

Attachment 12: TRCA Submission on ERO_019-5284, ERO_019-5285

April 29, 2022

BY E-MAIL ONLY (PlanningConsultation@ontario.ca)

Re: Proposed Planning Act Changes (the proposed More Homes for Everyone Act, 2022) (ERO #019-5284) & Community Infrastructure and Housing Accelerator – Proposed Guideline (ERO #019-5285)

Thank you for the opportunity to comment on the above noted postings to the Environmental Registry of Ontario (ERO). TRCA conducts itself in accordance with the objects, powers, roles, and responsibilities set out for conservation authorities (CA) under the *Conservation Authorities Act* (CA Act) and the Ministry of Natural Resources and Forestry's Procedural Manual chapter on CA policies and procedures for plan review and permitting activities. TRCA is:

- A public body under the *Planning Act* and *Environmental Assessment Act*;
- An agency delegated the responsibility to represent the provincial interest on natural hazards under Section 3.1 of the Provincial Policy Statement (PPS);
- A regulatory authority under Section 28 of the CA Act;
- A service provider to municipal partners and other public agencies;
- A Source Protection Authority under the *Clean Water Act*;
- A resource management agency; and
- A major landowner in the Greater Toronto Area.

TRCA's role as a commenting body under the *Planning Act*, and pursuant to Memorandums of Understanding (MOUs) with partner municipalities, is separate and distinct from its regulatory role under the CA Act. However, TRCA's participation in the review and approval of development applications under the *Planning Act* helps to ensure that development approved under the *Planning Act* can also meet the regulatory requirements governing the issuance of permits under the CA Act.

In these roles, and as stated in the Ministry of Environment Conservation and Parks (MECP) "A Made-In-Ontario Environment Plan," CAs work in collaboration with municipalities and stakeholders to protect people and property from flooding and other natural hazards, and to conserve natural resources. Through MOUs and Service Level Agreements (SLAs), TRCA provides technical support to its provincial and municipal partners in implementing municipal growth management policies. Further, TRCA recognizes the importance of efficiency, certainty, transparency and accountability in planning and design review processes, so that development and infrastructure projects can occur in a timely, safe and environmentally sustainable manner.

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Government Proposal

We understand that these ERO proposals aim to encourage construction of more homes faster by expediting planning approvals to help meet Ontario's long-term commitment to address the housing crisis. We also recognize that this work aims to build upon the recommendations contained in the Ontario Housing Affordability Task Force.

We note that the subject EROs are requesting feedback (until April 29, 2022) on proposed amendments to the *Planning Act* (and other legislation, e.g., *City of Toronto Act, 2006*, *Development Charges Act, 1997*) that would streamline approvals through a series of changes associated with Bill 109, the *More Homes for Everyone Act, 2022*. These changes include, but are not limited to:

- New legislated timelines for municipalities to decide on complete applications or be required to refund some or all fees to applicants;
- The Minister may now prescribe matters not to be required as a condition of subdivision approval;
- Approval authorities may now deem a subdivision application that lapsed in the past 5 years to not have (if not previously deemed so);
- A municipal Council's legislated ability to decide on site plan applications is now automatically delegated to municipal staff; and,
- A new provincial process for declaring site plan applications complete is to be established;
- The Minister (MMAH) may now suspend the time period for filing a non-decision appeal of a new Official Plan (OP) or OP amendment (OPA) and refer all or part of a new OP/OPA to the Ontario Land Tribunal (OLT) for a recommendation or decision;
- A cap on parkland dedication requirements in Transit Oriented Communities;
- A new Community Infrastructure and Housing Accelerator (CIHA) tool that enables lower- and single-tier municipalities to request (through Council) that the Minister make a zoning order (outside the Greenbelt) to regulate the use of land and the location, use, height, size and spacing of buildings and structures to permit certain types of development; and,
- Proposed guidelines for the CIHA tool which, if published as written in conjunction with the legislative changes through Bill 109:
 - May be applied to community infrastructure, any housing, mixed-use development or buildings/structures that facilitate employment/economic development;
 - Need not be consistent with the PPS and/or conform to provincial policies; and,
 - Allow the Minister (MMAH) to exempt related planning approvals from requirements to be consistent with the PPS and/or conform to provincial policies, provided the requesting municipality demonstrates

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to the Minister's satisfaction that impacts (e.g., environmental) from the exemption would be mitigated.

