

November 24, 2022

Hon. Steve Clark
Minister of Municipal Affairs & Housing
17th Floor – 777 Bay Street
Toronto, ON
M7A 2J3

OPPI Commentary on Bill 23 and Supplementary ERO Postings

Dear Minister Clark,

On behalf of the Ontario Professional Planners Institute (OPPI), I am writing to provide our commentary in response to *Bill 23, More Homes Built Faster Act, 2022* and its supplementary postings on the Environmental Registry of Ontario (ERO).

As you know, OPPI is the recognized voice of Ontario's planning profession. With over 4,600 members, it serves as both the Professional Institute and regulator of Registered Professional Planners (RPP) in the province. Our members work across the planning spectrum, for consulting firms, provincial and municipal approval bodies, private developers, community agencies and academic institutions.

Bill 23 represents the single most significant transformation of Ontario's planning system that I've seen in my 36-year career in the field. It fundamentally changes how land use planning is conducted in the Province of Ontario. I've heard directly from our members and received significant input from our Council Directors and various committees since the release of the bill.

We strongly support your policy objective of tackling the housing affordability and supply challenges in the Province of Ontario. However, our membership is very concerned with some provisions in Bill 23, particularly ones that limit meaningful public engagement, impede protections for the environment and negatively impact coordination of infrastructure and growth planning across regions. As planners, our fundamental role is ensuring all those considerations are incorporated in planning decisions in order to appropriately protect the public interest.

Good planning is the key to building great communities. It's the informed thinking that is needed to plan successful and livable urban, suburban, and rural communities while balancing short-term and long-term public needs over the next two, 10, or 30 years. We cannot ignore this long-term view in our consideration of Bill 23.

Our comments therefore range the full spectrum from measures we strongly support to measures that will have significant unintended consequences if not appropriately addressed. We have also provided recommendations to change Bill 23 to address the unintended consequences.

OPPI's feedback for your consideration is as follows:

ERO - 019-6163: Proposed Planning Act & City of Toronto Act Changes

- **Additional Residential Units** – the government is proposing to strengthen the “additional residential units” framework by allowing “as-of-right” up to three units per lot where residential uses are permitted in settlement areas with full municipal water and sewage services. OPPI supports this measure as it will provide for opportunities for gentle intensification including in the untapped yellow belt areas.
- **Higher Density Around Transit** – the government is proposing to require municipalities to implement “as-of-right” zoning for transit supportive densities in Major Transit Station Areas (MTSAs) and Protected Major Transit Station Areas (PMTSAs). Updates to zoning would be required within 1-year of approval of an MTSA or PMTSA. OPPI has long supported the need to move towards as-of-right zoning within Strategic Growth Areas and continues to support this measure.
- **Removal of Regional Planning** – the government is proposing to remove planning policy and approval responsibilities from seven upper-tier governments (Durham, Halton, Niagara, Peel, Simcoe, Waterloo, and York).

OPPI members have raised significant concerns with this proposed measure. We appreciate that the government is seeking to remove perceived duplication in development approvals in a two-tiered setting. However, regional planning serves an essential function that supports housing development by coordinating land use planning with the planning and investment in infrastructure, transit, and public service facilities. It also plays a crucial role in growth management.

Each of the Upper Tier municipalities in the Greater Golden Horseshoe have undertaken work through their Municipal Comprehensive Reviews to ensure growth is equitable across their lower-tier municipalities, while considering existing and planned infrastructure needs and to locate growth where it can best be served by existing and planned major infrastructure and existing and planned higher order transit. This essential coordination between growth management, transit and infrastructure is pivotal to supporting the government's policy objective of unlocking more housing in the Province.

OPPI recommends the government retain regional planning roles around long range, coordinated and integrated growth management while downloading development approvals to the lower tier municipalities.

- **Third Party Appeals** – the government had initially proposed to limit third party appeals for official plans, official plan amendments (OPA), zoning by-laws, zoning by-law amendments (ZBA),

consents, and minor variances. OPPI members were concerned with the lack of public input into decision making due to the broad-based removal of third-party appeals.

