HALDIMAND COUNTY

Memorandum PDD-M02-2022 Planning Legislation Information Update

For Consideration by Council in Committee on December 6, 2022

To: Mayor Bentley and Members of Council

From: Shannon VanDalen, MCIP, RPP, Manager Planning and Development and Mark Merritt, General Manager, Financial & Data Services

There have been a number of changes in 2022 to various pieces of Provincial legislation that impact the development process in Haldimand County. Those changes have been introduced through multiple legislative bills, as follows:

i. Bill 109 – *More Homes for Everyone Act, 2022*
   - First Reading: March 30, 2022
   - Royal Assent: April 14, 2022

ii. Bill 23 – *More homes Built Faster Act, 2022*
   - First Reading: October 25, 2022
   - Royal Assent: November 28, 2022

iii. Bill 27 – *Protecting Agricultural Land Act, 2022*
   - First Reading: October 27, 2022

While the legislation includes changes to a number of Ontario Acts, from a Haldimand County development perspective the impacts relate to the *Planning Act, 1990; Development Charges Act, 1997; Conservation Authorities Act*; *Ontario Heritage Act; and Ontario Land Tribunal Act, 202.*

The following memo will identify key components of the Bills and potential benefits or implications to the municipality. On the whole, the changes being introduced by this collection of Bills are very concerning to staff. These changes will fundamentally upend decades of checks and balances in terms of proper planning, stakeholder input, environmental review, and appeal rights. Further, they impose significant reductions to municipal development charges and planning application revenues, all of which would see more money remaining in the pockets of developers and less in the pockets of municipal tax payers (i.e. increased likelihood of property tax increases). Staff in Finance and Planning & Development have contributed to numerous submissions to the Province on the Bills through their work and memberships in the Development Directors of Ontario, Regional Planning Commissioners of Ontario, and Municipal Finance Officers' Association. Each of these associations, which include representation from Chief Financial Officers and Chief Planners of the major municipalities in Ontario, have expressed significant concerns to the Province in line with those contained in this memo. Further, the Association of Municipalities of Ontario (AMO), which represents the voice of all Ontario municipalities, has submitted a formal letter of concern (included as Attachment 1) with respect to Bill 23, which closely aligns with County staff comments in the tables below. While commenting periods are closed, and the Bills of greatest concern are in effect (Bill 109 and Bill 23), staff have ensured the concerns of the County have been expressed in concert with those of many other municipalities in the province.

Bill 109 – More Homes for Everyone Act, 2022

Bill 109 impacts the *Planning Act* and received Royal Assent on April 14, 2022. As such, its sweeping changes are in force and effect or soon to be (i.e. January 1st, 2023) across the entire Province. The following chart provides a summary of the most impactful changes to the County and staff's comment relative thereto.

