

Chief Executive Officer



December 8, 2022

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

**Re: TRCA Response to Request for Comments
Proposed Planning Act and City of Toronto Act Changes (Schedules 9 and 1 of
Bill 23 - the proposed More Homes Built Faster Act, 2022) (ERO #019-6163) and
Proposed Changes to Ontario Regulation 299/19: Additional Residential Units
(ERO #019-6197)**

Thank you for the opportunity to comment on the above noted postings to the Environmental Registry of Ontario (ERO) by the Ministry of Municipal Affairs and Housing (MMAH), which proposed changes to the *Planning Act* and the *City of Toronto Act*, for the purposes of building new homes for Ontarians as part of the Province's commitment to build 1.5 million homes over the next ten years. More specifically, we understand that, among a suite of other proposed amendments, key changes of particular interest to TRCA include:

- Allowing up to three units per lot "as-of-right" in many existing residential areas to strengthen the existing additional residential unit (ARU) framework
- Requiring municipalities to implement "as-of-right" zoning for transit supportive densities in specified areas around "major transit station areas" (MTSA) and "protected" MTSA (PMTSA), and to update their zoning by-laws accordingly within one year of MTSA/PMTSA approval
- Removal of planning policy approval responsibilities from certain upper-tier municipalities (including the regions of Durham, Peel, York, and Simcoe County)
- Limits to third party appeals for planning matters
- Exempting all aspects of site plan control for residential development up to ten units and removing the ability for municipalities to regulate architectural details and landscape design through site plan control
- Re-enact provisions not yet in force that would limit conservation authority (CA) appeals to natural hazard matters in provincial policy statements
- Broaden the ability of CAs to use an existing streamlined process to sever land

TRCA has an interest in the proposed changes given our roles as:

- A regulator under Section 28 of the *Conservation Authorities Act*;
- A public commenting body under the *Planning Act* and the *Environmental Assessment Act*;
- A delegated commenting body to represent the Provincial interest in natural hazards;
- A service provider to our municipal, provincial and federal agency partners;
- A resource management agency operating on a local watershed basis; and

- One of the largest landowners in the Greater Toronto region.

In these roles, and as stated in the “Made-in-Ontario Environment Plan” and consistent with “Ontario’s Flooding Strategy”, CAs work in collaboration with municipalities and stakeholders to protect people and property from flooding and other natural hazards, and to conserve natural resources. With TRCA’s roles and experience in mind, we offer the following comments.

COMMENTS

TRCA supports the Province’s important goal of addressing the housing crisis through expediting development approvals and has taken actions that help support this objective, however, Bill 23 could bring increased costs and delays to the planning process while jeopardizing the environment and public safety from natural hazards. As per the resolution unanimously passed by [TRCA’s Board of Directors held on October 28, 2022](#), and Board-endorsed [TRCA staff report on the impact of Bill 23 on November 10, 2022](#), **TRCA had requested a removal and/or revision to certain proposed legislative changes. Now that the amendments proposed under the current ERO postings have passed through Bill 23, TRCA requests that the Province reconvene the multi-sector Conservation Authority Working Group and consult on the development of the regulations necessary to implement the amendments to address concerns for:**

- **reduced oversight for managing natural hazards and meeting source water protection requirements,**
- **prohibiting CA advisory services to municipalities for Ontario Land Tribunal appeals on natural heritage,**
- **preventing municipalities from applying a full suite of sustainable design standards.**

Please see our detailed comments below describing our recommendations specific to these concerns.

1. Intensification through “as-of-right” permissions for Additional Residential Units (ARUs) and higher density around transit should not be permitted within natural hazards

We understand that up to three ARUs would be permitted on an urban property without the need to change zoning or official plans, which could include two residential units in the principal building, one in an ancillary building or three residential units in a principal building. Municipalities would also be required to implement “as-of-right” zoning for transit supportive densities around specified transit station areas.

While we generally support the Province’s proactive measures to intensify development and concentrate higher densities around transit to increase housing supply, we note that Ontario’s land use planning framework not only articulates where and how growth is to occur, it identifies where growth should not take place. In part, this is to protect the agricultural land base, ecological and hydrological features and areas, and mitigate against risk to life and property from natural hazards. TRCA’s own policy document, The Living City Policies, is consistent with this policy framework and guides our advisory role under the *Planning Act* and regulatory role under the CA Act.