However, the bill was amended during Committee to limit third party appeals only for consents and minor variances. OPPI supports the amended provision. Nonetheless, OPPI agrees that more could be done to streamline Ontario Land Tribunal processes to expedite time to hearings and streamline the actual hearings themselves.

- **Site Plan Control** – the government is proposing to exempt site plan control for residential developments up to 10 units. OPPI does not have any concerns with this proposal.

The government had also originally proposed to remove the ability for municipalities to regulate architectural details and landscape design from site plan control all together. Our members echo the submission made by the Ontario Association of Landscape Architects (OALA) on this matter. Critical aspects such as the review of exterior sustainable design features allow municipalities to require Green Standards and achieve important climate mitigation and adaptation site details. This could include, as OALA stated, urban tree canopy for shade, native species selection for biodiversity, treatment of glazing to reduce bird collisions, material selection to reduce greenhouse gas emissions, shielded lighting to reduce light pollution and maximize safety.

We were pleased to see Bill 23 amended during Committee to allow for consideration of green roofs, alternative roof structures, environmental considerations related to the Building Code, sustainable design, and protection of adjoining lands. OPPI supports the direction of these amendments but also requests the government allow the ability to consider landscaping through the site plan control process. This is critical to enhance the public realm particularly in intensifying urban areas.

ERO 019-6172: Proposed Planning Act and Development Charges Act Changes

- **Development Charges (DC)** – the government is proposing as series of DC-related measures to incent the construction of priority types of housing such as affordable housing, family-sized purpose-built rentals, and attainable housing.

OPPI members support the concept of financial incentives to drive more supply of these types of housing units. However, we have two specific comments:

1. The government should ensure adequate provisions are in place to lock-in affordability levels tied to discounts on DCs. For example, securing affordability requirements on title would prevent a scenario where a project receives the discount and then is subsequently sold, and units return to market prices.
2. The government should provide these incentives by way of a provincial rebate. Our municipal partners require funding to provide servicing and ensure other growth-related costs associated with new developments are covered. Shortchanging these

necessary fees could potentially delay projects due to lack of servicing, etc. As an example, the Town of Oakville uses DCs to fund almost 100% of their active transportation infrastructure projects and recommendations. Without this funding source, there would be little to no opportunity to fulfill their modal targets with similar impact on climate adaptation and mitigation measures which would not be consistent with the Provincial Policy Statement.

- **Parkland Changes** – the government is proposing a series of changes related to parkland. These include the use of encumbered land and privately-owned public spaces that would count towards municipal parkland dedication requirements if defined criteria is met. OPPI generally supports these changes to make more efficient use of available land in a development.

However, parkland changes also include a reduction in the alternative parkland dedication rate that will reduce the amount of parkland made available as part of a development. Our recent experience with a public health crisis has reinforced the value of shared outdoor spaces such as dedicated parkland. Lack of adequate access to these public spaces could have negative impacts to physical and mental health of our communities.

There are several municipal scenarios and examples where parkland dedication targets / minimums have been achieved through the development and implementation of trail linkages as active recreational space. Again, without sufficient parkland dedication, we are not only creating public health challenges but also putting more barriers in place to achieve our recreation and transportation targets. Many of these targets are set with the intent of reducing the demand on and for more higher order infrastructure (i.e., roadways).

Capping of parkland on intensification sites does make sense, but OPPI encourages the government to ensure there is appropriate consideration to the holistic value of parkland to our residents and to keep the current rates of parkland dedication requirements.

ERO 019-6141: Conservation Authorities (CAs)

The government is proposing a series of changes to CAs with an aim to streamline the development approvals process. Many OPPI members work for CAs. We believe the proposed changes could negatively impact watershed management at a critical time when we need to do more to tackle the increasing impacts of climate change on our communities.

As stated by Conservation Ontario (CO), the specific concerns are related to measures that transfer regulatory responsibility from CAs to municipalities and prevent municipalities from working with CAs to provide development application review services for anything beyond natural hazards.

