

More Homes Built Faster Act, 2022 Receives Royal Assent: A Quick Guide to What's in Force (Aird and Berlis)

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Ontario's Bill 23, the [More Homes Built Faster Act, 2022](#) ("**Bill 23**") received royal assent on November 28, 2022.

The *More Homes Built Faster Act, 2022* was introduced to support Ontario's Housing Supply Action Plan and increase housing supply in the Province. However, whether these amendments achieve that goal remains to be seen.

In addition to making significant amendments to a number of statutes, the new legislation anticipates and establishes a framework for additional changes that the Province has signalled will be forthcoming, including a number of regulations implementing the statutory amendments. Other related changes, not discussed below, involve the Greenbelt and anticipated revisions to, and a possible consolidation of, the Provincial Policy Statement and Growth Plan for the Greater Golden Horseshoe.

Aird & Berlis LLP prepared an earlier detailed review of the proposed changes to Ontario's land use planning regime when they were first announced, which can be found [here](#).

The Province made some important amendments to Bill 23 through the Committee process. We discussed the proposed changes and amendments at our webinar on November 21, 2022, which can be viewed [here](#).

The purpose of this updated newsflash is to summarize the key amendments that were passed by the legislature, with a focus on the amendments that will impact development stakeholders in the Greater Toronto and Hamilton Area the most. This newsflash also notes the effective dates of the various provisions.

Approval Authorities

Eliminating Planning Responsibilities for Certain Upper-Tier Municipalities

The County of Simcoe and the Regions of Durham, Halton, Niagara, Peel, Waterloo and York will become "upper-tier municipalities without planning responsibilities" and **will be removed from the *Planning Act* approval process for lower-tier official plans, official plan amendments and plans of subdivision**. The Minister of Municipal Affairs and Housing ("**the Minister**"), whose decisions are not subject to appeal, will replace these upper-tier

municipalities as the approval authority for the lower-tier official plans and official plan amendments.

These amendments **have not yet come into force**, and will be proclaimed at a later date. The Province has indicated that it intends to give municipalities time to transition to the new regime, and to that end, Bill 23 includes a number of new transition provisions. It remains to be seen how these changes will affect matters under Regional jurisdiction such as servicing and roads.

Redefining the Role of Conservation Authorities

Amendments to the *Conservation Authorities Act* will:

- **Redefine the scope of, and limit, conservation authorities' ability to review or comment on a development application, including any supporting studies** made under a "prescribed Act." While the regulation listing the "prescribed Acts" has not yet been promulgated, it is anticipated that it will include (but not be limited to) the *Planning Act*, *Endangered Species Act*, *Environmental Assessment Act*, *Environmental Protection Act* and *Niagara Escarpment Planning and Development Act*. This **will impact** development applications that would have received conservation authority comments on **municipal** and **"other"** programs and services as defined in the *Conservation Authorities Act*, but **will not affect** the applications that would have received comments on **mandatory** programs and services (including programs and services related to the risk of natural hazards, among others). These amendments **will come into force on January 1, 2023**.
- **Exempt development authorized under the *Planning Act* from the requirement to obtain a conservation permit**, provided that certain prescribed conditions and restrictions are satisfied. The regulation containing the prescribed conditions and restrictions is forthcoming. **These amendments are not yet in force**, and will come into force on a day to be named by proclamation of the Lieutenant Governor unless otherwise noted.

Applications and Appeals

Eliminating Public Meetings for Subdivision Applications

Amendments to the *Planning Act* remove the requirement that approval authorities hold a public meeting in respect of a proposed subdivision. This amendment is in force as of November 28, 2022.

Encouraging Gentle Density

Amendments to the *Planning Act* encourage modest intensification of residential land by establishing that official plans and zoning by-laws may not prohibit up to three residential units (including any residential units in any ancillary building or structure) on a parcel of urban residential land with no minimum unit size and no more than one parking space required per residential unit. The Minister may make regulations in relation to these amendments. There is no

appeal in respect of official plan or zoning by-law policies that are passed to permit the above-noted modest intensification and any existing official plan policy or zoning by-law provision that contravenes same are deemed to be of no effect. These amendments are in force as of November 28, 2022.