Changes	Description	Comment
Minister Review of Official Plans & Amendments – Suspension of the Timeline	Prior to Bill 109 the Minister had 120 days to make a decision on official plan matters for which the minister is the approval authority. With the change, the Minister now has the ability to "stop the clock" to allow additional time for review. This change is currently in effect and retroactive to any Official Plan matters before the Minister.	Phase 2 of the Haldimand County Municipal Comprehensive Review (Official Plan Update) was adopted by Council on August 29, 2022 and has been with the Ministry of Municipal Affairs and Housing as a complete submission/under review since September 20, 2022. Under the 120 day requirement the Ministry was required to issue its decision the Official Plan Update by January 17, 2023. Notwithstanding, on November 16, 2022, the County received a letter from Minister Clark advising that he was using his authority to suspend the 120 day timeline for Haldimand. It is staff's understanding that all municipalities in Ontario with an Official Plan Update at a similar stage in process received this letter.
Streamlining the Approvals Process: Application Fees Refund	The legislation contains new penalizing provisions that require municipalities to refund, in part or in entirety, fees for rezoning or combined official plan and zoning by-law amendment applications if a decision by the municipality is not made within the timelines prescribed in the *Planning Act*. This change is to take effect on January 1, 2023. A municipality shall refund any fee paid as follows: Zoning By-law (ZBL) ➢ 0-90 days = no refund ➢ 91-150 days = 50% refund ➢ 151-210 days = 75% refund ➢ Greater than 210 days = full refund Combined Official Plan and ZBL ➢ 0-120 days = no refund ➢ 121-180 days = 50% refund ➢ 181-240 days = 75% refund ➢ Greater than 240 days = full refund	Planning staff will continue to track and work to meet the identified timelines. In 2022, the 0-90 day (no refund) timeline for Zoning Amendments is being met approximately 75% percent of the time. The 25% of applications that have not met the 0-90-day timeline are those that relate to larger developments such as Plans of Subdivisions or for complex applications where additional studies, information or public consultation was required. In almost all cases, this grouping of applications met with a decision in the 91 – 150 days timeline. If the legislation were in effect in 2022, the amount of application fees to be refunded would have been $13,413.00 of the total $63,946.00 revenue. Official Plan amendments are operating at approximately 60% within the identified 120 day (no refund) timeline. In all other cases the applications met with a Council decision within the 180 day timeline. Those applications that were within the 180 days were impacted by delays in review/comment by Provincial Ministries. If the legislation were in effect in 2022, the amount of application fees to be

Changes	Description	Comment
		refunded would have been $32,704.00 of the total $50,710.00 revenue. Going forward there will be some operational changes implemented by Planning staff to minimize the financial impacts and potential refunds. This will be addressed by putting a greater emphasis on the upfront review and potential multi-stage assessment of applications to ensure that the required studies are completed and include the essential details. There will need to be a stronger focus prior to the application being submitted to ensure that all information is provided before staff consider it complete and the planning process and timeline commences. For staff, it will mean additional multi-divisional pre-screening to ensure completeness and minimize the amount of times that staff have to go back to the applicant for revisions/additional information. If all the prescribed information is not provided or addressed, the application would be deemed incomplete and returned to the proponent with direction as to what is still outstanding. The proponent would then have to resubmit when all details are addressed. Staff will continue to monitor the applications and work with departments and agencies to meet the prescribed timelines.
Amendments to Site Plan Control	Site Plan approval must be delegated to staff (no longer optional) – Council can no longer be the approval authority for site plans. Site Plans must be approved within 60-days of being deemed complete, and a municipality cannot deny or refuse Site Plan Approval. If approval is not granted within the 60-days, a full refund of application fees is required.	The General Manager of Community & Development Services has had delegated authority for Site Plan Approval for a number of years, with Council previously acting on this option. The most significant impact of this legislative change is the 60 day approval requirement. Historically, site plan approvals have ranged from 60 to 120 days, with the majority being over 60 days. The main reason for such is the process that the County has in place. The current approval process requires that all aspects of the design must be fully completed and approved – this includes site plan, lot grading/drainage, stormwater management, photometrics (lighting), electrical, archaeological, etc. The current process also requires all administrative (e.g. posting of

