes Built Faster Act, 2022" (Bill 23). The Province has proposed sweeping changes to nine statutes, including significant changes to the Planning Act, Development Charges Act and Conservation Authorities Act, to help achieve the goal of building 1.5 million homes in Ontario over the next 10 years.

On October 25, 2022, the Province held first reading of a range of legislative changes, policies and other actions proposed as part of their housing supply action plan. A consultation process has been initiated through a series of postings on the Environmental Registry of Ontario (ERO). According to the Province's consultation materials, the postings are intended to comprise the third phase of 'Housing Supply Action Plans' that the Province has been utilizing to implement the various recommendations in the Provincial Housing Affordability Task Force's report.

Municipalities across Ontario, public bodies and organizations submitted comments in response to the previous phases of the Province's housing supply action plan consultations. However, it does not appear there were substantial changes or adjustments to the proposed legislation or associated regulations in response to the feedback provided. In some cases, legislation was passed during the consultation window. However, previous feedback provided on the various housing related discussion topics may have been considered in drafting the current proposal. There

is also evidence that feedback already provided in response to Bill 23 is resulting in changes to the legislation as it was introduced, which is encouraging.

The consultation on the current postings represents the first, and likely only, opportunity to review and provide feedback on the specific changes being proposed. The 30-day consultation period provided for most of these postings provides very little time for municipalities to properly assess and comment on the potential impacts of the proposed legislative changes. This is especially true considering many critical details of the legislation will be contained in regulations that have not yet been introduced, and Municipal Elections, which were held on the day before Bill 23 was introduced, has impacted Council's schedule during the commenting period.

The focus of this report will be to provide Council with an overview of the proposed legislative and regulatory changes (e.g. Planning Act, Development Charges Act, Heritage Act, Local Planning Appeal Tribunal Act, Conservation Authority Act etc.) and related comments and concerns, as they have the shortest commenting time frame. A subsequent staff report (or reports) will be prepared to provide more detail on any proposed changes to the legislation as a result of comments submitted or new regulations that are introduced.

In the interest of providing a summary of significant changes, the following graphic (adapted with thanks from a version produced by staff in Wellington County) provides an overview of various legislative changes proposed in Bill 23, some of which are discussed in detail within this report:

BUILDING MORE HOMES	
Additional Residential Units (ARUs)	• allow landowners to have up to 3 residential units per lot without the need for a zoning by-law amendment in municipally-serviced urban residential areas • would permit 3 units in the main dwelling (including 2 ARUs) or a combination of 2 units in the main dwelling (including 1 ARU) and another ARU in an ancillary building • zoning by-laws cannot set a minimum unit size or require more than one parking space per unit, but other zoning rules would apply
Housing targets to 2031	• set housing targets to 2031 for 29 "large and fast-growing" municipalities in Southern Ontario (not applicable to the Township of Uxbridge)
Major transit stations	• build more homes near major transit stations (not applicable to the Township of Uxbridge)
Conservation Authorities	• identification of Conservation Authority lands suitable for housing

STREAMLINING	
Public Involvement	• remove "third party" appeal rights for all planning applications (this would include appeals by the public). This has since been revised by the Committee to only apply to Minor Variances and Consents • remove the public meeting requirement for draft plan of subdivision approvals
Conservation Authorities (CAs)	• remove Conservation Authority appeal rights for planning applications, except where the appeal would relate to natural hazards policies • limit Conservation Authority responsibilities to review and comment on planning applications (either on behalf of a municipality or on their own) to focus on natural hazards and flooding • change the Provincial wetland evaluation system, including shifting responsibility for wetland evaluation to local municipalities • establish one regulation for all 36 CAs in Ontario
New Provincial Planning Document	• eliminate duplication between the Provincial Policy Statement (PPS) and A Place to Grow (Growth Plan), by combining them into one document and providing a more flexible approach to growth management
Planning Responsibilities	• shift planning responsibilities from some upper-tier municipalities to lower-tier municipalities (Including from Durham Region to the Township of Uxbridge)
Site Plans	• exclude projects with 10 or fewer residential units from site plan control • exclude exterior design of buildings from site plan control on project of any size
Heritage	• add more stringent requirements related to municipal heritage registers and timing of designation
Rental Unit Demolition and Conversion	• impose limits and conditions on the powers of a local municipality to prohibit and regulate the demolition and conversion of residential rental properties

