



## **Administrative Report**

### **Office of the Manager, Planning Services**

**To:** Warden MacDonald and Members of Essex County Council

**From:** Rebecca Belanger, MCIP, RPP  
Manager, Planning Services

**Date:** Wednesday, February 15, 2023

**Subject:** Bill 23, More Homes Built Faster Act, 2022  
Information Report

**Report #:** 2023-0215-IPS-R02-RB

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#### **Purpose**

The purpose of this report is to inform County Council and summarize the changes to Ontario's planning system resulting from Bill 23 (short title is *the More Homes Built Faster Act*) and to advise that Administration intends to submit comments on Bill 23, as directed by a resolution passed on December 21, 2022, substantively reflecting the comments as outlined in this report and as directed by Council.

#### **Background**

##### **REPORT HIGHLIGHTS**

- Bill 23, *the More Homes Built Faster Act*, 2022, received Royal Assent on November 28, 2022. It introduces changes to numerous Acts, including the *Planning Act*, the *Development Charges (DC) Act*, the *Ontario Land Tribunal (OLT) Act* and the *Conservation Authorities Act*.
- The housing crisis requires a comprehensive approach to deliver urgently needed affordable housing. County Administration invites collaboration with the Province and municipal partners on solutions.
- County Planning remains committed to embracing innovation while maintaining values and integrity of the County's existing and future communities.
- Administration believes that some components of the Bill are positive for Essex County and other changes are negative and require mitigation, especially those that impact the County and member

municipality's ability to fund necessary growth-related infrastructure and support complete communities.

- The impacts to the natural environment resulting from proposed changes to Ontario's Wetland Evaluation System (OWES) scoring methodology, and proposed changing roles of the MNRF and conservation authorities are of significant concern. Further, the prospect of natural heritage offsetting for the loss of natural heritage destruction is also of concern dependent on its application.
- Administration recommends advocacy to the Province to pause proclamation of in-effect dates of the pending legislation to enable more consultation.
- The financial challenges created by Bill 23 are significant. Revenue streams, parkland contributions, resources, and the ability to fund growth related studies are negatively impacted. Administration continues to develop a more accurate financial assessment which will be presented to Council at a future date. The monetary impact is presently unknown and will likely be exponentially higher.
- Additional financial challenges that are imposed on the County and local municipalities are in the form of responsibilities for additional services, leading to the need for additional staffing resources.
- The Province has indicated that they understand these impacts and will offer other financial tools to assist municipalities with certain infrastructure funding. The County is eager to learn what those tools are.
- Administration continues to explore opportunities and challenges resulting from Bill 23 and have identified immediate action items and matters that require additional definition from the Province while seeking to position Essex County for success.

This report will focus on legislative changes relevant to the County of Essex context. While there are some positive changes in Bill 23, there are other changes that may impact Essex County, our member municipalities, and conservation authorities in an adverse fashion. Within this report County staff have flagged policies and regulatory changes that could negatively impact County and municipal revenues, changes to the planning process, and changes which would have a major impact on conservation authorities, both in their operations and the services they provide to the County and member municipalities. In the response submission from AMO to Bill 23, dated November 16, 2022, it states *"Preliminary analysis of the Bill indicates the transfer of up to \$1 billion a year in costs from private sector developers to property taxpayers without any likelihood of improved housing affordability. Similarly, the bill's provisions designed to reduce environmental*

*protection will benefit developers in the short term, with costs to the public and homeowners that cannot be calculated.” (Attached as Appendix 2)*

This report will also briefly summarize changes that are specific to municipalities in the Greater Golden Horseshoe (GGH) such as changes to upper tier planning functions. No changes to the upper tier planning authorities of the County of Essex have occurred as a result of Bill 23 at this time.

## Discussion

The stated goal of this Act is to help facilitate the development of 1.5 million new dwelling units by 2031.

In addition to the legislation, the Province announced that it is proposing to update and integrate the Provincial Policy Statement (PPS) and a provincial plan called “A Place to Grow: Growth Plan for the Greater Golden Horseshoe”. No additional information on the forthcoming changes to the PPS is available yet.

The *More Homes Built Faster Act* (Bill 23) has been identified as the next step in the government’s plan to streamline the approval process specifically for the development of housing in the province, changes to the *Planning Act* and other related legislation, following on the *More Homes, More Choice Act, 2019*, and the *More Homes for Everyone Act, 2020*.

Following is an analysis of the most salient sections of Bill 23 that Administration are of the opinion will have a direct impact on the County and the member municipalities.

## Planning Act

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1. Bill 23 **eliminates third-party appeal rights** for consents and minor variances, mirroring existing appeal rights for plans of subdivision.
2. The most recent changes to the *Planning Act* pursuant to Bill 23 results in **an exemption from site plan control** for residential developments consisting of up to 10 dwelling units.
  - The exemption for site plan control could have potential adverse impacts or unanticipated consequences for member municipalities that are approaching, or have reached, the limits of their servicing capacity, including conveyance and capacity. Other concerns may include provision of adequate storm water management and impacts on adjacent land uses.