Changes	Description	Comment
		security, insurance, etc.) and legal agreement requirements are fully submitted and executed prior to final site plan approval being issued. Given the complexity and myriad of staff (internal and external) involved in all of these aspects of the process, it is simply not possible to meet the 60 day timeframe. Based on the above, staff will be implementing a new process to ensure that compliance can be achieved. That process, which has been employed for years by other municipalities in Ontario (and soon by many more as a result of the Act changes), would see a conditional approval granted to the site plan. What this would look like in practice is that site design would be approved and would be subject to meeting a series of conditions which could include things such as final stormwater management plan, final lot grading/drainage plan, final photometrics plan/electrical plan, completion and execution of a site plan agreement, submission of all fees, securities and insurance, etc. In effect, the developer would be responsible for all the same things they are today, staff efforts/expectations in the process would remain largely unchanged and the entire review and approval process would end up being the same – however, as there would be a conditional plan approval within 60 days, it allows for the *Planning Act* refund timeline to be achieved and impacts to ratepayers (to effectively subsidize private development) would be mitigated.
Complete Application	A new complete application process for Site Plan Applications is also contained in Bill 109. Similar complete application requirements that were previously applied to Official Plan Amendment and Zoning By-law Amendment applications now also apply to Site Plans. This means that all the components of a development must be identified and verified for submission before an application can be deemed complete and the processing time starts.	Through the Municipal Comprehensive Review (Official Plan Update Phase 2), policies have been developed to address this change and there will be more robust policies and detailed lists of what studies may be required and what would constitute a complete application, including the types of reports, plan and supporting information needed to complete a fully review of a proposal.

Changes	Description	Comment
Amendments to Subdivision Control	The Minister now has the power to prescribe matters that *cannot* form the basis of draft plan approval – i.e. what conditions cannot be applied as part of the subdivision approval process. Additionally, the legislation also enables a mechanism for plans of subdivisions where approvals have lapsed, the ability not to lapse due to certain conditions.	The change could impact the types of conditions that are applied to a subdivision prior to final registration, however, no additional information or guidelines have been provided. The intent of this change is to create consistency across the Province and application of condition requirements. Given the unknowns of where this may land, it is not possible at this time to measure the potential impact to the County.
Community Infrastructure and Housing Accelerator Tool and Tool Guideline	This legislation change will allow developments under certain circumstances that planning instruments – including the Provincial Policy Statement; a provincial plan or an official plan - will not apply to. The draft policy reflects a wide range of developments such as all forms of housing proposals; employment and economic development and mixed-use developments.	This guideline has not been released and there is little detail at this time as to what the accelerator tool might look like or where it could apply. As additional information becomes available, staff will provide updates to Council.
Regulations re: Surety Bonds and other Instruments	This will allow Surety Bonds as a means to secure planning obligations – an additional method for developers to provide securities to the municipality to complete the requirements of works to be completed.	Haldimand County does allow for bonds to be provided for securities. The municipality does accept bonds for up to 90% of the value of a required security.

Proposed Bill 23 Changes

The changes and amendments proposed through Bill 23, which received Royal Assent on November 28th, 2022, will substantially and fundamentally alter the planning process in Ontario, and will see a shifting of focus from public interests and environmental considerations to prioritizing new housing and benefiting the development industry above all other. It will also fundamentally impact the collection of Development Charges, including how they are collected and for what they can be collected for. These changes will have significant financial implications for Ontario municipalities, including the County.

The following chart provides a summary of the proposed Acts to be affected, a description of the changes and a brief comment on the change.

Changes	Description	Comment
Conservation Authorities Act		
Approval and review authority	Remove the CA's ability to review/comment on planning applications. Open up potential development opportunities in Wetlands and regulated areas.	These changes would effectively transfer the responsibility for review on a variety of studies and technical processes related to hazard mitigation and natural feature protections to the County. Haldimand, like most Ontario municipalities, does not have in house expertise to assess natural hazard issues/feature protections and thus relies fully on the CAs to complete this work as part of the development review process. Expecting municipalities to complete this work (without the requisite resources and expertise) would pose significant risk to features and new developments, thus increasing the potential liability to the County should a project proceed that otherwise should not have. To that end, should these changes take full effect, the County would likely be required to hire a Resource Planner that has the qualifications and full capacity to assess developments against natural hazard issues and feature protections. This outcome would carry significant cost for the County that could range between $80,000 to $100,000 per annum.
Development Charges Act		
Exemptions, Caps and considerations of Development Charges	Require full exemption from DCs for affordable and attainable residential units; non-profit housing and include inclusionary zoning on residential units.	This change would see full exemption required for all forms of affordable and attainable housing. Currently, the Haldimand County Development Charges By-law does not recognize these exemptions, and would require an amendment to conform to the Act. This change will impact the Development Charges By-law and the overall tax base for the County. Additional review will be required. Attainable Housing is housing that can be afforded by people earning around the Area Median Income and is typically applied to rent that does not exceed 30% of gross annual household income. Affordable housing is housing that is subsidized. This part of the legislation in not yet in force but the details of how this is defined could have significant implications on the ability to collect Development Charges.

