
HALDIMAND COUNTY

Report CDS-05-2024 Bill 185 – Planning Act and Development Charges Act Amendments



For Consideration by Council in Committee on May 21, 2024

OBJECTIVE:

To provide Council with information on the changes and impacts proposed by the Province through the recently released *Cutting Red Tape to Build More Homes Act, 2024* (Bill 185) and new Provincial Planning Statement.

RECOMMENDATIONS:

1. THAT Report CDS-05-2024 Bill 185 – Planning Act and Development Charges Act Amendments be received;
2. AND THAT staff provide feedback to the Province regarding the various issues and concerns raised in Report CDS-05-2024 to both the Environmental Registry of Ontario and Ministry of Municipal Affairs & Housing staff.

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EXECUTIVE SUMMARY:

The Province recently issued Bill 185 which contains a significant amount of change to both the *Planning Act* and *Development Charges Act*. There are changes that will be beneficial – e.g. cancellation of planning application fee refunds, elimination of mandatory phase-in of new development charges, reinstating the inclusion of eligible capital costs related to studies, and flexible public notice requirements. Conversely, there are also changes that will be problematic – e.g. changing pre-consultation meetings to voluntary, removing 3rd party appeal rights and implementation of the exemptions from development charges and parkland dedication fees for “Affordable” housing units.

A new Provincial Planning Statement (PPS) was also released at the same time as Bill 185 and represents some significant shifts in policy direction. The new PPS puts forth a number of concerning changes, including impacts to preservation of agricultural lands, reduced employment land protections, and more flexible urban boundary changes. Staff are recommending comments in relation to the key areas of concern expressed in this report, for both Bill 185 and the new PPS, be provided to the Province.

BACKGROUND:

Since 2021, there have been no less than 10 government bills brought forward in the Ontario Legislature addressing matters of land use planning, development and municipal regulatory powers. These changes have led to an immense amount of instability and uncertainty in the system, and have hand-cuffed municipalities in much of their long-range planning. In a context where land use law and policy are moving in different directions, it is difficult to actually “plan” for anything. As municipalities were starting to ‘settle in’ and become somewhat comfortable with the myriad of changes, the Province issued more significant change. The *Cutting Red Tape to Build More Homes Act, 2024* (Bill 185), was presented to the Legislative Assembly of Ontario for first reading on April 10, 2024. That same day, the Province also released for further public comment an updated draft of a new Provincial Planning Statement 2024 – one that is proposed to replace both the existing Provincial Policy Statement 2020 and the Growth Plan for the Greater Golden Horseshoe, the latter of which has stood as a separate provincial plan applicable to a significant portion of southern Ontario since 2006. The Province also indicated that along with these measures, it is introducing the next edition of the Building Code.

Regardless of the concerns noted above and the frustrations that additional change brings, staff has to stay on top of new legislation, not only to understand its immediate implications but also to try to anticipate what could come next. With respect to Bill 185 and the draft 2024 Provincial Planning Statement, what is reviewed and commented upon herein currently represent “drafts” and “proposals” by the Province. It is expected that they can and will change before they are final. Staff will continue to monitor and provide Council with any relevant updates to further significant changes. For now, staff have summarized the key changes as they relate to Haldimand County within this report and are proposing that the concerns raised be provided to the Province through the Environmental Registry of Ontario and Ministry of Municipal Affairs & Housing staff.

ANALYSIS:

Bill 185 consists of a number of significant changes to various Acts which are packaged into a suite of unique postings on the Environmental Registry of Ontario (ERO). Staff have summarized their comments under each ERO posting, with focus being on those changes that will result in the most significant impact in the County (note: there are many changes that only apply to larger urban centres – e.g. changes relating to post-secondary institutions, transit-oriented development, 2-tier municipal governance systems).

- ERO #019-8462: An updated proposed Provincial Planning Statement

Staff comments: The PPS sets the rules for land use planning in Ontario. It covers policies about managing growth, using and managing natural resources, protecting the environment, and public health and safety. In the spring of 2023, the Province released a draft Provincial Planning Statement (PPS) for public comment. The draft brought together the Provincial Policy Statement and Growth Plan into one singular document. The government is now seeking feedback through consultation on a further updated, proposed PPS, responsive to feedback received through the 2023 consultation. Key proposed changes would focus planning processes on housing outcomes and would include making it easier and faster to make land available for residential development, increasing intensification in areas close to transit and in strategic growth areas (including through redevelopment of underused plazas and shopping malls), supporting coordination between municipalities and school boards and promoting a range of housing options including student and senior’s housing. Staff provided comments on the first draft of the new PPS through report PDD-15-2023 in May 2023. Many of the concerns raised as part of the review remain unchanged but some

positive shifts in policy direction have been made. A summary of the key changes and potential impacts is included as Attachment 1.