As a commenting body, and through our memorandums of understanding, TRCA (along with other CAs) assists municipalities in assessing, avoiding, remediating, or mitigating risks from natural

hazards prior to *Planning Act* approvals and the issuance of building permits. Where requested, we assist municipalities with comprehensive official plan and zoning by-law reviews to ensure flood plain mapping and policies are up to date and conform to provincial policy on natural hazards. In TRCA's experience, where official plans and zoning do not reflect current natural hazard mapping or contain associated land use restrictions, there is potential for development permissions to establish expectations that conflict with provincial and CA policies for developing outside of lands subject to natural hazards. Even where development already exists within a flood plain, proposed additions or additional units increases risk to life and property. This inconsistency leads to confusion and delay of development approvals. The current government actions to amend the *Planning Act* under Bill 23 for as-of-right additional units ignores these risks where it enables the potential for intensified development regardless of natural hazards.

To assist with implementation of increased housing units safely, it should be clarified as to how these permissions would interface with other provincial policies, e.g., pursuant to section 3.1 of the Provincial Policy Statement (PPS) generally directing development outside of natural hazards and consistent with the PPS description of Special Policy Areas, which states that, "A Special Policy Area is not intended to allow for new or intensified development and site alteration, if a community has feasible opportunities for development outside the flood plain." It is imperative that provincial policy direction be adhered to so that risk to life and property are not increased by virtue of development and intensification within a natural hazard.

CAs work proactively with municipalities to identify appropriate locations for municipal implementation of missing middle and higher density transit-oriented development outside of natural hazards areas. CAs can also advise on remediation strategies for areas undergoing urban revitalization that may contain flood and erosion prone areas and remnant degraded natural features, which in turn can help expedite development and infrastructure plans and projects. TRCA is concerned that the legislative changes may prevent opportunities for this collaboration to continue.

Therefore, TRCA recommends that the Province require municipalities to implement the legislative changes for "as-of-right" permissions contingent on the subject lands being outside of natural hazards and to continue to engage conservation authorities to help identify these areas. Furthermore, we recommend that the Province focus on implementation of catalyst infrastructure to protect existing flood prone residential areas that once remediated could then be intensified.

2. Removal of regional planning policy and approval responsibilities within TRCA's jurisdiction would diminish regional-scale planning coordination and oversight when consistency and efficiency are needed most to address Ontario's housing crisis

TRCA recognizes the valuable roles our partnering regional municipalities play in integrating land use, infrastructure, and environmental planning and we encourage the Province to consider their requests in response to Bill 23. TRCA works collaboratively with Peel, York and Durham regions on various regional planning exercises to assist with provincial policy conformity, including watershed planning, identification and protection of natural heritage systems, implementation of drinking water source protection policy, and coordinated growth management through land needs assessment and infrastructure expansion. In light of this experience and the proposed removal of regional planning responsibilities within our jurisdiction, we note the following areas of potential concern.

Watershed and Subwatershed Planning

Like regional planning, watershed planning is undertaken at the scale necessary for meaningful, integrated long-term planning that considers cumulative development impacts across local municipal boundaries. TRCA's experience with watershed planning and subwatershed planning is that this type of work, when supported by regional municipalities with involvement of local municipalities, creates certainty for all stakeholders and saves time while achieving other efficiencies at successive stages of *Planning Act* and environmental assessment processes across multiple political boundaries. For instance, the Carruthers Creek Watershed Plan was recently developed through collaborative efforts by TRCA, the Region of Durham, the Town of Ajax and City of Pickering to establish management actions to guide municipal implementation of development and infrastructure and environmental decision-making across the watershed. Without the regional planning role, (combined with CAs' removal from natural heritage planning matters under the CA Act), opportunities for coordination among municipalities sharing a watershed and the associated benefits achieved, are drastically reduced.

Source Water Protection

Under the *Municipal Act*, regional municipalities within TRCA's jurisdiction are responsible for drinking water production, treatment, and storage. Within the CTC Source Protection Plan (SPP) developed under the *Clean Water Act* these regional municipalities coordinate and work together with local municipalities to implement the land use planning policies in the CTC SPP. This direction and guidance are distilled in part through regional official plans, updated to conform to new or amended source protection plans.

As noted, regional municipalities are implementors of land use planning policies within source protection plan policies. These policies are in place to ensure certain development and site alteration under the *Planning Act* (including certain Site Plan applications) does not become a significant drinking water quantity threat, e.g., due to recharge reduction. Removal or transference of this responsibility could place new requirements on lower-tier municipalities without the expertise or capacity to do so. It could also necessitate amendments to source protection plans given existing references to regional roles and conformity requirements (and timing) for OP and zoning approvals.

Additionally, under the Growth Plan, regional municipalities are (currently) required to undertake integrated planning to manage provincially forecasted growth. Due to this convergence, regional growth planning has become a vital mechanism for source water protection in that it considers how development, land use and infrastructure interface with the long-term viability of water quality and quantity to support anticipated growth. However, **TRCA is concerned that removal or downloading of regional planning responsibilities to local municipalities could undermine source protection plan implementation and would necessitate a timely review and update of source protection plans.**

3. Site plan control exemptions have implications for CA service to municipalities in managing natural hazard risk and in source water protection

Bill 23 exemptions for Site Plan control could have unintended consequences on managing natural hazard risk and on source protection plan implementation.