REDUCING COSTS AND FEES	
Development Charges and Parkland Dedication	• exempt non-profit housing developments, inclusionary zoning residential units, and affordable, additional and attainable housing units from development charges and parkland dedication • discount development charges for purpose-built rentals • remove costs of certain studies from development charge eligibility • reduce alternative parkland dedication rates

Conservation Authorities	• a temporary freeze on CA fees for development permits and proposals
Other	• review of other fees charged by Provincial ministries, boards, agencies and commissions • provide the OLT with discretionary power to order the unsuccessful party at a hearing to pay the successful party's costs

DISCUSSION:

Additional Residential Units

Bill 23 proposes to permit, as of right, up to three residential units on any parcel of land that is served by Municipal water and sewer connections. This would mean that no zoning or other planning permission would be required to build two accessory units on an existing residential lot; such units could be basement apartment(s), dwelling unit(s) within the main dwelling, dwelling unit(s) within an accessory building, or a triplex. All that would be required in terms of approvals would be a building permit.

Further, municipal Zoning By-laws and Official Plans would be prohibited from requiring more than 1 parking space per unit or setting minimum unit sizes. Any section of an Official Plan and Zoning By-law which is more restrictive than these provisions would be deemed to be of no effect.

Implications:

Staff generally support this change. Secondary suites are routinely permitted throughout most of the Municipality, and the Planning Act has required an Official Plan to "contain policies that authorize the use of additional residential units by authorizing two residential units in a detached house, semi-detached house or rowhouse, and one residential unit in a building or structure ancillary to a detached house" so this change to permit third suites is more evolutionary than revolutionary. However, that support comes with two primary caveats:

- Municipalities ought to be able to limit multi-unit developments where servicing capacity is inadequate. The Town, while adequately serviced at the moment, is expending significant human and financial resources to ensure that our infrastructure is adequate to meet development demand over the coming years. Much of the urban servicing infrastructure in the Town is old, and the Town is undertaking ongoing renewal; however, many lots are serviced with inadequate or undersized water and sewer connections which would struggle to support three units.

- It is worth noting that the Township has had very modest uptake in its secondary suite program, so how many 2nd and 3rd units actually get built remains to be seen.

RECOMMENDATION

1. Permit limitations on 2nd and 3rd units where water and sewer servicing are inadequate to meet demand.

Development Charges

Reductions and/or Exemptions

The Bill proposes to fully exempt non-profit housing, affordable housing and attainable housing from paying DC's. The definition of "attainable housing" dwelling units will be established by regulation which have yet to be published.

Non-profit housing will be fully exempt if developed by a registered not-for-profit corporation.

Affordable Housing will be fully exempt from DC's if the price or rent of a residential unit is no more than 80% of the average market rent (AMR) or average purchase price (APR) and the unit is intended to be affordable for a period of 25 years or more. The AMR and APR will be set by a Bulletin yet to be published by the Province.

The Bill proposes that to preserve affordability, a unit which will be affordable for 25 years shall be the subject of an agreement with the Municipality and may be registered on title. This agreement may be in a standard form established by the Ministry but is yet to be published.

Importantly, with respect to attainable units, as opposed to affordable units, the requirement is only that the unit be attainable at the time of sale but does not share the 25-year requirement for affordable units.

Affordable units would also be largely exempt from parkland or community benefits payments.

The Bill proposes to add a new definition of "rental housing development: development of a building or structure with four or more residential units all of which are intended for use as rented residential premises". DC's for such developments would be reduced by 25% for units with 3 or more bedrooms; 20% for two-bedroom units; and 15% for all other residential rental units.