One particular overarching concern warrants comment here, which is the impact of the new PPS on the County's Official Plan. When the Province signalled a new policy document was coming and subsequently issued a first draft (spring 2023), a fundamental concern of staff was the impact it would have on the work recently completed on the County's Official Plan (OP) update (both Phases 1 and 2). In particular, would the Province require the County to open up its' OP, redo studies, and complete significant policy revisions to bring it into conformity with the new PPS? Those concerns appear to have been satisfactorily addressed as the Province's various releases indicate that OPs will not need to conform until the next scheduled update, which for the County would be 2027/28. In the interim, where there are conflicts between the new PPS and a municipal OP, the PPS will take precedence – the impacts of that are to be determined but could play out in the form of a more restrictive or a more flexible policy set, depending on the subject matter.

- ERO #019-8366: Removing barriers to additional residential units (ARUs)

Staff comments: The Minister is proposing changes to the *Planning Act* that, if passed, would help create additional residential units (ARUs), such as garden, laneway or basement suites, by providing authority for regulations to eliminate practical barriers to these units being built. This could include authorities to put in place regulations that eliminate the requirement to use various basic tools to control this land use, including zoning by-laws, minor variances and site plan. This provision, if passed, would widen the scope of the Minister's ability to regulate not only a second or third residential unit (currently permitted as of right in the County subject to certain criteria) but any ARUs in a house, as well as the land on which such ARUs are located and the building or structure within which such ARUs are located. In essence, the Minister would be able to make certain existing tools and processes inoperative. The tools and processes in effect at the County are intended to regulate ARUs (referred to in our By-law as 'secondary suites') to ensure 'fit' at both the site and neighbourhood level, and to facilitate proper function of properties. Losing some or all of these authorities could prove to be problematic and lead to future compatibility or site functionality issues (e.g. drainage/stormwater).

- ERO #019-8368: Proposed amendments to Ontario Regulation 73/23: Municipal Planning Data Reporting regulation

Staff comments: In an effort to remain transparent regarding the Province's commitment to help municipal partners build at least 1.5 million homes by 2031, Ontario has started reporting on the total number of homes created in municipalities with assigned housing targets. This was the focus of a recent staff report relating to housing target performance (CDS-01-2024). In addition, Ontario is proposing changes to the Municipal Planning Data Reporting regulation (O. Reg. 73/23) under the *Planning Act* to include an additional 21 municipalities (encompassing all 50 municipalities with provincially assigned housing targets) and enhance municipal data points. Haldimand County is included in the additional 21 and will now be required to report to the Province on datapoints with frequencies as follows:

- On a quarterly basis, key statistics—including number of submissions, decisions, lots/units created, etc.—are to be provided in the form of a standardized summary table for the following planning applications:
 - official plan amendment applications
 - zoning by-law amendments
 - plans of condominium
 - plans of subdivision
 - site plan applications

- land severances (consents)
 - minor variances
 - community infrastructure and housing accelerator orders
 - minister’s zoning orders
- On an annual basis, information is to be provided, including:
 - yearly summary for all planning application data listed above; plus,
 - settlement area boundary changes;
 - employment area changes; and
 - geospatial data that identifies designated serviced land supply

Municipalities would be required to publish these summaries to their municipal website and update the summaries each quarter beginning October 1, 2024. While this adds another set of administrative tasks to the Planning & Development Division, this will be a helpful exercise in ensuring accuracy of provincial reporting and allows the County to build upon the provincial requirements and proactively track and monitor growth. These new obligations will now need to be factored into the Division’s work plan for 2024 and beyond.

- ERO #019-8370: Regulatory changes under the *Planning Act* and *Development Charges Act, 1997*: Newspaper Notice Requirements and Consequential Housekeeping Changes

Staff comments: Ontario is proposing to enable municipalities to give notice of new planning applications and development charge matters on a municipal website if there is no local newspaper so that the public is well-informed about proposed changes in their communities. Ontario is also proposing to enhance public engagement for new planning applications by developing municipal best practices for public notice in partnership with municipalities, including multilingual notices to support culturally diverse communities. The ability to provide website notice is a welcome change, one that planning authorities across the Province have been requesting for years. This is of particular importance given that publishers across the Province have been transitioning from print to on-line formats, including the loss of one local paper in Haldimand (and just one remaining). It is not clear what the best practices will consist of but staff will monitor this closely.