We note that the proposed amendments detailed in the subject ERO postings have now been enacted as they are associated with various Schedules of Bill 109, which was recently passed by Ontario's Legislature and received Royal Assent on April 14, 2022.

We further acknowledge that these changes are the first step of many related concurrent postings (e.g., EROs 019-5286 and 019-5287) and that future initiatives aimed at supporting the "missing middle" are forthcoming, including the Province's preparation of an annual supply action plan to develop new provincial policies over four years, beginning in 2022/23.

COMMENTS

TRCA understands the importance of streamlining planning approvals to support the growth and development needs in the Province, especially in the Greater Golden Horseshoe. However, through our Board of Directors, TRCA has articulated our view that this should not come at the expense of the fundamental principles of the Growth Plan for "protecting what is valuable" or ensuring the appropriate technical and planning processes take place to ensure consistency between S.47(1) of the *Planning Act* and S.28 of the CA Act. The ecosystem services offered by the natural heritage system and sound natural hazard management are needed for a healthy and resilient growing region.

TRCA works in collaboration with our regional and local municipalities to successfully advance a coordinated review and approval process. Through this collaborative work process, natural heritage features and natural hazards are appropriately identified, and impacts avoided, mitigated, or compensated for in cooperation with municipalities, landowners, and the Ministry of Northern Development, Mines, Natural Resources and Forestry (MNDMNR).

Community Infrastructure and Housing Accelerator (CIHA)

In the absence of a collaborative exercise as noted above, like other zoning orders authorized by the Minister under the *Planning Act*, a CIHA zoning order issued (outside the Greenbelt) may permit a form and scale of development contrary to provincial and municipal policies and CA regulatory requirements. This may negatively impact CA efforts to mitigate risk to the public and properties from natural hazards, including flooding, erosion, and slope instability. Given the Province's commitment to prepare for the impacts of a changing climate, there is a need to ensure that development approved through a CIHA zoning order does not create or exacerbate natural hazards or result in unacceptable risk to life and property. The technical expertise and input of municipalities and CAs, as per the current development review and approval process under the *Planning Act*, including site plan control and public notice, are critical and should apply to CIHA zoning orders.

To help mitigate potential negative impacts, the Province could include additional parameters in the proposed guidance material for directing infill and intensification outside of natural hazards and natural features by referencing PPS 3.1 (Natural Hazards) and 2.1 (Natural Heritage), which must be considered when implementing legislative or regulatory requirements. Moreover, technical guidance to municipalities could direct them to engage partner CAs to help ensure new development, redevelopment, or any form of intensification mitigates, remediates, or is safely sited outside of natural hazards. Doing so minimizes risk to life and property, while optimizing public-and private-sector time and resources for helping to increase the mix and supply of diverse housing types across the Province.

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Further to the above, Bill 109 enables lower- and single-tier municipalities to request a CIHA zoning order. TRCA is currently working with our municipal partners in the completion of their Municipal Comprehensive Reviews (MCR)s. We have collaborated to provide updated science-based natural heritage and water resource system data and mapping, key input on land needs assessments to identify suitable areas for settlement area boundary expansions, and recommendations on draft policies to assist with OP conformity to new provincial policies. The proposed CIHA guidelines would allow lower-tiers to request a CIHA zoning order that could alter the use of land and permit development that could circumvent MCR work by their respective upper-tiers. The potential long-term ramifications on regional growth management, infrastructure investment, watershed planning, and climate change mitigation and adaptation are unclear. Moreover, the potential impacts of such decisions are further complicated if CIHA orders, and related planning approvals (outside the Greenbelt) need not be consistent with the PPS or provincial plans – exemptions which could ultimately ignore the best available science.

Application Processing Time and Fee Refunds

Bill 109 includes a legislated requirement that if municipalities fail to meet statutory deadlines they must refund fees (on a graduated scale over time, up to 100%). The new application timeframe and refund framework could encourage premature decisions or refusals. This could increase the number of appeals to the already backlogged Ontario Land Tribunal (OLT), which would further divert public staff and resources from ongoing review and approvals. It would also increase pressure on CAs to expedite their review of applications (and expedite issuance of related permits under the CA Act, where applicable), including those involving complex scientific studies to mitigate environmental impacts and natural hazard risk. We note that OLT appeals can take upwards of 1+ additional years to be resolved. To help avoid lengthy appeals that could otherwise facilitate new housing units quicker, TRCA suggests the Province monitor the number of related OLT appeals (and subsequent hearing timelines) with a view to extending the timelines and/or reducing refund requirements, or reversing the changes altogether.