- In areas of the seven municipalities where there are severe servicing limitations, or in flood prone areas, where site plan control is no longer an available tool, there may be the need to explore and invoke creative mechanisms that would assist Building Departments in controlling the appropriate issuance of building permits.
  - Where site plan control is no longer an available tool to regulate development of less than 10 units, additional burden will be placed on the seven municipal Building Departments to utilize the applicable law section of the Ontario Building Code with greater scrutiny.
3. In addition to the exemption mentioned above, **exterior design is no longer a matter that is subject to site plan control** which will potentially impact the urban design of our streetscapes. As a result of Bill 23, the seven municipalities will need to review and update their site plan control by-laws.
4. The **Elimination of Public Meetings** for approval of the **Draft Plan of Subdivision**. The County of Essex is the approval authority for draft plans of subdivision as delegated by the Province. One of the hallmarks of good land use planning includes engaging with the public in a fair and transparent manner. Public meetings provide the public with an opportunity to review and ask questions about subdivision plans and address issues prior to decisions being made. Bill 23 has removed the public meeting requirement for subdivisions and as such, the County is in the process of modifying the process and advising the local municipalities accordingly. Often subdivisions are processed concurrently with Zoning By-law Amendments, which are still subject to public meeting requirements.
5. Various changes to **Parkland Dedication and Parkland fees**.
- The amendments to the *Planning Act* include an exemption from parkland dedication or cash-in-lieu of parkland dedication for developments that create affordable dwelling units, attainable dwelling units and inclusionary zoning units.
  - Bill 23 now allows landowners and developers to identify lands that they want to convey for parkland dedication. In addition, Bill 23 allows private land to be used for park or other public recreational purposes (such as privately-owned public spaces).
  - The municipality can decide to refuse to accept the proposed conveyance of land subject to a notice to the owner. The owner will have 20 days to appeal the municipality's refusal of the proposed parkland conveyance to the Ontario Land Tribunal.

- In 2023 and each calendar year following, municipalities will be required to spend or allocate 60% of the monies received from cash-in-lieu of parkland dedication annually.
- The changes to parkland dedication, payment in lieu of dedication and requirement to spend 60% of funds received in the same calendar year could have a significant impact on the delivery of recreational services and infrastructure for the member municipalities.

## **6. Removal of Upper Tier approval powers.**

Upper-tier municipalities are now categorized in the Act as either an “upper-tier municipality with planning responsibilities” or an “upper-tier municipality without planning responsibilities.” Those upper-tier municipalities without planning responsibilities are listed as being the County of Simcoe and the Regions of Durham, Halton, Niagara, Peel, Waterloo, and York.

Additional upper-tier municipalities can be added to the list of those without planning responsibilities through regulation. Although the County of Essex is not presently on the list as an upper-tier municipality without planning responsibilities, it may only be a matter of time before Essex County also becomes prescribed. The County plays an integral role in coordinating regional matters including environmental and sustainability, agricultural issues and roads. The County also provides consistent and expeditious service delivery pertaining to subdivision approvals for developers.

Should Essex County at some point become an upper-tier municipality without planning responsibilities, it is anticipated that all member municipalities would likely require additional planning staff.

## **Development Charges Act, 1997**

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Bill 23 amends the *Development Charges Act* by freezing, reducing, and exempting fees typically levied by municipalities and other authorities that can significantly impact the cost of development. Specifically, Bill 23 includes:

- Exemptions to development charges for “affordable residential units,” “attainable units,” “non-profit housing developments”, and “affordable housing units” required pursuant to an Inclusionary Zoning By-law;
- Reductions to development charges for the development of rental housing;
- Reduction of the amount of development charges that may be imposed under existing and future development charges by-laws (a 20% reduction from the development charge that otherwise could have been imposed

during the first year the by-law is in force, and a 15%, 10%, 5% reduction in the second, third, and fourth year);

- A maximum interest rate (prime plus 1%) that municipalities can charge on development charges in certain circumstances for rental, institutional, and non-profit housing;
- A requirement that municipalities spend at least 60% of their development charge reserve fund for priority services.

Industry stakeholders, including the Association of Municipalities of Ontario, have been especially critical of these changes, arguing that the amendments will result in a shortfall of approximately \$5.0 billion for Ontario's municipalities, which would be passed onto residents in the form of higher property taxes or reduced services. Administration is aware that some municipalities have had to take on debt to keep their DC reserve funds sustained in fast growth communities in the province. Bill 23, further reduces revenue supply by requiring deferrals and reductions which is only going to make cashflow for these municipalities worse. Work is underway in the sector to better identify the impact of debt on DC reserves, however data isn't available yet.