OPPI supports CO's position that these measures would have the following unintended consequences such as:

- Weaken the ability of CAs to continue to protect people and property from natural hazards,

- Place new responsibility on municipalities related to natural hazards and natural resources that they are unprepared and under-resourced to address, and
- Diminish the ability to protect critical natural infrastructure such as wetlands that reduce flooding and protect water quality in lakes and rivers.

OPPI also endorses the following recommendations put forth by Conservation Ontario to the government:

- Allow municipalities to enter into agreements with CAs for review and comment on development applications such as natural heritage and water resources plan review.
- Development subject to *Planning Act* authorizations should not be exempt from requiring a conservation authority permit and conservation authority regulations should not be delegated to municipalities.
- Conservation authority development fees should not be frozen since they are based on cost recovery.
- Careful consideration is required when identifying conservation authority lands to support housing development.

OPPI also supports the call for the government to reconvene the multi-stakeholder Conservation Authority Working Group to review the proposed changes and help guide timely, efficient, and cost-effective improvements that will more effectively address the concerns of all stakeholders.

ERO 019-6196 - Ontario Heritage Act

The government is proposing a series of changes to heritage considerations to remove barriers that are perceived to be slowing housing construction. Overall, OPPI members believe inordinate weight has been given to the impact of heritage listings and designations on the provision of housing across the province. Properties with status under the *Ontario Heritage Act* (OHA) represent a small percentage of properties across the province. Housing and heritage conservation are not mutually exclusive and there are examples of successful integration of the two into liveable communities across the province.

OPPI's specific recommendations include:

- **Provincial Heritage Changes** – the powers outlined in this section should be used sparingly, if at all, and only where there is more precise language included in the OHA and its regulations around provincial priorities.
- **Heritage Register** – OPPI supports the requirement to post the Heritage Register on municipal websites. This increases transparency and is common practice among many municipalities.

However, our members have the following concerns:

- Concerns with the implementation of a two-year time limit on listing of non-designated buildings with a five-year limitation on re-listing.
 - Heritage Registers provide a public record of municipal heritage resources and create a transparent system for both municipalities and property owners. The time limits imposed on listed properties through Bill 23 will create less transparency, more reactionary designations, and more appeals to the OLT on matters of designation. This will not increase the supply of housing.
 - OPPI suggests that a mutual-consent clause be implemented to allow for properties to remain on the Register past the two years if the property owner agrees. This is consistent with other sections of the OHA.
- Concern with the proposal to raise the threshold for individual designation from one to two criteria.
 - Raising the threshold will make it more difficult to protect and recognize places of significance associated with underrepresented groups as most will not have “design” value in the traditional sense described in the criteria.
 - This measure should not proceed without a review of the criteria in Reg. 9/06. OPPI suggests that broader consultation be undertaken with an adequate range of representative groups to identify and ensure that emerging themes and issues in heritage conservation are considered.
- Concern with limitation on designation under Section 29 of the OHA if a property is not previously listed.
 - This limitation conflicts with the recently implemented Reg. 385/21 that allows for the extension of prescribed timelines when “new and relevant information” is provided.
 - OPPI suggests that a mutual-agreement clause be added to allow for designation of a property that is not listed if the property owner agrees.
- **Heritage Conservation Districts** – OPPI supports regulatory amendments to provide municipalities with the ability to amend existing Heritage Conservation District (HCD) Plans. We also support applying specified criteria to the designation of HCDs. The existing criteria under O.Reg. 9/06 would not be appropriate as it was drafted for individual properties not districts.

ERO 019-6160: Ontario Wetland Evaluation System

The government is proposing to amend the 2014 version of the Ontario Wetland Evaluation System (OWES) by eliminating the concept of a “wetland complex” and eliminating the role of the Ministry of Natural Resources and Forestry (MNRF) in identifying wetlands as provincially significant.

- **Wetland Complexes** have been a fundamental part of wetland protection policy since the original Wetlands Policy Statement of 1992. In our experience they have been an accepted part of wetland evaluation science since the first wetland evaluation system of 1983.