It is noted that without site plan control, municipalities may have limited ability to receive input on or regulate site detailed design items such as setbacks and location of buildings as they relate to hazardous lands and natural features. It is also noted that site plan control can be an important opportunity for municipalities to ensure that stormwater is properly managed with the potential to increase pluvial flooding. Without site plan control there may be no other *Planning Act* circulation

to the conservation authority, losing an earlier opportunity for the CA to identify any challenges with the proposed development.

Where a municipality can currently implement source protection policies through review of Site Plan applications (e.g., to require salt management plans, control siting and design of septic systems and stormwater management controls), many (i.e., if > 10 residential units) would instead be deferred to a later stage (e.g., building permit), where staff may lack necessary technical and policy expertise. This could necessitate revisions and lead to unnecessary costs and delays if, as experienced by TRCA staff, a stormwater management pond or sewage force main were proposed in a wellhead protection area where it would impact drinking water quality. Site Plan applications are also triggers for specific source protection plan policies. Therefore, exempting Site Plan controls would nullify their ability to protect against certain drinking water threats outright, e.g., reduced water quantity (recharge reduction) from increased impervious cover.

Lastly, widespread acceleration of development approvals through Bill 23 could shift municipal projections for existing capacity and projected timing of new drinking water sources (e.g., wells, intakes) and/or capacity re-allocation, which could influence demand and timing for source protection plan amendments under Section 34 of the *Clean Water Act*. In TRCA's experience these processes require extensive pre-consultation and technical evaluation between consultants, CAs, municipalities and the Province to evaluate and delineate drinking water vulnerability threats. It also requires associated policy and mapping updates and corresponding statutory public consultation to amend existing source protection and official plans, which can take time and necessitate transition provisions to streamline development while maintaining drinking water protections. As a Source Protection Authority, TRCA has first-hand experience in these processes, as evidenced through our current work related to new wells and increased allocation in Nobleton and Caledon, and a new water treatment intake (Toronto Island) and treatment outlet (Ashbridges Bay) in Toronto. Given the key role regional municipalities play in coordinating this work with regional planning responsibilities, we believe they should maintain their regional planning role.

TRCA will continue to work with our partner source protection authorities – Credit Valley Conservation and Central Lake Ontario Conservation Authority to lead the development of the source protection plan for the CTC Source Protection Region.

We recommend the Province engage CAs and municipalities to identify appropriate solutions to ensure that watershed planning and source protection plans continue to be implemented effectively and in a timely manner.

Further, TRCA recommends that the site plan exemption for less than 10 units be subject to none of the proposed units being within an area subject to natural hazards and that municipalities be directed to engage in early pre-consultation with CAs to identify and resolve any issues with the proposed development, including issues associated with natural hazards or the protection of sources of drinking water.

4. Limiting CA Appeals of Land Use Planning Decisions leaves a gap in CA service to municipalities

Under Bill 23's *Planning Act* amendments, CA appeals of land use planning decisions will be limited to matters that affect land they own, where the CA is the applicant, or when a CA is acting as a public body, only relating to natural hazard policies in provincial policy statements. In current practice, TRCA supports its municipal partners in *Planning Act* appeals dealing with both natural hazards and natural heritage due to municipalities' reliance on TRCA staff as expert witnesses in ecology, hydrogeology, geotechnical engineering and water resource engineering. **TRCA**

recommends, that to maintain current efficient and effective CA advisory service to municipalities for appeals related to natural heritage, we recommend the Province engage municipalities and CAs to consult on ways to address the gap in service that will be left by Bill 23, that currently helps streamline appeals and approvals.

5. Municipal Green Standards are a valuable tool for preparing for climate change

Under Bill 23, the exemptions for Site Plan control remove the ability for municipalities across TRCA's jurisdiction to regulate architectural details and landscape design, curtailing the ability to implement green development and urban design standards. TRCA's municipal partners regularly engage TRCA on the development of these standards through our valuable advisory role in the plan input and plan review process. Many of these site level matters that TRCA advises municipalities on assist them in meeting provincial policies for preparing for the impacts of a changing climate through sustainable development and infrastructure planning and design, e.g., Low Impact Development measures for stormwater management. Given that the *Planning Act* amendments for this change were approved through the passing of Bill 23, **TRCA recommends that municipalities be provided with an alternate mechanism in order to retain the ability to implement green development standards.**

Should you have any questions, require clarification, or wish to meet to discuss any of the above remarks, please contact the undersigned at 416.667.6290 or at john.mackenzie@trca.ca.

Sincerely,

<Original signed by>

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