Phase-In of DC's

The Bill proposes to phase in new development charges by requiring that any development charge imposed during the first, second, third and fourth years that the by-law is in force could be no more than 80%, 85%, 90%, 95%, respectively, of the maximum development charge. As first introduced, Bill 23 made this change retroactive to any DC bylaw passed after June 1st, 2022. It is staffs understanding that the Standing Committee on Heritage, Infrastructure and Cultural Policy will amend this to any DC bylaw passed after January 1st, 2022.

Maximum Interest Rate

The eligible interest rate a Municipality could charge a developer would be capped at prime plus one per cent. The Township of Uxbridge currently applies an interest rate of 5% on deferred development charges. The Bank of Canada's published Prime Rate currently sits at 5.95%.

Requirement to Spend or Allocate DC Reserves

The Bill proposes to require Municipalities to allocate or spend 60% of their DC reserves for water, wastewater, and roads at the beginning of each year. The Bill does not define “allocate”.

DC By-Law Expiration

DC By-laws currently expire after 5 years, the Bill proposes to amend this to 10 years. The Bill also proposes to use a historical service level of 15 years compared to the current 10 years to calculate capital costs that are eligible to be recovered through development charges.

DC Eligible Costs

Changes to the method for determining development charges in section 5 of the Development Charges Act are being proposed, including to remove the costs of certain studies from the list of capital costs that are considered in determining a development charge that may be imposed (i.e. housing services and costs of studies).

The proposed changes will shift costs associated with growth to existing residents, from both a water and wastewater rates perspective and through the tax levy. If implemented, the Township will need to complete review of the current Development Charge bylaw and will incorporate any known impacts resulting from the Bill 23 changes.

The potential implications for the Township are significant:

1. According to the Durham Region Association of Realtors Housing Report, the average year-to-date sale price across all unit types in Uxbridge is $1,350,683 in 2022. The same statistic at year-end 2021 was $1,310,700; and $944,857 in 2020. The three-year average therefore is approximately $1,202,080. If the Province adopts such a figure as the average purchase price, then any residence sold for ~$960,000 (80% of market) will be considered affordable and exempt from paying DC’s. Many unit types in the Township are already priced at or below that amount, and is a number far from what Staff suggest would be considered affordable housing. If the average purchase price is set by the Province anywhere near the actual average resale price in the Township, we can expect to lose significant DC and parkland revenue while at the same time making no material difference on housing affordability.

2. Staff understand the tremendous need for affordable housing in our municipality and across the province. However, further clarification is needed to support the exemption from DC’s for registered not-for-profit housing developers, to ensure DCs are reduced only on those units within a development that will be considered affordable (as addressed above).

3. The definition of “rental housing development” does not appear to exclude short-term accommodations, and the Township currently has no definition or restrictions on short-term rental units. Therefore, the DC exemption for rental units and 2nd/3rd units could potentially be sought for short-term accommodation uses, which does not contribute to addressing housing availability in the province, and actually removes units from the housing inventory.

6. The phasing-in of Development Charges means the Town will not receive the full payable DC's until the 5th year after enactment of a DC By-law. Staff believe this to be a typo in the proposed legislation, but phasing in should be on the increase above the current DC only. Anything else would result in DC reductions if a new DC bylaw represents an increase of less than 20%.

7. An interest rate of prime plus 1% is likely better than could be obtained by most developers for construction financing. It also risks the Township providing financing of these costs at a rate better than our own cost of borrowing, which would have an impact if the growth-related capital expenses were incurred prior to the deferred DCs being due. To mitigate this risk, the rate should be the greater of prime plus 1% or the Municipality's cost of borrowing plus 1%.

8. The Bill does not define "allocate" when it refers to spending 60% of water/wastewater/roads DC's in a given year. If allocate simply means spending must be included in the capital budget forecast then this is less of a concern. If, however, it means that the money must be allocated to be spent in that same year that is not only problematic, but impossible, since water, sewer and roads are major capital spends which require years of planning and draw from multiple years, or even decades, of DC reserves.

9. Overall, the general reductions and exemptions from paying Development Charges will require the Township to make up the funding shortfalls from general taxation, and through water and wastewater user fees administered by Durham Region.