Focusing Heritage Designations

Amendments to the *Ontario Heritage Act* (“OHA”) are **not yet in force, but will come into full force and effect on a date to be proclaimed by the Minister**. These amendments include:

- Limits on a municipality’s ability to list properties and keep them listed:
 - The amendments will include a **new threshold test** for listing a property. A property proposed to be listed must now meet certain prescribed criteria to determine if the property is of cultural heritage value or interest. It is unknown whether these criteria will be in a new regulation or if the existing criteria for designation in O. Reg. 9/06 will be used for this purpose.
 - Municipalities will be **required to remove a property** from the heritage register if council **has not initiated a designation process** under section 29 of the OHA within two years of it being listed. For properties that are **already listed** on the heritage register, the two-year period commences upon proclamation of this section.
 - Municipalities will also be **required to remove a property** from the heritage register if council gives notice of its intention to designate a property under section 29 of the OHA but the **designation is not finalized** because the municipality withdraws the notice, because the municipality does not pass the designating by-law within a prescribed timeline, or because the designating by-law is appealed to the Tribunal and repealed.
 - If a property is removed from the heritage register, the municipality will be **prohibited from listing that property again for a period of five years**.
- Council will not be permitted to issue a notice of intention to designate a property under section 29 of the OHA unless the property is already on the municipality’s heritage register when the 90-day timeline after the filing of a *Planning Act* application is triggered.
- A higher bar is established for council to designate an area as a heritage conservation district (“HCD”) under Part V of the OHA by requiring such designation **to meet certain prescribed criteria** in order to establish that the area is of cultural heritage value or interest. A regulation is expected to be published outlining the criteria for designating an HCD.

Limiting Site Plan Control

Amendments to the *City of Toronto Act, 2006* and the *Planning Act*, which will apply to site plan applications filed on or after November 28, 2022, include:

- **Removing a municipality’s power to regulate exterior design** through the site plan control process, with the exception of the following matters which remain subject to site plan control:
 - exterior access to a building that contains affordable housing;
 - green roofs;
 - building construction requirements related to environmental conservation under the *Building Code Act, 1992*; and
 - the appearance of building elements that impacts matters of health, safety, accessibility, sustainable design or the protection of adjoining lands.
- **Exempting** residential development with **10 or fewer residential units** from site plan control, which exemption also applies to pending applications.

Removing the Two-Year Moratorium on Applications

Amendments to the *Planning Act* **eliminate the previous prohibition on applications** to amend new official plans, secondary plans, new zoning by-laws and minor variances **within two years of approval**.

Restricting Third-Party Appeals

Amendments to the *Planning Act* **remove and limit** the right of third-party appellants to **appeal a minor variance and consent decision** (but the owner of a property, the municipality and certain specified persons and public bodies still have the right to appeal a decision). These amendments **have come into force and are retroactive**, applying to third-party appeals that were not scheduled for a hearing on the merits before October 25, 2022.

There are **no changes** to the **right of third parties to appeal official plans or official plan amendments or zoning by-laws or zoning by-law amendments**.

Streamlining the Ontario Land Tribunal (“Tribunal”) Process

Amendments to the *Ontario Land Tribunal Act, 2021*, which **have not yet come into force**, and which will come into force **on a day to be named by proclamation** of the Lieutenant Governor will:

- Expand the **Tribunal’s authority to dismiss appeals** without a hearing, notably on the basis that the party who brought a 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**.
- **Strengthen the Tribunal’s authority** to order an unsuccessful party in a proceeding to **pay a successful party’s costs**. It is unclear if this change will obviate the requirement for the Tribunal to find that the party’s conduct meets the threshold of “unreasonable, frivolous or vexatious or bad faith” in order to be subject to a cost award, which is the current standard.
- **Prioritize the resolution of specified classes of proceedings**, which may be done through regulations made by the Lieutenant Governor in Council or the Minister of

Municipal Affairs. These regulations have not yet been promulgated and so it is unknown what will constitute “specified classes of proceedings.”

