



Staff Report

Legal Services

Report To: Council Meeting
Meeting Date: November 14, 2022
Report Number: FAF.22.171
Title: Bill 23 – More Homes Built Faster Act
Prepared by: Will Thomson, Director of Legal Services

A. Recommendations

THAT Council receive Staff Report FAF.22.171, entitled “Bill 23 – More Homes Built Faster Act.”;

AND THAT Council endorse recommendations 1-15 as set out in this report, and direct Staff to make a submission on that basis to the Standing Committee on Heritage, Infrastructure and Cultural Policy;

AND THAT Council direct Staff, if selected, to attend at the Committee hearings on Bill 23 and express the Town’s concerns and recommendations as set out in this report.

B. Overview

This report is Staff’s overall summary identifying the major impacts of Bill 23, the *More Homes Built Faster Act*, on the Town. This report is not exhaustive and attempts to highlight only the most consequential proposed amendments and discuss how they may impact the Town, its operations, and finances.

Staff are seeking Council’s endorsements of the issues and recommendations and direction on if/how to convey those concerns to the province ahead of the November 24, 2022 commenting deadline.

C. Background

Bill 23, the *More Homes Built Faster Act* was released by the province at the end of October and proposes to amend numerous Acts with the stated goal of building 1.5 million new homes over 10 years. To do so, the Bill seeks to expedite development approvals, remove permitting processes and appeals, and reduce fees.

Without dissecting each individual affected Act, this report will discuss some of the major themes of Bill 23. In each section, Staff have attempted to summarize the major proposed

changes, explore how those changes may impact the Town (**in bold**), and make recommendations for amendments (**in bold Red**).

D. Analysis

THREE UNITS PER LOT

Bill 23 proposes to permit, as of right, up to three residential units on any parcel of land that is served by Municipal water and sewer connections. This would mean that no zoning or other planning permission would be required to build two accessory units on an existing residential lot; such units could be basement apartments, garage suites, or a separate garden suite, or a single-family home divided into 3 units. All that is required is to obtain a building permit.

Further, municipal Zoning By-laws and Official Plans would be prohibited from requiring more than 1 parking space per unit or setting minimum unit sizes.

Official Plans and Zoning By-laws which contravene these new provisions are deemed to be of no effect.

Implications:

Staff generally support this change. Secondary suites are already a permitted use throughout most of the Municipality, so this change to permit third suites is more evolutionary than revolutionary. However, that support comes with two primary caveats:

1. This permission ought to exclude Short Term Accommodations (STA), to be discussed further in the STA section, below.
2. Municipalities ought to be able to limit multi-unit developments where servicing capacity is inadequate. The Town, while adequately serviced at the moment, is expending significant human and financial resources to ensure that our infrastructure is adequate to meet development demand over the coming years. Much of the urban servicing infrastructure in the Town is old, and the Town is undertaking ongoing renewal; however, many lots are serviced with inadequate or undersized water and sewer connections which would struggle to support three units.
3. It is worth noting that the Town has had very modest uptake in its secondary suite program, so how many 2nd and 3rd units actually get built remains to be seen.

Recommendation:

That the Province amend the relevant proposed provisions of the Planning Act and Development Charges Act to:

1. **Exclude Short Term Accommodation uses from qualifying as a “parcel of urban residential land”; and,**
2. **Permit limitations on 2nd and 3rd units where water and sewer servicing are inadequate to meet demand.**

DEVELOPMENT CHARGES

Bill 23 makes extensive changes to the collection of Development Charges (DC).

Exemptions/ Reductions

The Bill proposes to fully exempt *non-profit housing*, *affordable housing*, and *attainable housing* from paying DC's. Eligible *attainable* housing developments will be established by regulation which have yet to be published.

Non-profit housing will be fully exempt if developed by a registered not-for-profit corporation (e.g.: Blue Mountain Attainable Housing Corp.).

Affordable Housing will be fully exempt from DC's if the price or rent of a residential unit is no more than 80% of the *average market rent (AMR)* or *average purchase price (APR)* and the unit is intended to be affordable for a period of 25 years or more. The AMR and APR will be set by a Bulletin yet to be published by the province.

The Bill proposes that to preserve affordability, a unit which will be *affordable* for 25 years shall be the subject of an agreement with the Municipality and may be registered on title. This agreement may be in a standard form established by the Ministry but is yet to be published.

