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Policy refresh – Ontario government proposes key changes to provincial planning policy



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Authors: Chris Barnett, Evan Barz, Andrew Rintoul

On April 6, 2023, the Ontario government unveiled the latest of its policy and legislative proposals as part of its Housing Supply Action Plan. The proposals include the release for comment of a new Provincial Planning Statement (PPS), which will replace the PPS and the Growth Plan. Some changes are also proposed to the *Planning Act*, with the introduction of Bill 97, the *Helping Homebuyers, Protecting Tenants Act, 2023*, which proposes legislative amendments with the goal of achieving the construction of 1.5 million new homes by 2031.

To understand these proposed changes in context, Osler has prepared comprehensive comparison (along with a concordance table) of the proposed 2023 PPS, as well as a comparison showing the proposed changes to the *Planning Act*. They can be downloaded here:

2023 PPS – Comparison and concordance

Planning Act – as proposed to be amended by Bill 97

While Bill 97 does not contain the sweeping changes brought in by Bill 23, the small and technical fixes to the *Planning Act* sought to be introduced through Bill 97 are important.

In addition, the government also proclaimed in force a section that was part of Bill 23, effective April 6, 2023, which gives the Minister the power to amend municipal official plans if the Minister is of the view that a matter of provincial interest could be adversely affected. There is no process set out in the Act for notice or consultation prior to making such a decision. As such, this appears to be the official plan equivalent of a Minister's zoning order.

The government has advised that it expects the new PPS to come into force in the fall of 2023. While generally it is expected that decisions will be required to be consistent with the new PPS as of its effective date, Bill 97 does allow for the minister to make regulations which could address different transition rules.

The government has also advised that it does not expect the implementation of its removal of planning responsibilities from most upper tier municipalities until winter 2024, at the earliest.

2023 PPS

The changes proposed in the 2023 PPS represent fundamental changes in how growth planning is carried out in the province. The elimination of intensification targets, the repeal of the Growth Plan and the ability to expand settlement areas at any time will shift how, where and when municipalities grow. Some of the key changes are:

Growth targets

- With the proposed repeal of the Growth Plan, municipalities will no longer be required to plan to specific population and employment targets for a horizon year. After 20 years of being required to plan for a specific target in a specific year, and all land budget decisions driven by those targets, this fundamental aspect of growth planning in Ontario will come to an end.
- The government expects that municipalities will continue to use the 2051 targets at a minimum. Over time, municipalities will be expected to carry out their own forecasting.
- When updating official plans, municipalities will be required to have enough land designated for at least 25 years (a change from up to 25 years), with planning expressly allowed to extend beyond this horizon for infrastructure, employment areas and strategic growth areas.

Strategic growth areas

- The concept of strategic growth areas has been integrated from the Growth Plan. They are to be identified in official plans, and should be the focus of growth. They include major transit station areas.
- Large and fast growing municipalities (listed in an appendix, and effectively Toronto, York, southern Durham, Peel, Halton, Hamilton, London, Waterloo, Kitchener, Barrie, Niagara Falls, St. Catharines, Windsor, Cambridge, Kingston, Guelph, Ottawa and Brantford) will be required to identify these areas in their official plans, along with density targets.

Major transit station areas

- The concept of major transit station areas is carried forward from the Growth Plan, with the definition and minimum density targets being generally the same.

Intensification

- The Growth Plan contained specific intensification targets which required municipalities to plan for a certain amount of growth within defined built boundaries. The 2023 PPS supports intensification generally, but with no specific targets to be met.

Built boundary

- The concept of a delineated built-up area contained in the Growth Plan has not been carried forward into the 2023 PPS.

Municipal comprehensive reviews

- The concept of municipal comprehensive reviews of official plans has not been carried forward into the 2023 PPS.

Settlement area expansions

- With no requirement for municipal comprehensive reviews, municipalities have the ability to consider settlement area expansions at any time. The tests to be applied are not as stringent as they were, and require consideration of adequacy of servicing, phasing and agricultural issues, such as the minimum distance separation formula. There is no limitation on the ability of landowners from applying for an expansion, although the *Planning Act* continues to limit the ability to appeal the refusals of any such applications.

Employment land conversions

- Municipalities can consider (and landowners can apply for) the removal of land from employment areas. The tests to be met include that there is a need for the removal, and the land is not required for employment uses over the long term; however, in the absence of land budgets and targets to be met with the proposed repeal of the Growth Plan, the application of these tests will rely on targets contained in official plans. The *Planning Act* continues to limit the ability to appeal refusals or non-decisions of such applications, but (as noted below) Bill 97 proposes to change the definition of areas of employment.

Employment areas

- The definition of 'employment areas' is proposed to be changed in both the *Planning Act* and the new PPS. The focus is on uses that cannot locate in mixed use areas, such as heavy industry, manufacturing and large scale warehousing

Provincially significant employment zones

- These zones, introduced in 2019 without any substantial policy implementation, will no longer exist with the repeal of the Growth Plan. The government is considering alternative approaches to protect these lands, possibly through the use of minister's zoning orders.

Agricultural lot severances

- Additional residences will be permitted on farm properties (up to two additional on one parcel and up to three additional residential parcels).

Climate change

- General policies requiring municipalities to plan for climate change.

Natural heritage

- The proposed approach to natural heritage has not been finalized, and so we do not know

what the proposed policies are for natural heritage system protection.

A summary of the changes proposed by Bill 97:

Subject	Proposal
New Ministerial powers	The Minister will be given the power to: • Require landowners and municipalities to enter into agreements where the Provincial Land Development Facilitator has been appointed. These agreements could include matters that go beyond what can be provided in either the *Planning Act* or *Development Charges Act*. The order has the same effect as an interim control by-law, only permitting existing uses to continue until agreements have been signed. • Exempt lands that are the subject of MZOs from complying with provincial policies and official plans when other planning approvals are applied for, such as plans of subdivision. This gives the Minister the ability to address circumstances where an MZO permits residential uses in an area where the official plan does not. • Make regulations regarding transition related to the applicability of a new provincial policy statement. • Make regulations regarding the powers of municipalities to regulate demolition and conversion of residential rental properties, including to pass a by-law requiring a landowner to provide compensation.
New effective date for Bill 109 planning fee refunds	The effective date for planning application fee refunds where no decision is made within the statutory time periods that were originally in place for applications filed on or after January 1, 2023, is proposed to be changed to July 1, 2023. If any fee refunds were owing as a result of applications filed and not decided on between January 1 and July 1, 2023, the refund is deemed not to have been required.
Parking for additional units	Bill 23 put in place restrictions on the ability to require more than one parking space where additional residential units are permitted as of right. Bill 97 proposes to clarify that official plans and zoning by-laws can still require more than one parking space for the primary residential unit.
Employment area definition changes	The definition of an employment area is proposed to be limited to areas where manufacturing, research and development related to manufacturing, warehousing and ancillary uses occur. This appears to be related to broader proposed policy changes regarding the protection of, and conversion from, employment uses, contained in the proposed 2023 PPS.

In addition to these changes, amendments are also proposed to the *Residential Tenancies Act*, which will strengthen protections against evictions due to renovations, demolitions and conversions, as well as those in respect of landlord's own use, and clarify tenants' rights to install air conditioners.