The goal of eliminating DC's to incentivize affordable housing is a noble concept however many municipalities in the province already had exemptions for development charges for affordable housing units. Applicants that could prove that they were building affordable housing received a waiving of the associated development charges. This incentive has led to very little uptake by the development community to build affordable housing. An alternative for consideration would be for the Province to provide additional grant funding to municipalities that they could add to their Community Improvement Plan funding to create additional incentives for affordable and attainable housing units.

Although the County does not presently have a development charges by-law, these funding shortfalls for our member municipalities are acknowledged and therefore of concern to the County.

## **Ontario Heritage Act**

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In several of our member municipalities there are buildings and properties that have been designated under the *Ontario Heritage Act* (OHA). The changes to the OHA will have the most significant impact on the Towns of Amherstburg and Kingsville. These changes create additional burden to Town administration relating to municipal registers including the process and requirements around the removal and inclusion of non-designated properties

on the municipal registers and the requirement to make municipal registers available on a publicly accessible website.

## **Ontario Land Tribunal**

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The *Ontario Land Tribunal (OLT) Act* has been amended to broaden the ability of the OLT to dismiss proceedings without hearing if it is the opinion of the OLT that the appeal has been submitted to create undue delay. In addition, the OLT may dismiss a hearing if it determines that a party to the hearing has failed to comply with an OLT order.

The Act empowers the OLT to order the unsuccessful party to pay the costs of the successful party. Traditionally the award of costs has been applied in a limited manner and time will tell as to whether award of costs for losing parties will evolve. If this is the case, municipalities may be overly cautious in their decision-making involving *Planning Act* applications under threat of award of costs in the case of OLT appeals.

## **Conservation Authorities Act and Associated Regulations**

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Bill 23 has made sweeping changes to the *Conservation Authorities Act* and associated regulations that effect the relationship between the County, member municipalities and the two conservation authorities that are the stewards to the watersheds in the County (Essex Region Conservation Authority, Lower Thames Valley Conservation Authority).

On December 28, 2022, the MNR sent a letter to all Conservation Authorities and municipalities informing that the province had passed O.Reg. 596/22.

## **Natural Heritage Reviews and Responsibilities**

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The conservation authorities have for years provided a variety of valuable programs and services to the member municipalities. Historically, the County and the member municipalities have relied on their expertise to review Environmental Impact Assessments (EIAs) and provide comments relating to natural heritage. The recent amendments to the Act prohibit conservation authorities from commenting on proposals or applications under prescribed Acts, including the *Planning Act*, that are not part of their current core mandate (natural hazards and source water protection). Conservation authorities can still review applications to submit comments relating to natural hazards and source water protection but may not provide comments relating to natural heritage. Due to the historic knowledge of natural heritage matters, including the creation and maintenance of natural heritage mapping and databases for the member municipalities, this is a tremendous loss to the County.

County Planning along with the member municipalities will now be responsible for meeting Provincial, regional and local policy pertaining to natural heritage regarding all new development proposals, establishing the terms of reference for the studies, and obtaining peer reviews where ERCA previously provided this service economically to the development community. This change will place additional burden on the County Planning Division and the member municipal planning departments.

## **Stormwater Management**

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Due to the changes to the *Conservation Authorities Act*, where ERCA previously provided a peer review of stormwater management reports for the County and member municipalities, this service will also be reduced. ERCA's review of stormwater management reports will now be limited to water quantity (control of flood, impacts on the downstream watercourse) and limited in the context of water quality. This will place additional burden on some municipal Engineering Departments that relied heavily on ERCA for peer review. This change will likely place additional costs and time on developers for municipalities to obtain peer reviews by a limited number of engineering consultants in the Essex County area.

## **Changes to the Scoring of Wetlands in Ontario**

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In Ontario, wetlands are very important for flood attenuation, water filtering, groundwater recharge and discharge. When there is a lot of rain or snowmelt, wetlands absorb and slow floodwaters, helping to alleviate property damage and can even save lives. In the face of climate change, these wetlands are ever more important as we experience more extreme storm events. Essex County's wetlands are diverse ecosystems that provide important habitats for plants and animals. Ontario's wetlands are scored for importance through the Ontario Wetland Evaluation System (OWES). Wetlands that receive a higher score are considered provincially significant wetlands and presently protected from development based on the PPS.

As part of provincial changes supporting Bill 23, there were proposed changes to the Ontario Wetland Evaluation System posted on the Environmental Registry. The comment period on the ERO closed on November 24 with a decision posted on December 22, 2022. To summarize the changes to the OWES evaluation system of which the decision has now been approved includes:

- Removal of the MNRF as the approval authority of wetland evaluations and participation of Conservation Authorities;
- Allowing mapping updates to wetland boundaries without undertaking re-evaluations;

- MNRF is no longer to be consulted in order to provide the background for the completion of the wetland evaluation.
- The concept of wetland complexing has been removed, each wetland must qualify as significant, individually on its own.