Importantly, with respect to *attainable* units, as opposed to *affordable* units, the requirement is only that the unit be *attainable* at the time of sale but does not share the 25-year requirement for *affordable* units.

Affordable units would also be largely exempt from parkland or community benefits payments.

The Bill proposes to add a new definition of "rental housing development: *development of a building or structure with four or more residential units all of which are intended for use as rented residential premises*". DC's for such developments would be reduced by 25% for units with 3 or more bedrooms; 20% for two-bedroom units; and 15% for all other residential rental units.

Phase-In of DC's

The Bill proposes to phase in development charges; any development charge imposed during the first, second, third and fourth years that the by-law is in force could be no more than 80,85,90,95 per cent, respectively, of the maximum development charge that could have otherwise been charged.

Maximum Interest Rate

The eligible interest rate a Municipality could charge a developer would be capped at prime plus one per cent.

Requirement to Spend DC's

The Bill proposes to require Municipalities to *allocate or spend* 60% of their DC reserves for water, wastewater, and roads at the beginning of each year. The Bill does not define “allocate”.

DC By-Law Expiration

DC By-laws currently expire after 5 years, the Bill proposes to make these 10 years. The Bill also proposes to use a historical service level of 15 years compared to the current 10 years to calculate capital costs that are eligible to be recovered through development charges.

Implications:

The potential implications for the Town are significant:

1. According to Royal LePage’s 3rd quarter market report, the average YTD sale price in Blue Mountains in 2020 was \$870,831; in 2021, \$1,067,005; and in 2022, \$1,384,230. The three-year average therefore is approximately \$1,100,000*. If the Province adopts such a figure as the *average purchase price*, then any residence sold for ~\$880,000 (80% of market) will be considered *affordable* and exempt from paying DC’s. Many unit types in the Town are already priced around \$900,000 – semi’s, townhomes, condos – but such a number is far from what we’d suggest is *affordable*. If the *average purchase price* is set by the province anywhere near the actual average resale price in the Town, we can expect to lose significant DC and parkland revenue and make no material difference on affordability.
2. Staff support the exemption from paying DC’s for registered not-for-profit housing developers.
3. The definition of “rental housing development” does not appear to exclude STA’s. Therefore, the DC exemption for rental units and 2nd/3rd units could be sought for STA uses.
4. Staff support the reduction in DC’s payable for market rentals.
5. The phasing-in of Development Charges means the Town will not receive the full payable DC’s until the 5th year after enactment of a DC By-law.
6. An interest rate of prime, plus 1% is likely better than the market will offer for construction financing. It also risks the Town having to finance these costs at a rate better than our own cost of borrowing. This rate should be indexed to the Municipality’s cost of borrowing.
7. The Bill does not define “allocate” when it refers to spending 60% of water/wastewater/roads DC’s in a given year. If *allocate* simply means “budget” or “include in 10/15-year capital plan” then this is less of a concern. If, however, it means that the money must be allocated to be spent *in that same year* that is not only problematic, but impossible, since water, sewer and roads are major capital spends which require years of planning and are typically “lumpy” spends – i.e. the money is saved over many years, only to be spent all at once. As with much of Bill 23, the *devil is in the details*, and we have few details...
8. Using a historic service level of 15 years rather than 10 is problematic for a rapidly growing Municipality like TBM, as our infrastructure needs and service levels are

rapidly changing to meet the changing population and demographics. What we offered 15 years ago is a far cry from what we need to offer today.

9. Overall, the general reductions and exemptions from paying Development Charges will require the Town to make up the funding shortfalls from general taxation, and water and wastewater user-fees.

**note – this data is used as an example, actual current price is now likely higher.*

Recommendation:

3. That the Province set the Average Market Rent and Average Purchase Price at rates which incentivize truly affordable housing, or the 80% rate be reduced.
4. Set a Maximum Affordable Housing Rate of \$500,000
5. That the definition of “Rental Housing Development” in the Development Charges Act be amended to exclude short term rentals.
6. That flexibility be given in the setting of interest rates to reflect the Municipalities cost of borrowing and lending. Or use existing legislation and tie the rate to the maximum allowed on unpaid property taxes.
7. That “allocate” be given a broad and flexible definition, or the requirement to spend or allocate 60% of DC reserves be removed.
8. That the DCs be based on 10 years of projected spending, similar to Transit, rather than looking back 10 or 15 years
9. That DCs used within a given year be included in the Town’s total revenues for the purposes of calculating the Town’s Annual Debt Repayment Limit. This would reflect that DCs can be used for annual debt principal and interest payments.
10. Remove the phasing in of the charges as this doesn’t reflect the construction needs and costs of the Town.