- ERO #019-8369: Changes to the Planning Act – Various Matters *Fee Refunds*

Staff comments: After consultations with municipal and housing sector partners, Ontario is proposing to remove fee refund provisions from the *Planning Act*. In 2022, changes were made that require municipalities to refund zoning by-law amendment and site plan application fees on a graduated basis, if they fail to make a decision on an application within legislated timelines. In order to make these timelines, some municipalities—including the County—adopted Official Plan policies and new processes that impose additional pre-application requirements, ultimately lengthening the application process. While it is frustrating for staff to receive this reversal after putting significant effort into changing processes, forms and OP policies, it is a welcome reversal given the lessened likelihood of fee refunds and the potential that reverting to old processes could actually help speed up local decisions.

It is staff’s understanding that applications filed after July 1, 2023, and before the deletion date of the fee refund requirements come into effect, may still be eligible for a fee refund. It is expected that the deletion date of the fee refund requirement will stop the clock on these refunds, meaning only the delays incurred up to that point in time would be eligible for refund and any further delays (beyond the deletion date) will not result in moving to additional refund levels.

2. *Further Elimination of Third-Party Appeal Rights*

Staff comments: Bill 23 introduced into the *Planning Act* the concept of a “specified person” which is defined to mean a list of entities that includes utilities, pipeline and rail operators, and other similar public/private entities. Bill 23 further revised the *Planning Act* to limit the right to appeal the approval of a minor variance, a draft plan of subdivision, or a consent to sever to the applicant, the municipal authority, the Minister or a “specified person.” In doing so, the Province eliminated appeals by third-party landowners, ratepayers and other members of the public. Ontario is now proposing a further change to the *Planning Act* that will prohibit third party appeals of Official Plan and zoning by-law amendments. Appeals are proposed to only be available to the applicant, Minister, public bodies and specified persons (generally utility companies that made submissions) – essentially, the same parties identified through Bill 23. This is all proposed in an effort to reduce costs and delays and help build homes faster, an overarching concept which staff agree with. That said, staff are also of the view that full public access to participate in the development review and decision-making process should be maintained. Removing third party appeal rights is a regressive step in public engagement that would preclude Ontarians the opportunity to help shape their communities. Of note, the two Ontario Land Tribunal (OLT) appeals that are currently active in the County—Pyle Road, Lowbanks and Cayuga Street, Caledonia—are both applicant-led appeals. Those types of appeals can still occur with the proposed changes as applicant appeal rights are not being removed.

3. *New Appeal Rights for Settlement Area Expansion Applications*

Staff comments: The *Planning Act* currently provides that an applicant cannot appeal an Official Plan Amendment or a zoning by-law amendment application that would expand or alter an in-force settlement area boundary. Bill 185 proposes a change that would allow a private applicant to appeal the approval authority’s refusal or non-decision so long as the proposed boundary expansion does not include any lands within the Greenbelt area.

This new appeal right is paired with new criteria for the assessment of proposals for settlement area boundary expansions (found in the draft PPS – see Attachment 1 for summary). The draft PPS also does not propose size limitations for boundary expansion proposals. This new appeal right attempts to remove local and provincial politics from important decisions on boundary expansions, with decisions now being subject to an independent and neutral process. However, it falls short given that it is an appeal right only for applicants and the general public would be precluded from being an appellant (as described in 2. above). For substantive and community-shaping decisions such as boundary expansion, having appeal rights in place for all parties is sensible to ensure maximum integrity and balance is built into the process.

4. *Use It or Lose It – Servicing Allocation Lapsing*

Staff comments: By their very nature, municipal services (water and sanitary sewers, water and wastewater treatment plants, pumping stations, etc.) have capacity limitations in terms of the amount of development they can support. Municipal services are important, finite resources that are integral to support the timely construction of new housing. In some cases, projects do not advance to construction. This means that the servicing capacity that is “allocated” to that project is not realized. In some cases, where existing services are constrained, unrealized allocated capacity impacts the ability of other projects to progress and potentially delays the construction of new homes for no reason other than the theoretical allocation of capacity to a different project that is not moving forward. Simply put, this can lead to stalled developments.

Stalled developments can limit a municipality’s progress in meeting provincial housing targets. Ontario is proposing to create a new “use it or lose it” process to enhance and expand a municipality’s ability to address this obstacle and to support the efficient allocation of housing-

enabling infrastructure. If passed, it would enable municipalities to adopt policies setting out how water and wastewater servicing may be allocated and reallocated so that developments ready to proceed encounter fewer barriers and delays prior to construction.