Changes	Description	Comment
Mandatory Discounted Phase in of New DC Rates	All new rates are subject to a mandatory phase – in over 5 years.	This change would require all DC rate increases when passing a new by-law to be phased in over 5 years. The loss revenues form this phase-in would have to be recovered from property taxes.
Costs of Associated Studies and Land Acquisition Ineligible	All studies required to support the DC Background Study would be ineligible to be recovered from DC charges.	Several studies (e.g. DC Study, Population Forecasts, Master Servicing Studies, etc.) are required to prepare the Provincially required Background Study required to enact a DC By-law/rates. These studies would have to be recovered from property taxes.
Removes Housing as an Eligible Service	Municipalities would no longer be eligible to collect DCs for Affordable housing.	Currently, the County does not collect DC funds to develop new Social Housing, however, this provision eliminates this as a revenue source in the future.
Increasing Historical Service Levels standard period from 10 to 15 years	The maximum eligible DC costs for each service would be limited to the average cost over the past 15 years vs. 10 years.	The *Development Charges Act* limits the eligible costs for a service to the historical cost level over the past 10 years. By expanding this to 15 years, the inflationary impacts over this period will not be reflected in the future costs to provide these growth infrastructure needs. Any shortfalls will require additional funds from property taxes.
Ontario Land Tribunal Act		
Appeal rights and associated costs	Ability of the OLT to additionally dismiss appeals without a full hearing, if the party who brought the proceeding is contributing to undue delay, and if it is the opinion of the Tribunal that the party has failed to comply with a Tribunal order. Providing the OLT with the ability to Prioritize the resolution of certain proceedings.	Typically, the OLT does not award cost as part of its decision. However, this change would see the opportunity for the OLT to specify that the Tribunal may order an unsuccessful party to pay a successful party's cost. This provision could be utilized if, in the opinion of the OLT, there is an undue impact or hardship or that there was an act in bad faith. Regarding the OLT's ability to prioritize certain proceedings, this would be based on certain criteria or types of development, such as additional residential units or affordable housing.
Planning Act Changes		
Third Party Appeals	Reduction of the ability for Third Party appeal to only a "specified person". A "specified person" is defined as public bodies such as Ontario Power Generation, Hydro One Inc., operators of railway lines and telecommunications	As it stands currently, anyone who makes written or oral submission at a public meeting can file an appeal with the OLT. However, this proposed change would eliminate that opportunity and revise the wording of the *Planning Act* to "only specified persons". This would mean that neighbouring land owners,