RIGHT TO APPEAL

Historically, any member of the public who participated in the public process for a planning application (Public Meeting/written comment) was eligible to appeal an Official Plan Amendment, Zoning By-law Amendment, minor variances, or consents (severances). The proposed Bill 23 proposes to significantly curtail these appeal rights and limit the third-party right of appeal to a shortlist of prescribed parties, including utilities, railways etc. but excluding members of the public or public interest groups/ ratepayer organizations. Further, the Bill proposes to remove the need for a public meeting on Plan of Subdivision applications (the right to appeal subdivisions was restricted in earlier amendments to the Planning Act).

Implications:

The implications for the Town are indirect. It appears that the province’s intent with this amendment is to limit the number of appeals to the Ontario Land Tribunal, and more specifically, prevent frivolous, vexatious, or unnecessary appeals. Generally speaking, in TBM, it is relatively rare for a member of the public or public interest group to appeal a planning decision, though it does happen. Further, third party appeals can delay the development

approval process by requiring an Ontario Land Tribunal hearing, such appeals often raise genuine issues that are worthy of consideration and debate; they are very rarely truly vexatious.

In the absence of a third-party right of appeal, the Town should expect greater pressure from third parties at the decision-making stage.

As for Plans of Subdivision no longer requiring a public meeting, staff do not believe this will have a significant impact on the planning process in the Town. Generally, subdivision applications are accompanied by Zoning By-law and/or Official Plan amendments which still require a public meeting. In the event that a subdivision application is not accompanied by another application under the Planning Act, staff could still consider having a public meeting given the Bill does not go so far as to prohibit the municipality's ability to hold the meeting.

Recommendation:

- 11. Rather than removing third-party appeals entirely, it is recommended that the Ontario Land Tribunal introduce a process to vet third-party appeals and allow only those which raise genuine planning issues to proceed.**

CONSERVATION AUTHORITY

While Bill 23 proposes numerous changes to the Conservation Authorities Act, but two stand out as most potentially impactful for Municipalities:

1. The Bill proposes to restrict the issuance of development permits by CA's to their core mandate and eliminate the ability for CA's to enter into Memorandums of Understanding with Municipal partners to provide other services (e.g., ecological, natural heritage, wetlands, and biodiversity).
2. The Bill proposes to exempt certain development approved under certain Acts (including the Planning Act) from the need to obtain a CA development permit if certain conditions (yet to be established) are met.

Implications

Most development land in the Town is sandwiched in a narrow band of land between the Niagara Escarpment and Georgian Bay; as such, there are very few development proposals in Town that don't require extensive natural heritage and ecological review. This need does not disappear merely because the Conservation Authority isn't required to do it; rather, such responsibility will fall to the Town. The Town does not have the human or financial resources to take on this responsibility and would therefore be forced to build an in-house team with the necessary expertise, rely on the upper-tier, or hire outside consultants; all options which add to time and cost in a development approval. Therefore, Staff believe that contrary to the stated goal of expediting home-building, this proposal will delay development, at least in the short term.

Recommendation:

- 8. That Municipalities be free to enter into MOU's with CA's to continue to perform natural heritage work for the Municipality.**
- 9. That Planning Act approvals not be exempt from a development permit absent strict controls to engage and include the CA in the development process.**

SITE PLAN CONTROL

Bill 23 makes two primary changes to Site Plan Control.

1. Exterior design will no longer be a reviewable element of Site Plan Control; and,
2. Any development with no more than 10 residential units will not be subject to Site Plan Control.

Implications:

The removal of exterior design requirements under Site Plan Control will greatly reduce the Town's ability to manage and set design guidelines or architectural standards. Without this control being in place, discussions on these elements may become more prominent in other applications made under the Planning Act which are not considered appropriate relative to the site plan stage.