In AMO's comprehensive submission on Bill 23, it states *"The submission reiterates the municipal commitment to working with the Government to increase the supply of housing and to improve housing affordability in Ontario. It acknowledges positive aspects of the Bill and plan. It also outlines serious concerns about the Bill, which will have the effect of undermining the financial capacity of municipalities to support growth and diminishing essential environmental protections."* Further, *"Similarly, the bill's provisions designed to reduce environmental protection will benefit developers in the short term, with costs to the public and homeowners that cannot be calculated."*

## **Achieving the upcoming Housing Supply in Essex County**

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County Planning is committed to putting in place the necessary policies and procedures in collaboration with member municipalities to streamline development approvals and continue to achieve the housing growth forecast that has recently been identified in the County Official Plan Review, Phase 1 Growth Analysis. As noted in the report to County Council on January 18<sup>th</sup>, by 2051, the total number of households in the County are forecast to grow from 71,400 to 101, 200 and 114,300. This will result in the need to accommodate on average an additional 990 to 1,430 new households per year, as compared to an average of 606 new households that were added per year over the last 15 years.

The challenge associated with achieving these growth forecasts is the availability of infrastructure. This includes the provision of housing-enabling infrastructure (roads, transit, utilities, and water/wastewater servicing), securing the County and member municipality's financial future, delivering robust parks and trail systems.

## **Conclusions**

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The County's Municipal Comprehensive Review is presently underway as Phase 2 to the County's OP review work program. Official Plans are required to be consistent with provincial policies. The timing for the release of the integrated Provincial Policy Statement may align with development of the County's new Official Plan. Should the Province release the new Provincial Policy Statement after the new County Official Plan has been prepared, adopted or approved; Administration will advise County Council accordingly as to the need for a County official plan amendment.

Bill 23 received Third Reading and Royal Assent on November 28, 2022. This bill will continue to have wide ranging and significant impacts on the governance of development. As changes to the affected Acts are implemented and new regulations are provided from the Province, Administration will continue to consult and monitor these changes and how they will affect the County and its member municipalities, including the need for amendments to the County Official Plan.

## **Financial Implications**

The County Planning Division will update procedures in light of Bill 23, however the timing for the Provincial proclamation of Bill 23 was after approval of the current County Budget. At present County Planning is working with the Province and member municipalities to determine how the level of service will be maintained and continue with efforts to expedite and streamline approval processes. In light of this transfer of responsibilities from CA's to the County and municipalities, measures such as utilizing environmental and engineering consultants has been contemplated.

At present, we are investigating the most efficient method to provide regional environmental planning services that ERCA previously fulfilled. Should additional staffing be required to fulfill this obligation, County Planning will provide a request as part of future budget deliberations.

## **Consultations**

Directors of Planning from the member municipalities have been consulted regarding the implications resulting from Bill 23 over the last number of months.

The Manager of Community Planning and Development, MMAH, south-west district, has been consulted regarding the implementation of Bill 23.

Senior Administration at the Essex Region Conservation Authority has been consulted since the announcement of Bill 23.

## **Recommendation**

That Essex County Council endorse the Administrative comments and recommendations to the Province, as contained in Report No. 2023-0215-IPS-R02-RB, included on the February 15, 2023, County Council Agenda and titled "Bill 23- Information Report"; and,

That the Warden, on behalf of Essex County Council, write to the Minister of Municipal Affairs and Housing to request that the Province of Ontario create

a municipal reimbursement fund to compensate the County of Essex and more importantly its local municipalities, in order that they be made whole as a result of the impacts of Bill 23 on municipal growth funding revenues and expenditures; and

That the Warden's letter to the Province also request that the Government of Ontario pause the further implementation of Bill 23, and participate in meaningful engagement with municipalities, and other key stakeholders, to address identified concerns in order to achieve the shared goal of increasing housing supply and improving affordability and sustainability; and

That Administration be authorized to prepare and submit to the Province of Ontario any additional comments on Bill 23, and any amending bills or related regulations, as necessary during their release.

## Approvals

Respectfully Submitted,

*Rebecca Belanger*

Rebecca Belanger, MCIP, RPP, Manager, Planning Services

Concurred With,

*Allan Botham*

Allan Botham, P.Eng., Director, Infrastructure and Planning Services

Concurred With,

*Mary Birch*

Mary Birch, Interim Chief Administrative Officer

Appendix Number	Title
1	Letter from Mike Galloway, CAO, County of Essex to the Honourable Steve Clark regarding Bill 23, November 22, 2022
2	AMO Submission dated November 16, 2022