Bill 185 proposes to expand on the existing municipal authority to attach lapsing provisions to approved site plans and draft plans of subdivision. While imposing this type of “use it or lose it” tool would be new for site plan approvals, the change for draft plan of subdivision approvals is that it would become mandatory. To some degree, the County already operates within the objective of this proposal which is to ensure that servicing capacity is allocated to projects that advance in an expeditious manner. Specifically, as part of the annual servicing allocation program, developers are measured against a similar ‘use it or lose it’ criterion, wherein inactivity on a project could result in withdrawal of committed-to capacity. Bill 185 aligns with this well-established County practice but actually takes it one step further as it would grant the legal authority for the County to withdraw capacity if issued building permits are not acted on. This would provide another tool for the County to ensure that developers are not monopolizing capacity and ‘sitting on it’ thereby restricting other projects from moving forward.

5. *Pre-Consultation Meetings Voluntary*

Staff comments: Bill 185 proposes to remove the municipal authority’s ability to require pre-consultation for applications for Official Plan Amendments, zoning by-law amendments, site plan approval and draft plans of subdivision. Instead, the *Planning Act* would be amended to simply permit applicants to seek pre-consultation. What is currently mandatory would become entirely optional. The pre-consultation process has been in place in the County for more than 15 years. The process has proven beneficial in that it identifies all the application requirements (e.g. technical studies, submission forms), areas of potential concern/benefit, fees and processes that are involved with a particular development proposal. This process has helped to facilitate the submission of complete applications which reduces the amount of back and forth required between staff and the applicant at the outset of the process. All of this helps to reduce delays, the number of plan/submission iterations (= less cost, less frustration), and ensures report completeness. It would be counter-productive to revert to a system where this process is no longer available to assist with building complete applications. Staff will continue to support and encourage the pre-consultation process, highlighting its benefits for applicants.

6. *Proposal to Exempt Community Service Facilities from Planning Act Requirements*

Staff comments: As stated in the Province’s press release, to get shovels in the ground faster for priority government projects, Bill 185 proposes to add a new section to the *Planning Act*, to authorize regulations that provide for the non-application of any provision of the *Planning Act* to prescribed classes of community service facilities that meet prescribed requirements. Community service facilities currently being contemplated for such exemptions include schools, hospitals and long-term care homes. This new regulation-making power, if passed and utilized, is intended to provide a new expedited approval process for such community service facilities.

Getting shovels in the ground faster for priority government projects, through a new expedited approval process, could be of immense benefit as it would allow for the critical needs of community members to be accommodated as quickly as possible. That said, it is important to still balance expediency with the need to mitigate any potential impacts that these new developments could bring with them (e.g. traffic, noise, stormwater, etc.). As such, there needs to be a process to address the various technical matters that would typically be done through the normal planning process (e.g. site plan).

ERO #019-8371: Changes to the Development Charges Act, 1997, to enhance municipalities' ability to invest in housing-enabling infrastructure

1. *Removal of Mandatory Phase-in*

Staff comments: This is a significant, financially beneficial amendment, essentially reversing the Province's previous decision effective for by-laws passed after January 1, 2022, to implement a mandatory 5 year phase-in of new/amended Development Charge rates. Under the proposed amendment, any Development Charge by-laws passed after Bill 185 comes into effect, will no longer be subject to the phase-in provisions. As the County's current by-law was enacted prior to January 1, 2022, the County's Development Charge fees are not reduced or impacted. As it is anticipated that the update to our Development Charges by-law will be passed after Bill 185 is enacted, the phase-in of rates will no longer apply.

2. *Capital Cost Definition*

Staff comments: Again, this is also financially beneficial for the County moving forward. The proposed amendment will reinstate the costs associated with any studies (e.g. Master Servicing Studies and Background Study) as eligible capital costs that can be funded from DC's. These studies were identified as eligible capital costs in the County's current Background Study, but have been removed as eligible costs in our 10 year capital forecast. It is anticipated that the funding related to these studies will be eligible upon the enactment of Bill 185 allowing the capital forecast to reflect this positive change.

3. *Process for Minor Amendments to Development Charges By-law*

Staff Comments: The proposed provisions would significantly reduce the time and costs associated with minor amendments to an approved Development Charges By-law. These amendments would include: removing a specified date for the by-law to expire, allowing for eligibility of studies and Background Study costs, and removing a previously required mandatory phase in.

4. *Reduction of Development Charge Freeze Timelines*

Staff Comments: Previous amendments provided for the "freezing" of Development Charge rates for certain types of developments. This applied to developments that were subject to site plan and/or zoning by-law amendments. The Development Charge rates were "frozen" at the rates in place at the time of the submission of the application. Under the previous amendments, the timeframe associated with the frozen rates was 24 months. This timeframe is proposed to be reduced to 18 months. For eligible developments, this will reduce the potential financial impact to the County.