Changes	Description	Comment
	infrastructure providers. This would apply back to appeals that have not had a hearing on the merits of the application scheduled before October 25, 2022, as well as all appeals moving forward.	public groups, interested parties, and in some cases even the property owner themselves, could not appeal a decision. As drafted, this applies to any Official Plan, Zoning By-law, Minor Variance or Consent application. The implication of this would be that a decision of Council if final, cannot be challenged by the OLT, same expected by the "specified persons" noted in the column to the left.
Two-Year Moratorium and Aggregate Projects	The *Planning Act* currently provides for a two-year moratorium on private development applications to amend a new Official Plan; Secondary Plan or Comprehensive Zoning By-law. Bill 23 proposes to lift this requirement if the application relates to a pit and/or quarry.	This process change would have a relatively minor impact on Haldimand County as we are currently in the process of receiving MCR approval, and through the OPA By-law adopted by Council, there was a waiver of the 2-year moratorium implemented – meaning, County Council has already made a decision to cancel the moratorium and allow for changes to the various planning instruments in the 2 year window.
Cap on Community Benefit Charges (CBC) Contribution	The *Planning Act* currently provides that the amount of a CBC charge payable in any given case shall not exceed an amount equal to 4% of the value of the land. Bill 23 proposes to introduce a cap on the total amount payable based on floor areas of the development or redevelopment.	Haldimand County presently does not have a CBC By-law and as a result, this change will not impact our current processes. However, should the municipality look to establish a CBC By-law, this legislation would be applicable.
Site Plan Control	Bill 23 proposes to amend the *Planning Act* to expand the list of exempted development forms that would not be subject to site plan control to include residential development with 10 or less residential units. Also, the proposed legislation intends to limit the types of lands and drawings reviewed through site plan control, in particular to exclude any exterior design plans and landscape plans.	Currently, site plan control is applicable for any residential development in an R3 Zone or higher – which covers a tri-plex, four-plex, townhouse dwelling units, and apartment units. This change would result in any multi-residential proposals of 10-units or less being exempt from the site plan process which is often critical to ensure the property planning and design of property drainage/grading, stormwater management, access arrangements, lighting, etc. The absence of authority to regulate these types of technical matters, could lead to incompatible development situations and civil issues surrounding property (e.g. flooding out neighbouring lots). This would not be subject to site plan control. In addition, the removal of architectural control (exterior design plans) and landscape plans

Changes	Description	Comment
		from site plan approval for all types of developments (as is proposed), would have a significant impact on the overall quality and aesthetic appeal of new developments in the County.
As of Right Multi-Unit Provisions	Official Plans and Zoning By-laws cannot prohibit up to three (3) residential units per parcel of urban residential lands. This configuration could be: • Three (3) in the primary dwelling structure; • Two (2) in the primary dwelling structure and one (1) in an accessory building; or • one (1) as the primary dwelling structure and Two (2) in an accessory building. This would apply to all single detached, semi-detached and townhouse units as well as limiting parking requirements and eliminating minimum floor area requirements.	The Haldimand County Zoning By-law currently allows for up to two (2) secondary suites per property, with one (1) secondary suite to be located within the principal dwelling. These changes could modify the current zoning provisions slightly, but would not significantly impact the municipalities current practice, save and except that of parking. The legislation proposes that each of the 3 dwelling units would only be required to provide one parking space – meaning, there could be 3 separate family units on a lot with just 3 parking spaces provided. In turn, that could lead to overflow onto municipal streets which would create By-law Enforcement and winter control challenges.
Parkland Dedication Requirements	Bill 23 proposes changes to: • The maximum parkland dedication rates • New exceptions for non-profit housing and additional residential units • New timing for calculation of parkland contribution • Requirements for a Park Plan prior to a Parkland dedication By-law • Parkland appeals to the OLT • Requirement to Spend Parkland Monies	Haldimand County enacted a Parkland Dedication By-law in May 2022. The by-law addresses the conveyance of land for park or other public recreational purposes or cash-in-lieu to established clear and consistent provisions. As the County's Parkland was passed prior to the legislation coming into effect, it remains in good standing and at this time a parks plan is not required to be completed. One of the key changes is the timing for calculations of cash-in-lieu contributions which would be applicable either at the time the Site Plan application is submitted for approval or when the Zoning By-law is approved, whichever is later. This value would be applicable for a period of two (2) years. If construction does not occur within that timeframe, the value would need to be recalculated at the building permit stage. It is difficult to determine if this would be