In this context, the Province should consider the iterative nature of the planning approvals process and that factors outside the control of approval agencies also significantly impact decision timelines. Despite best efforts to expedite review timelines, requisite processing timelines are often exceeded to ensure an acceptable form of development is approved. In part, this is because proponents contribute significantly to the length of time it takes for an application to be processed as approval requirements are often not addressed through an initial submission. For there to be a timely approval, applicants must meet pre-consultation and submission requirements and include timely re-submission(s) containing the information necessary to make a well-informed decision – particularly when involving matters of health and safety. To help remedy the above noted concerns, the Province could also consider amendments to the *Planning Act* that would effectively pause the new timelines when the onus for resolving municipal and agency comments is on the applicant for consideration and resubmission. Additionally, legislative changes could provide the applicant the option to waive their right for the refund to be returned. This would encourage a more collaborative approach to approvals and provide greater opportunity for productive negotiation to the benefit of all parties without added financial pressure to refuse an application.

We also note that the proposed changes do not encourage construction of new housing units quicker once an approval is received. Perhaps the Province could explore ways of incentivizing expedited construction following approvals within a certain timeframe, e.g., within 2 years of approval. CAs have long used permit expirations as a successful tool in

ensuring development and site alteration are undertaken in an expeditious manner following approvals.

Amendments to Site Plan and Subdivision Control

Subdivisions: The Minister may now prescribe matters not permitted to be required as a condition of subdivision approval. Further clarity on what can and cannot be imposed as conditions of plans of subdivision approval should be provided. In TRCA's experience, conditions, used appropriately, can be a critical tool to ensure high-level matters are carried forward to the detailed design stage. Restricting what can be included as conditions could result in a frontloading of pre-application requirements leading to a significant slowdown in the overall process. Should the prescribed matters include prohibiting financial conditions, this could lead to an inability for agencies like CAs to recover review fees to help pay for growth-related infrastructure and technical review services.

Site Plans: A new process is to be established for declaring site plan applications complete. As a service provider to municipalities through MOUs, and as an agency delegated the provincial responsibility to represent the provincial interest on natural hazards under the PPS, TRCA has worked collaboratively to ensure municipal submission requirements reflect TRCA input to help streamline approvals. This ensures appropriate science-based technical studies are submitted pursuant to our respective roles in the review and approval of applications under the *Planning Act*. It also helps ensure development approved under the *Planning Act* can also meet the regulatory requirements governing the issuance of permits under the CA Act, where applicable. This reduces costs, avoids duplication, and streamlines the overall approvals process.

In addition to complete application requirements, TRCA staff have for many years worked closely with applicants and our municipal partners to encourage pre-consultation application (PAC) meetings when possible. PAC meetings have the potential to further expedite the review process and provide applicants with certainty regarding the approval process. For example, TRCA continues to provide support to Toronto's OPA 550 which requires mandatory PAC meetings for some applications.

We recommend that the Province work with municipalities and CAs in the establishment of a new process to determine when a site plan application is to be deemed complete. As noted above, the Province could also consider a provision for site plan applications that would pause the timing requirements when an application is not with municipal or review agency staff.

Increased Ministerial Powers

The Minister of Housing and Municipal Affairs may now refer all or parts of an OPA or new OPs to the OLT for a recommendation and/or decision (i.e., approve, modify, refuse). TRCA is concerned that such referrals may potentially delay the implementation of a policy and science-based decision planning framework consistent with provincial policies and plans given the complex environmental and natural hazard issues facing municipalities within our jurisdiction. As noted above, TRCA has been working closely with our municipal partners to inform their MCR processes. It is unclear how suspending the timeframe for the Minister to decide on an OP/OPA or expanding appeal rights would expedite the creation of housing units. The potential delay, combined with the possibility of future CIHA zoning orders could have corresponding impacts on lower-tier conformity to upper-tier OPs.

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Thank you once again for the opportunity to provide comments on this proposal. Should you have any questions, require clarification on any of the above, or wish to meet to discuss our remarks, please contact the undersigned at 416.661.6600, ext. 5281 or at laurie.nelson@trca.ca.

Sincerely,

<Original signed by>

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BY E-MAIL

cc:

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