Site Plan Control is an important tool to manage appropriate site layout, easements, development standards, the construction of services and infrastructure, and meeting various design standards. This control is made more important by the proposal to permit 3 units/lot. The Town has Site Plan Control as a delegated approval to staff and Bill 109 has made this a requirement for all municipalities recognizing it is principally a technical review exercise. As such, the development risks associated with a public process are not present relative to other applications under the Planning Act. In its absence, eligible projects can proceed to applying for building permits in which site plan matters are generally out of scope.

The Town will be prevented from collecting parkland dedications on such residential developments.

Recommendation:

- 10. Withdraw the proposed changes to Site Plan Control**

PARKLAND

Bill 23 proposes the following primary changes to Parkland:

1. The maximum rate of parkland dedication is being capped, and proportionally reduce for affordable units. This is geared mainly at high-density developments and isn't anticipated to have a dramatic impact on the Town.
2. Non-profit housing and 2nd/3rd units will be exempt from parkland dedications.

3. Developers will be able to propose what land will be dedicated as parkland, and refusal to accept the identified lands is appealable to the Ontario Land Tribunal.
4. Similar to Development Charges, the Town will be required to spend or allocate 60% of the parkland reserve annually.

Implications:

Provided that “allocate” is broadly defined, Staff do not anticipate dramatic changes to our current approach to parkland acquisition and the spending of cash-in-lieu payments. Perhaps more significant is the changes to the process of parkland dedication. This will require staff to reassess the applicability of policies within Section D6 Public Parkland and Open Space. The municipality currently has criteria regulating the dedication of parkland that will be impacted based on the flexibility now granted to Developers.

Recommendations:

11. Define “allocate” broadly to allow Municipalities to long-term plan/ save for parkland expenditures and acquisitions.
12. Further define “other restriction” in the context of land to be conveyed to the municipality
13. Remove the collection of Parkland Dedication and make parkland purchases an eligible DC expense.

SHORT TERM ACCOMMODATION

Short Term Accommodations are not explicitly mentioned in Bill 23, but the Town’s regulation of STA’s could be dramatically impacted in the following primary ways:

1. STA’s are not exempt from the definition of rental housing, meaning they could benefit from reduced Development Charges.
2. Given the new 3 units/lot, lots within the exception area could see up to 3 licensed STA’s per lot.
3. STA’s would necessarily not be subject to Site Plan Control.

Implications:

As noted above, the regulatory power to manage STA’s could be greatly restricted.

Recommendations:

12. That Short Term Accommodations be excluded from the definition of “Rental Housing Development” and be considered a non-residential use.
13. That purpose-built Short-Term Accommodations be *included* in the definition of “Development” in the Planning Act as it relates to Site Plan Control.
14. That purpose-built Short-Term Accommodations be excluded from the 2nd/3rd unit policies of the Planning Act.

15. That purpose-built Short-Term Accommodations be excluded from any Development Charge or Parkland dedication exemptions.

E. Strategic Priorities

1. Communication and Engagement

We will enhance communications and engagement between Town Staff, Town residents and stakeholders

2. Organizational Excellence

We will continually seek out ways to improve the internal organization of Town Staff and the management of Town assets.

3. Community

We will protect and enhance the community feel and the character of the Town, while ensuring the responsible use of resources and restoration of nature.

4. Quality of Life

We will foster a high quality of life for full-time and part-time residents of all ages and stages, while welcoming visitors.

F. Environmental Impacts

The curtailing of Conservation Authority permitting powers presents a potential threat to natural heritage review and protection.

G. Financial Impacts

Undetermined. The Town could face a serious development charge shortfall if the various development charge exemptions are passed as written. Any development charges not collected will require taxation, water and wastewater user-fees to fully fund the growth-related projects.

H. In Consultation With

Adam Smith, Director of Planning and Development

Shawn Postma, Manager, Community Planning

Sam Dinsmore, Deputy Treasurer, Manager of Accounting and Budgets

I. Public Engagement

The topic of this Staff Report has not been the subject of a Public Meeting and/or a Public Information Centre as neither a Public Meeting nor a Public Information Centre are required.

Any comments regarding this report should be submitted to Will Thomson, Director Legal Services directorlegal@thebluemountains.ca.

J. Attached

N/A

Respectfully submitted,

Will Thomson
Director Legal Services

For more information, please contact:
Will Thomson, Director Legal Services
directorlegal@thebluemountains.ca
519-599-3131 extension 258

Report Approval Details

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This report and all of its attachments were approved and signed as outlined below:

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