Recommendation:

2. That the Province set the Average Market Rent and Average Purchase Price at rates that properly reflect affordable housing. This could be achieved either by reducing the 80% rate or identifying a maximum price for affordable housing (ie. $500,000)

3. That the definition of "Rental Housing Development" in the Development Charges Act be amended to exclude short term rentals.

4. That flexibility be given in the setting of interest rates to reflect the Township's cost of borrowing and lending. One proposal has been to utilize existing legislation that sets a maximum interest rate permitted on unpaid property taxes.

5. That "allocate" be given a broad and flexible definition to allow large capital investments in infrastructure related to growth, or that the requirement to spend or allocate 60% of DC reserves be removed.

Right To Appeal

Historically, any member of the public who participated in the public process for a planning application by attending a public meeting or providing written comment was eligible to appeal an Official Plan Amendment, Zoning By-law Amendment, minor variance, or consent/severances. Bill 23 proposes to remove appeal rights of third-parties from "persons" to "specified persons" which includes utilities, railways etc. but excludes members of the public or public interest groups / ratepayer organizations.

Further, the Bill proposes to remove the need for a public meeting on Plan of Subdivision applications (the right to appeal subdivisions was restricted in earlier amendments to the Planning Act).

Bill 23 proposes to further expand the Ontario Land Tribunals (OLT) current authority to dismiss a Planning Act appeal without a hearing, by adding the following as grounds for dismissal:

- the party who brought the proceeding has contributed to undue delay; or
- a party has failed to comply with a Tribunal order

The OLT will also have increased authority to award costs to the successful party, which will be paid by the unsuccessful party. The OLT 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.", and is awarded only in extremely rare cases. The changes proposed under Bill 23 are not clear whether this test will still need to be met, and if not, the Township will have to consider potential cost awards when deciding whether to participate in an appeal.

Implications:

The implications for the Township are indirect. It appears that the province's intent with this amendment is to limit the number of appeals to the Ontario Land Tribunal, and more specifically, prevent frivolous, vexatious, or unnecessary appeals. Third party appeals can delay the development approval process by requiring an Ontario Land Tribunal hearing. In the absence of a third-party right of appeal, the Township should expect greater pressure from third parties at the public consultation and decision-making stage.

As for Plans of Subdivision no longer requiring a public meeting, staff do not believe this will have a significant impact on the planning process in the Town. Generally, subdivision applications are accompanied by Zoning By-law and/or Official Plan amendments which still require a public meeting. In the event that a subdivision application is not accompanied by another application under the Planning Act, staff could still consider having a public meeting given the Bill does not go so far as to prohibit the municipality's ability to hold the meeting.

Recommendation:

6. Rather than removing third-party appeals entirely, it is recommended that the Ontario Land Tribunal introduce a process to vet third-party appeals and allow only those which raise genuine planning issues to proceed.

<u>Conservation Authority</u>

Bill 23 proposes numerous changes to the Conservation Authorities Act, two stand out as most potentially impactful for the Township of Uxbridge:

1. The Bill proposes to restrict the issuance of development permits by Conservation Authorities to a core mandate of flood protection and eliminate the ability for CA's to

enter into Memorandums of Understanding with Municipal partners to provide other services (e.g., ecological, natural heritage, wetlands, and biodiversity).

2. The Bill proposes to exempt certain development approved under certain Acts (including the Planning Act) from the need to obtain a permit from the Conservation Authority if certain conditions (yet to be established) are met.

Implications:

Nearly all development in the Township falls under either the Oak Ridges Moraine or within the Greenbelt; as such, there are very few development proposals that don't require natural heritage and ecological review. This need will not disappear just by removing the Conservation Authority's ability to provide it. Rather, the responsibility will fall to the approval authority, which given the removal or the upper-tier's Planning role, will be the Township. The Township does not have the resources to take on this responsibility and would therefore be forced to either increase staff or hire outside consultants; both of which add to time and cost in a development approval. Therefore, Staff believe that contrary to the stated goal of expediting home-building, this proposal will delay development, at least in the short term.