5. *Other Related Amendments – Implementing the Affordable Residential Unit Exemption*

Staff Comments: Although specifically not included in the proposed amendments included in Bill 185, the Province has moved forward with the required legislative amendments to implement the exemptions related to Development Charge fees, parkland dedication fees and community benefit charges for various "Affordable" units as defined by the Province. The units fall under various categories including Affordable Rental Units and Affordable Owned units. The exemptions will result in the loss of revenues required to fund associated growth related infrastructure needs. At this point, it is difficult to assess how many of these units will actually be built.

- Updated Building Code

Staff comments: The Province will soon be releasing the next edition of Ontario's Building Code (Code) with a focus on increasing housing supply, supporting public safety and innovation. The next edition is intended to change hundreds of provisions in an effort to reduce red tape and increase harmonization with the National Construction Codes. Once the new code has launched, the Province intends to increase the use of advanced wood construction like mass timber and consult with fire-safety stakeholders on single-exit stair in small residential buildings as well as improved safety measures for building residents and firefighters, such as sprinklers.

Along with the new Code, the Province will:

- develop a new guide, identifying pathways for innovative product approvals;
- update the Building Materials Evaluation Commission handbook to include a pre-submission protocol for applicants;
- modernize the qualification and registration system for building practitioners, moving to a more user-friendly and efficient platform; and
- propose to create a regulation-making authority to exempt standardized housing designs (once created) from certain sections of the *Planning Act* (e.g. zoning). If passed, this would allow the Province to make regulations that would speed up approvals and allow Ontario to potentially partner with British Columbia and the Federal government on a catalog of housing designs that could also be delivered even faster using modular construction.

Details around all of the above changes are still scarce and there will be future consultation opportunities which staff will be monitoring and participating in.

- Minister's Zoning Order Framework

Staff comments: The Province has launched a new go-forward framework regarding how requests for Minister's Zoning Orders (MZOs) will be received and considered. These are not legislative changes, but are laid out in a document released online. The new framework includes details on who can make a request, intake thresholds and submission expectations. On the latter, the requirements include demonstrating why the normal municipal process cannot be used, as well as information on Indigenous engagement and public consultation.

At the local level, and specific to the Council supported MZO, Minister Calandra recently issued a letter to the County advising that the previously submitted MZO no longer has status. He has advised that moving forward, he will only be considering requests that have been submitted in accordance with the new MZO framework. The implications of this are still being explored by staff and a report will be forthcoming in future to set out Council's options in light of these changes.

FINANCIAL/LEGAL IMPLICATIONS:

The cancellation of the planning application refunds will positively impact on revenues and will eliminate the need for refunds to be budgeted as part of the annual Tax-Supported Operating Budget. This change will eliminate a refund line of \$60,000 in future budget planning.

The move to voluntary pre-consultation meetings could lead to a reduction in revenue from this source should proponents opt out of this process before submitting an application. The Planning & Development Division budgets \$55,000 in revenue annually from this service in the Tax-Supported Operating Budget. If proponents elect to still participate in the pre-consultation process, the County's fee will still apply (\$1,000 per meeting). As noted earlier in the report, staff will still strongly encourage proponents to take part in this process given the immense value it brings.

The increased limitation on 3rd party appeals could lead to reduced legal service costs given the potential for appeals is significantly reduced. The County receives (on average) one appeal per year and so this change would equate to a small cost savings of between \$10,000 to \$15,000 annually.

Generally speaking, the proposed amendments related to the *Development Charges Act*, reverse a number of the previous amendments that impacted the County's ability to fund growth from growth. In particular, the two most impactful changes (e.g. reversal of the mandatory phase-in and reinstatement of studies and Background Studies as eligible Capital) are most applicable to developments in the County. A previous estimate by staff anticipated these changes to have a cumulative annual impact of approximately \$2 million over the next 5 to 10 years. With the proposed amendments, the majority of these financial impacts should now be avoided.

STAKEHOLDER IMPACTS:

The scope of changes being introduced in Bill 185 and the new Provincial Planning Statement will impact broadly across Haldimand County, including a large variety of stakeholders and the general public.

REPORT IMPACTS:

Agreement: No

By-law: No

Budget Amendment: No

Policy: No

REFERENCES:

1. [Report PDD-15-2023](#) Information Report Relating to Proposed Planning Legislation Changes.

ATTACHMENTS:

1. Provincial Planning Statement – Summary of Key Changes.