Growth Funding Tools

Refining Community Benefits Charges (“CBC”)

Amendments to the *Planning Act* that **came into force on November 28, 2022**, include:

- **Imposing a cap on the total amount of a community benefit charge that may be payable** in a given case, which is not to 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 the new proposed building or structure, and “B” is the floor area of all buildings and structures that will be on the land following the development or redevelopment).
- **Allowing municipalities to accept in-kind contributions and authorizing municipalities to enter into an agreement to secure in-kind CBC contributions and to register the agreement on title.**

Scaling Back Development Charges

Amendments to the *Development Charges Act, 1997*, which **came into force on November 28, 2022**, unless otherwise noted, include:

- Exempt “affordable residential units” and “attainable residential units,” non-profit housing developments and inclusionary zoning residential units from development charges. **Some of these exemptions are not yet in force and will come into force on a day to be named by proclamation** of the Lieutenant Governor.
- **Reduce development charges overall** by requiring that any development charge imposed during the first, second, third and fourth years that a development charge by-law is in force can be no more than 80, 85, 90 and 95 per cent of the maximum development charge that could otherwise be charged. **These reductions will apply to development charges imposed by by-laws passed on or after January 1, 2022, and before November 28, 2022.**
- **Reduce development charges for rental housing developments** of four or more residential rental units by: 25 per cent for three-bedroom units, 20 per cent for two-bedroom units and 15 per cent for all other units. This discount is in addition to the statutory discounts described above, and may apply to any part of a development charge payable under an early or late payment agreement that is in respect of a “prescribed development” (which are to be defined in a future regulation).
- **Impose a cap on interest** that can be charged by municipalities in respect of a “frozen” development charge to a maximum “floating” interest rate of prime plus one per cent.
- **Require municipalities to spend at least 60 per cent of their development charge reserve funds** at the beginning of each year (to start in 2023) on the following: water supply services, wastewater services and services related to highways.

- **Remove “housing services” from the list of services for which a development charge may be imposed.** Many municipalities previously relied on development charges to fund housing services, so this change will likely have a significant impact on budgets for affordable housing and shelter services.

Rethinking Parkland Dedication

Amendments to the *Planning Act*, which came into force on November 28, 2022, unless otherwise noted, will:

- **Cap the maximum amount of land** that can be **conveyed or paid in lieu** at 10 per cent of the value of the land for sites under five hectares (“ha”) and 15 per cent for sites greater than five ha.
- **Reduce the maximum alternative dedication rate** to one ha/600 new units for land and one ha/1,000 new units for cash in lieu.
- Establish a **new trigger for calculating the required parkland contribution or payment in lieu**:
 - the day the related site plan application is filed or the zoning by-law is passed, whichever is later, or
 - if no site plan application is filed or zoning by-law is passed, the day the first building permit is issued.
- Establish that parkland contribution amounts calculated at the rezoning and site plan stage are **only valid for two years from the date of approval**, otherwise a new rate is calculated based on the applicable rate on the day the first building permit is issued.
- Allow landowners to **propose portions of their land for parkland conveyance** to a municipality, and the **right to appeal** refusals of such proposals to the Tribunal. This amendment is **not yet in force**, and will come into force on a day to be named by proclamation of the Lieutenant Governor.
- **Permit encumbered parkland, strata parks and privately owned publicly accessible open spaces (“POPS”)** to be eligible for parkland credits. This amendment is **not yet in force**, and will come into force on a day to be named by proclamation of the Lieutenant Governor.
- **Incentivize the construction of affordable housing and attainable housing** by:
 - Capping the required parkland dedication for developments or redevelopments that include certain defined classes of affordable units to five per cent of the land multiplied by the ratio of “A” to “B” (where “A” is the number of affordable units and “B” is the total number of affordable units in the development).
 - Exempting non-profit housing developments and up to two additional secondary suite residential units from parkland dedication requirements.

These amendments **are not yet in force**, and will come into force on a day to be named by proclamation of the Lieutenant Governor.

- **Require municipalities to spend or allocate at least 60 per cent of their parkland reserve funds** at the beginning of each year (to start in 2023).

The Aird & Berlis [Municipal & Land Use Planning Group](#) will continue to monitor regulatory changes related to the *More Homes Built Faster Act, 2022*. Please contact a member of the group for more information.

https://www.airdberlis.com/insights/publications/publication/more-homes-built-faster-act-2022-receives-royal-assent-a-quick-guide-to-what-s-in-force?utm_source=vuture&utm_medium=email&utm_campaign=municipal%20law%20bulletin%20-%2012.02.22

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