



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	February 16, 2021
SUBJECT/REPORT NO:	Bill 197, the <i>COVID-19 Economic Recovery Act, 2020</i> and Changes to the <i>Planning Act</i> (PED21046) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Anita Fabac (905) 546-2424 Ext. 1258
SUBMITTED BY:	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That Council adopt the submissions and recommendations regarding legislative provisions in the *Planning Act* in force with the enactment of Bill 197, the *COVID-19 Economic Recovery Act*, as provided in Report PED21046;
- (b) That the Director of Planning and Chief Planner be authorized and directed to confirm the submission made to the Province attached as Appendix "A" to Report PED21046.

EXECUTIVE SUMMARY

On December 16, 2020, the Province posted on the Environmental Registry of Ontario an invitation to submit comments concerning changes to certain legislative provisions in the *Planning Act* in force with the enactment of Bill 197, the *COVID-19 Economic Recovery Act, 2020* which received Royal Assent on July 21, 2020. In summary, the changes enable the Minister to address site plan matters and apply inclusionary zoning as part of a Minister's Zoning Order.

The Province sought feedback as to whether the legislative changes should be expanded, repealed or otherwise adjusted and how this enhanced authority should be used. The Ministry indicated that they were interested in feedback where this enhanced authority could be particularly helpful and where using it may not be appropriate.

Site plan is a technical review to ensure development complies with detailed aspects of development related to City guidelines and standards based on the specific locational context. As such, Staff has advised the Province that the City does not support the proposed changes to allow the Minister to address site plan matters for areas part of a Minister's Zoning Order.

The deadline for comments on the ERO posting was January 30, 2021. As such and given the timing, staff-level comments have been submitted to the Province and through this Report and are contained at Appendix "A" to Report PED21046. If the recommendations of this Report are approved by Council, the Director of Planning and Chief Planner will notify the Province that the submission made has been adopted by Council and of any amendments made by Council for the City of Hamilton.

Alternatives for Consideration – N/A

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: N/A

HISTORICAL BACKGROUND

Recent changes to Section 47 of the *Planning Act* were included in Schedule 17 of Bill 197, the *COVID-19 Economic Recovery Act, 2020*. This Bill received Royal Assent on July 21, 2020.

Section 47 of the *Planning Act* gives the Minister of Municipal Affairs and Housing the authority to zone any property in Ontario by issuing a zoning order. Currently, when a zoning order is issued by the Minister, a municipality has the authority to address site plan matters for that area under Section 41 on the *Planning Act*.

The recently enacted legislative changes to the *Planning Act* enhance the Minister's authority for zoning orders across the Province, however this enhanced authority will not apply to lands within the Greenbelt Area.

ANALYSIS AND RATIONALE FOR RECOMMENDATIONS

The enhanced authority through the recent *Planning Act* changes allows the Minister to:

- Require inclusionary zoning affordable housing;
- Remove municipal use of site plan control and require agreements between the municipality and owner or applicant concerning site plan matters; and,
- Make amendments to Minister's Zoning Orders that use any of these enhanced authorities without first giving public notice.

The Province has indicated that an enhanced Minister's Zoning Order could help to overcome potential barriers and the enhanced authority could be used to support transit station infrastructure, optimize surplus lands, provide increased certainty for strategic projects, remove potential delays, increase the availability of affordable housing and enable economic recovery.

Inclusionary Zoning

The recently enacted changes to Section 47 of the *Planning Act* provide the Minister with authority, as part of a Minister's Zoning Order, to use inclusionary zoning to require affordable housing units in a proposed development. The changes would allow the Minister to require agreements between the landowner and the municipality or the landowner and the Minister to address inclusionary zoning matters.

Staff Comments

Through Bill 108 the ability for a municipality to use inclusionary zoning was restricted to major transit station areas or where a development permit system is in place. Council was not supportive of these restrictions as they limited the City's ability to increase the supply of affordable housing.

Staff have no concerns with Ministerial authority to use inclusionary zoning however it is requested that the Province provide municipalities with the authority to seek affordable housing through the use of inclusionary zoning City wide and not in limited areas of the City to support the City's Housing and Homelessness Action Plan to increase affordable housing projects in the City. In addition, the City should be provided with the opportunity to review the specific details of how inclusionary zoning would be applied to individual sites, how it would be administered, and who would be responsible for ensuring the units created are affordable housing units and the mechanisms to ensure the units remain as affordable units, including the direct and indirect costs of monitoring the units over time (i.e. will they be rental or ownership, and if ownership, what price controls will be utilized?).

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Site Plan Control

The recently enacted changes to the *Planning Act* allow the Minister to address site plan matters for areas part of a Minister's Zoning Order. This new authority could be used in conjunction with a new Minister's Zoning Order or to an existing Minister's Zoning Order. This authority would supersede municipal site plan authority. Through the Minister's Zoning Order the Minister could require a municipality and owner/applicant to enter into an agreement to address site plan matters, however the Minister will be able to give binding direction outside the zoning order regarding the agreement to scope the matters to be address or to specify how the matters are to be addressed.