OPPI does not see the justification of such changes to the OWES. Our wetlands are vital, and their protection has been supported by 30 years of science and policy. The effect of eliminating wetland complexes, combined with opening the door to re-evaluating existing units within such complexes as individual wetlands such that those individual units might no longer qualify as provincially significant wetlands (PSWs), will inevitably have the effect of reducing the extent of PSWs and therefore of "no-touch" wetlands in Ontario.

OPPI recommends the government pause this measure until a robust, science-based evaluation is conducted on its impact.

- **Role of MNRF** – removing the role of the Ministry from the identification of PSWs is a matter of policy and administration, not science. However, it does present some challenges.
 - Many municipalities lack the expertise or capacity to take on this role. This is compounded by the proposed inability to rely on Conservation Authorities for this technical expertise. This may result in further delays to the approvals process.
 - MNRF’s decision based on scientific grounds has been final until now. It is unclear if the OLT now becomes the route to final decision between the municipality and the applicant.

OPPI recommends the government revoke this proposed measure and retain MNRF’s current role in identifying PSWs.

ERO 019-6173: Inclusionary Zoning (IZ) Regulation

The government is proposing to amend O.Reg 232/18 to set an upper limit of 5% of total units (or 5% of GFA) to be set aside as affordable and for a maximum period of 25 years. Amendments are also proposing to set the lowest price/rent that can be required for inclusionary zoning at 80% of average resale price or 80% of average market rent. These proposed amendments would only apply to lands within PMTSAs.

OPPI members hold the viewpoint that IZ is an essential policy to promote the supply of affordable units. Reducing its impact could serve to hamper a critical segment of the housing we need and go against the government's objective of addressing housing affordability.

OPPI recommends that the government allow municipalities to set the cap in PMTSAs and the maximum time period for the unit to remain affordable based on the studies and analysis that municipalities are currently required to undertake.

ERO 019-6197: Additional Residential Units Regulation

Building on proposed measures in Bill 23 to enable up to three units on most residential lots, the government is proposing to amend O.Reg. 299/19 to align the regulation with legislative changes commented on as part of ERO 019-6163. OPPI does not have any further comment in addition to what was stated in response to that ERO earlier in this submission.

ERO 019-6240: Excess Soil Regulation

The government is proposing to amend O.Reg. 406/19 to remove the reuse planning requirements, including registration, sampling, and tracking, for excess soil moved from lower risk projects, and to enable larger temporary piles of soil for storage.

The proposal does not present any information on how these proposed changes would align with O.Reg. 153/04 (Records of Site Condition under the Environmental Protection Act). OPPI recommends the government conduct a review to ensure alignment exists between the two regulations.

Other ERO Postings

OPPI intends to comment on two further postings that are part of the Housing Supply Action Plan 3.0 package, ERO 019-6177 (Review of A Place to Grow and Provincial Policy Statement) and ERO 019-6161 (Conserving Ontario's Natural Heritage). We will provide detailed submissions in response to those consultations in advance of the December 30th deadline for comments.

Conclusion

In summary, we support the government's desire to address housing affordability in the Province of Ontario. There is no question about that core objective. However, we urge the government to engage in meaningful consultation with the planning profession before implementing these changes. Some of these measures will have unintended consequences that are not in the public interest and will not lead to good planning or livable communities.

Ontario's planning profession is eager to roll up their sleeves and sit down with the Ministry to address some of these challenges as we advance our collective desire to address the housing crisis. We have shared a lot of information with you authored by Registered Professional Planners (RPPs) that is the result of thoughtful conversation and editorial messaging that has taken place over the past few weeks

to develop this submission. All that to say we respectfully request a meeting with the Minister and senior staff to review some further background and details with respect to our recommendations.

I respectfully request you and/or your Ministry staff to contact OPPI's Executive Director Susan Wiggins at (647) 326-2328 or by email at s.wiggins@ontarioplanners.ca to arrange the meeting and/or if you have any questions.

Sincerely,



Paul Lowes, M.E.S., MCIP, RPP
President
Ontario Professional Planners Institute

cc.

Hon. Michael Parsa, Associate Minister of Housing, MMAH
OPPI Board of Directors
Susan Wiggins, Executive Director, OPPI