Municipalities are proposed to be delegated the responsibility to review and approve Ontario Wetland Evaluation System (OWES) evaluations and maintain wetland information including the confirmation of wetland boundaries. This would duplicate existing processes and agreements between the Province and CAs where CA wetland boundary confirmations regulation purposes are accepted by the Province as OWES wetland limits. This could require the need for additional staff and/or consultant resources (e.g. ecologists, GIS specialists) to establish a process to maintain, review and update wetlands information.

It also appears that the approach that provides for the long-term protection and conservation of wetlands is largely being removed. This includes the removal of considerations for endangered and threatened species from wetland evaluations and removing ecosystem level concepts including complexing of features that are in close proximity. This will weaken wetland protections from development long term.

Recommendation:

7. That Municipalities be free to enter into MOU's with CA's to continue to perform natural heritage work for the Municipality.

<u>Site Plan Control</u>

Bill 23 makes two primary changes to Site Plan Control:

1. Any development with 10 residential units or fewer will not be subject to Site Plan Control.

2. Exterior design and landscaping will no longer be a reviewable element of Site Plan Control for a development of any size. Comments must relate to matters of health and safety only.

Implications:

The removal of exterior design requirements under Site Plan Control will greatly reduce the Township's ability to manage and set design and heritage guidelines, or architectural standards that provide a look and feel sympathetic to the heritage architecture that the Township is so proud of. Without this control being in place, discussions on these elements may become more prominent in other applications made under the Planning Act which are not considered appropriate relative to the site plan stage.

Site Plan Control is an important tool to manage appropriate site layout, easements, development standards, the construction of services and infrastructure, and meeting various design standards. This control is made more important by the proposal to permit 3 units/lot. The Town has Site Plan Control as a delegated approval to staff and Bill 109 has made this a requirement for all municipalities recognizing it is principally a technical review exercise that can take no more than 90 days before refunds will be required. As such, the risks associated with a public process are not present, and there is already a firm timeframe established in which site plan approval must be granted (even if with conditions). If eliminated, developments of less than 10 residential units can proceed to apply for building permits where staff can only enforce Ontario Building Code, and the location of parking, loading, waste management, . The Township will also be prevented from collecting parkland dedications on such residential developments.

Recommendation:

8. Withdraw the proposed changes to Site Plan Control.

Parkland

Bill 23 proposes the following primary changes to Parkland:

1. The maximum rate of parkland dedication, both in land and by cash-in-lieu is being reduced. This is geared mainly at high-density developments and isn't anticipated to have a significant impact on the Township.

2. Non-profit housing and Additional Residential Units will be exempt from parkland dedications. ARUs already are exempt from parkland dedication, and have not seen significant uptake within the Township since they were introduced, so this also isn't anticipated to have a significant impact on the Township.

3. Developers will be able to propose that encumbered land (subject to easements, with underground parking below, privately-owned public space, etc.) will be dedicated as parkland, and refusal to accept the identified lands is appealable to the Ontario Land Tribunal.

4. Similar to Development Charges, the Township will be required to spend or allocate 60% of its parkland reserve annually.

Implications:

Provided that "allocate" is broadly defined, Staff do not anticipate dramatic changes to our current approach to parkland acquisition/upgrades and the spending of cash-in-lieu payments. Perhaps more significant is the changes to the process of parkland dedication, which may result in significantly limited parkland in future greenfield

developments, and additional Land Tribunal hearings which would represent additional cost to the Township.

Recommendations:

9. Define “allocate” broadly to allow the Township to plan long-term for parkland acquisitions and improvements.

10. Further define “other restriction” in the context of land to be conveyed to the municipality and limit the encumbrances that a municipality would be required to consider under threat of further OLT appeals.

Elimination of Upper-Tier Planning Roles

Bill 23 proposes that certain upper-tier municipalities (eg. Regional municipal governments) will no longer have a planning role. Durham Region has been identified, along with most other GTA regions, as an upper-tier with no planning role.