Staff Comments

The Province is requesting comments concerning changes to certain legislative provisions in the *Planning Act* in force with the enactment of Bill 197, the *COVID-19 Economic Recovery Act, 2020* which received Royal Assent on July 21, 2020 relating to Minister's Zoning Orders and site plan control. As the legislative provisions are already in force, the City questions the timing of the Province seeking comments at this time and whether concerns can feasibly be addressed.

There are many misconceptions regarding the site plan process in terms of processing applications in a timely manner. In the case of the City of Hamilton's site plan process, staff are able to process applications in 6 to 9 months on average. Many of the delays that can occur are beyond the City's control in that delays relate to the timing and quality of resubmissions and required information, but the City works very hard to ensure plans and drawings are reviewed expeditiously and issues are addressed as quickly as possible to assist in getting applicants to the building permit stage.

Staff are not supportive of the Minister addressing site plan matters for areas part of a Minister's Zoning Order. The effect of this would be to upload the site plan review function from the City of Hamilton to the Province. This is contrary to previous Provincial initiatives to delegate approval functions (i.e. Official Plan Amendments, Plans of Subdivision and Plans of Condominium) to local municipalities to ensure that local requirements and standards are addressed. Site plan review has never been a Provincial function and has always resided with municipalities.

The following comments are provided for consideration:

- Development which fits within the vision established by the City of Hamilton's Official Plans and supported by quality technical studies proceeds in a timely manner through the site plan process in the City of Hamilton. It is unclear how allowing the Minister to address site plan matters would expedite development where technical review would still be required in order to make an informed decision on a site plan.

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- Site plan control is a tool to ensure a development is technically sound and in accordance with Council approved policies, protocols, guidelines and By-laws. Site plan control should continue to be the responsibility of municipalities as it provides the opportunity for municipalities to work with applicants and review and approve:
 - conformity with applicable Zoning By-laws and design standards/guidelines;
 - massing of buildings, exterior design, lighting and landscaping in accordance with Official Plan policies or other approved design standards and the relationship of buildings to the street, public access, sidewalk connections, and ensuring accessibility for persons with disabilities;
 - matters of Provincial interest including noise, and record of site condition;
 - impacts on environmental features and natural heritage systems;
 - loading, garbage collection, snow storage and parking areas;
 - grading or alteration in elevation or contour of the land and provision for the disposal of storm, surface and waste water;
 - detailed engineering including functional servicing reports with engineering drawings, stormwater management reports, transportation impact studies, geotechnical studies, vibration for shoring any proposed, construction management, slope stability and shoreline protection studies;
 - easements conveyed to the municipality for access, construction, maintenance or improvement of watercourses, ditches, land drainage works, sanitary sewage facilities and other public utilities of the municipality or local board;
 - erosion and siltation control;
 - tree removal and tree plantings;
 - letter of credit (securities) to be kept in force until the completion of the required site development works in conformity with the approved design and requirements and other fees, cost recoveries, developer and City shares for cost of development and Development Charges;
 - addressing/units and street naming for Emergency Services purposes;
 - servicing including capacity and allocation;
 - stormwater management and Low Impact Development;
 - ensuring land assembly and orderly development;
 - infrastructure upgrades to support the development; and,
 - right-of-way dedications to the City (including daylight triangles) and access management standards.

Should these matters no longer be the responsibility of municipalities, it is not clear if the Province would assume responsibility for the technical review of conformity with local zoning by-laws, other by-laws, guidelines and related policies. It is also not clear who will enforce the site plan requirements. The City requires a Letter of Credit as noted above and the Province should clarify if Letters of Credit would be required and if the Ministry would be responsible for receiving and releasing Letters of Credit.

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It should also be clarified who will assume liability and responsibility for site plan approvals, for example site servicing or grading. It should also be clarified who will be responsible for any issues post-construction and occupancy.

The Province should clarify in detail how the review of site plan matters would be undertaken, including process and responsibility, should the municipality not be the approval authority and the Province should confirm if the Ministry would provide clearance/approval on all technical site plan matters on behalf of the City and assume all liability and responsibility for those approvals.

- The City assumes a coordinating role with site plans by seeking comments from external agencies such as the Conservation Authorities and the Ministry of Transportation as well as requirements from other Departments within the City. The Province should clarify if the Ministry will assume this coordinating role.
- The Province should clarify if municipal site plan control by-laws would need to be amended to address Ministerial approval of site plans.
- The Province should be advised that it could be problematic if the Minister's Zoning Order dictated the scope of a site plan agreement before the site plan application is submitted. It may be impossible to anticipate every matter that may need to be addressed in a site plan application at the zoning stage before anyone (including the Ministry) knows the substance of the actual proposal.
- Should the approval authority no longer be the municipality, the Province should clarify if the Ministry will assume enforcement and ensure that the development meets municipal by-laws.
- The City's site plan process includes Conditional Approval and limits site plan approval to 1 year (or 15 months in the Downtown) to ensure the application is in keeping with the most up-to-date City By-laws and requirements. The Province should confirm if the Ministry will impose processes specific to each municipality in approving a site plan application.

Consultation

The following were consulted in the preparation of this report and comments to the Province:

- Legal Services;
- Growth Management Division; and,
- Transportation Planning Division.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement & Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” – Letter submitted to the Province with comments

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