Changes	Description	Comment
		an advantage or disadvantage given land values could fluctuate one way or another in that period of time. Additionally, the type of land that can be considered for dedication to the County by developers has been expanded and now can be encumbered by easements or limitations (e.g. natural hazards), or can be Privately-Owned, Publicly Accessible spaces (POPS). This change could impact the quality/usability of the land that is conveyed to the County – for example, encumbered lands would not be available to construct functional greenspace, accommodate play equipment, etc.; but the County would be compelled to accept such lands as the developer's parkland contribution. This would significantly impact the County's ability to actually expand its functional parkland space to keep pace with development and may lead to situations where the County has to purchase additional lands over and above the lands conveyed through development approval processes.
Public Meetings for Plans of Subdivision	Remove the legislative requirement to hold a public meeting.	Currently, a Public Meeting is required for a Plan of Subdivision under the *Planning Act*. The proposed amendment will totally remove this requirement so that no public meeting would be needed meaning that a proposed Plan of Subdivision could be approved without public input or discussion before Council-in-Committee. This change significantly impacts the public process and eliminates the ability for members of the public to express concerns or speak to matters of interest relating to what are often significant development proposals. This moves away from several of the central tenets of the land use planning process in Ontario which are consultation and transparency.

There are a few other items considered under Bill 23 including changes to the *Ontario Heritage Act*, the *City of Toronto Act, 2006* and the *Municipal Act, 2001* – however, they do not have a specific planning component relating to the Planning process or Haldimand County and are not being addressed through this information memo.

Proposed Bill 27 Changes

Planning Act

Changes	Description	Comment
Lands zoned or Prescribed for Agriculture	A municipality shall not pass a zoning by-law that changes the uses permitted on the land or the zoning of the land unless an Agricultural Impact Assessment has been completed.	Haldimand County has strong policies for the preservation of Agricultural lands and utilizes the OMAFRA Guidelines for On-Farm Diversified uses as a tool for secondary uses on a farm. However, going forward if a Zoning Amendment is proposed to introduce a use currently not contemplated on an Agricultural zoned property, an Agricultural Impact Assessment report would be required as part of a complete application.

LEGAL/FINANCIAL IMPACTS

It is currently very difficult to understand the full financial impacts of this proposed bill given the limited time to respond and the uncertainty/lack of details on how some of these provisions will be enacted. Suffice it to say, if this bill is enacted as drafted, it will ensure Development does not pay for Development. This is a fundamental principle the County has built our long-term financial plans upon.

More over, it is difficult to understand how the reduction in these fees will make housing more affordable in the Province of Ontario. As there is no correlation between the cost of a new home and the fees that Developers currently pay to the County. In fact, it appears counter-intuitive as the Province is eliminating the fees that are necessary to ensure the required infrastructure is in place to support the growth that is much needed. Without these critically important fees, these costs will have to be passed on to existing residents or projects and will have to be delayed which may prevent the intended development from occurring in the first place.

Based on a preliminary analysis of the *Development Charge Act* changes, the following chart outlines the anticipated impact on the County's tax levy on an annual basis, noting that several impacts are unknown at this time.

Proposed Change	Annual Impact
Phase-in of New Rates	$1,500,000
Removal of Land	$300,000
Removal of Studies	$100,000
Removal of Housing	unknown
Change in Historical Service Levels	unknown
Statutory Exemptions for Certain Development	unknown
Total	**$1,900,000**

The above chart includes cost impacts exclusive to the *Development Charges Act* only and does not include any direct or indirect costs of the changes proposed to other pieces of legislation noted above.

Based on the County's existing tax levy of approximately $76.2 million, this could have a potential tax annual levy impact of over 2.5% on the average residential home.

Based on early estimates by the Association of Municipalities of Ontario (AMO), the projected financial impact of the 29 largest municipalities in Ontario, which are expected to account for over 80% of the targeted1.5 million homes in Ontario over the next 10 years, could exceed $1 Billion annual to municipal taxpayers.

Many municipalities and associations have or plan to make presentations to the Province to outline the severe financial impacts these changes would have on municipal finances and our ability to provide the infrastructure and services to support the intended growth.

REFERENCES:

None.

ATTACHMENTS:

1. AMO Submission on Bill 23.