The Province’s stated rationale for this change is to reduce duplication. It is not clear what duplication the Province believes these changes would eliminate, other than potentially the need for both an upper tier and lower tier Official Plan amendment to facilitate certain developments. Applications and reviews currently completed by Durham Region will now be done by the Township and our consultants. Further to this, early indications are that the Township would be unable to engage the Region to conduct some of these reviews, through a memorandum of understanding, for example. It also remains to be seen if currently delegated Provincial reviews, like Contaminated Site Assessment, Archaeological Assessment and Noise Studies will continue to be delegated once lower-tier municipalities take on the Region’s planning role or if the Province will re-take these reviews.

However, in response to comments, it does appear that the Standing Committee on Heritage, Infrastructure and Cultural Policy is considering a softening of this change. While we previously had no information on when the transfer of responsibility would be completed (it was to be introduced in a regulation at a future date), we now also do not know what roles will be transferred. A facilitator may be appointed by the Province to determine what role, if any, Durham Region should provide with respect to Planning in the future.

Implications:

The Township may need to take on some or all of the applications and review roles that are currently administered by the Region. These include applications for Condominium, Subdivision, Consent/Severance and some Official Plan Amendment. This change may require staffing changes, even if consultants are heavily engaged in undertaking the work, just by virtue of the fact that application processing, status tracking, administrative work such as filing, mailing of notices, coordination of additional public meetings and committees, etc. would likely fall outside of what a consultant would be able to provide.

Further, the Durham Regional Official Plan may be transferred to the Township and coordination of that plan with the Township’s Official Plan, future review of that plan, and the process of receiving approval from the Ministry of Municipal Affairs and

Housing will all become the Township's responsibility. This will increase our reliance on consultants, especially in the year in which the two Official Plans are consolidated. It may also lead to disjointed development between municipalities that would have previously been organized through the Regional Official Plan, inefficient municipal servicing, etc. which may have to be addressed through significantly increased inter-municipal consultation on all Official Plan Amendments and comprehensive reviews conducted by neighbouring municipalities.

Recommendations:

11. That significant consultation and transition timing be provided in advance of any transfer of planning responsibility to the Township. Specifically in order to allow appropriate staffing and budget changes to be made which would allow the Township to execute the additional responsibilities without delay. The alternative would be counter to the objectives of the Housing Action Plan.

12. That Regional governments be permitted to enter into Memorandums of Understanding with local municipalities to continue to provide these services, at least during a transitional period.

Changes to the Ontario Heritage Act (OHA)

Amendments to the OHA are being proposed, primarily to the sections of the Act regarding Provincial heritage properties (i.e., properties owned by the Province and prescribed public bodies), the municipal register and Heritage Conservation Districts (HCDs).

Under the OHA, municipalities must maintain a register that includes non-designated properties that 'the council of the municipality believes to be of cultural heritage value or interest', which are known as 'listed' properties. The proposed changes would require that all non-designated properties proposed to be added to the register meet at least one of the prescribed criteria for determining cultural heritage value or interest, which currently serve as criteria for municipal designation, and that the municipality move to designate the property within 2 years of adding them to the register or remove the property from the register. All municipalities would also be required to make an up-to-date version of the register (i.e., designated and non-designated 'listed' properties) publicly available on their website.

Under the current OHA provisions, an application under the Planning Act is considered a 'prescribed event' and triggers a 90-day timeline for the municipality to issue a notice of intention to designate. With the proposed changes, municipalities would no longer be permitted to issue a notice of intention to designate an individual property under the Ontario Heritage Act, unless the property is already on the municipal heritage register as a listed property at the time a Planning Act application is made.

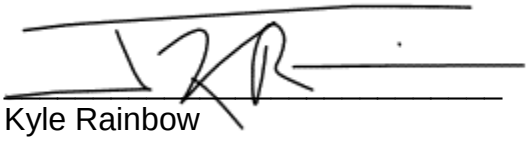
RECOMMENDATION

THAT Report DS-63/22 be received for information;

AND THAT Council direct Staff to submit comments through the Environmental Registry of Ontario to the Standing Committee on Heritage, Infrastructure and

Cultural Policy on the basis of the concerns and recommendations set out in this report.

Respectfully Submitted by:



Kyle Rainbow
Director, Development Services