

March 22, 2021

Via email and upload to the Environmental Registry of Ontario

Hon. Laurie Scott
Minister of Infrastructure
College Park, 5th Flr. Rm 5E200
777 Bay Street
Toronto ON M7A 2J3

Hon. Steve Clark
Minister of Municipal Affairs and Housing
College Park, 17th Flr.
777 Bay Street
Toronto ON M7A 2J3

Dear Ministers Scott and Clark:

**Subject: Central Lake Ontario Conservation Authority Comments for
Proposed Changes to Minister's Zoning Orders and the Planning Act
(Schedule 3 to Bill 257)
Environmental Registry of Ontario Notice Number 019-3233
CLOCA File# ASLA3**

At their meeting of March 16, 2021, the Central Lake Ontario Conservation Authority (CLOCA) Board of Directors passed the following Resolution:

Res. #26 Moved by R. Hooper
Seconded by I. McDougall

***WHEREAS The Purpose of the Planning Act is to promote sustainable economic development in a healthy natural environment and to provide for a land use planning system led by provincial policy; and,
WHEREAS The requirement for all decision-makers under the Planning Act to make decisions in a manner that is consistent with the Provincial Policy Statement is longstanding and necessary for good planning outcomes;
BE IT RESOLVED
THAT The Minister of Infrastructure and the Minister of Municipal Affairs and Housing be requested to withdraw Schedule 3 from Bill 257;
THAT the Analysis Commentary in Staff Report 5733-21 be endorsed and submitted to the appropriate Legislative Assembly of Ontario Standing Committee, the Province of Ontario and Conservation Ontario as CLOCA's comments regarding Bill 257 and Environmental Registry Posting 019-3233; and,***

THAT Staff Report 5733-21 be circulated to Watershed Municipalities, Members of Provincial Parliament, Members of Parliament and adjacent Conservation Authorities for their information and corresponding action.

CARRIED

Accordingly, please find the endorsed staff report and attachments enclosed with this letter for detailed commentary.

Yours truly,



Chris Jones, MCIP, RPP

Director of Planning and Regulation

CJ/

Encl. CLOCA Staff Report 5733-21 and attachments

Cc: Hon. Mark Holland, MP (Ajax), Mark.Holland@parl.gc.ca
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REPORT

CENTRAL LAKE ONTARIO CONSERVATION AUTHORITY

DATE: March 16, 2021

FILE: ASLA3

S.R.: 5733-21

TO: Chair and Members, CLOCA Board of Directors

FROM: Chris Jones, Director, Planning and Regulation

SUBJECT: **Proposed Planning Act Amendment Regarding Minister's Zoning Orders (MZO)**

APPROVED BY C.A.O. 

The purpose of this report is to introduce and provide commentary in relation to a Bill containing a proposed Planning Act amendment regarding Minister's Zoning Orders (MZO) powers and in response to a corresponding policy proposal posted to the *Environmental Registry of Ontario*.

Background

On March 4, 2021, the Minister of Infrastructure introduced Bill 257, *An Act to enact the Building Broadband Faster Act, 2021 and to make other amendments in respect of infrastructure and land use planning matters*, which received First Reading by the Legislative Assembly of Ontario on that same day. Schedule 3 to Bill 257 proposes to amend the *Planning Act* to provide that Minister's Zoning Orders (MZO) "are not required and are deemed to never have been required to be consistent with [provincial] policy statements..." It is proposed that this provision would not have effect on an MZO that applies to land within the Greenbelt Plan Area.

Also on March 4, 2021, the Ministry of Municipal Affairs and Housing (MMAH) posted a corresponding notice on the *Environmental Registry of Ontario* regarding the proposed changes. The notice states that: "The proposed changes would permit the Minister of Municipal Affairs and Housing to *take other considerations into account* when making decisions..." (emphasis added). Comments on the proposal may be submitted to the registry by April 3, 2021. **Attachment No. 1** to this report contains the registry posting.

Context for a Provincial Policy-led Land Use Planning System in Ontario

Since 1994, the *Planning Act* has set out in section 1.1 the overarching purposes of the Act. The first two purposes of the Act are set out, as follows:

- a) "To promote sustainable economic development in a healthy natural environment *within the policy* and by the means provided under this Act;
- b) To provide for a land use planning system *led by provincial policy...*" (emphasis added)

Since 1983 the *Planning Act* at section 3 has enabled the province to issue policy statements on matters relating to municipal planning that are of provincial interest. To give legal effect to the policy statements, and to ensure that Ontario has a planning system led by open and transparent provincial policy, all decision makers under the Act, including the council of the municipality, Ministers "in respect of *the exercise of any authority* that affects a planning matter *shall be consistent with the policy statements...*" (subsection 3 (5), emphasis added).

Summary of Provincial Policy

The most recent statement of provincial policy is the *Provincial Policy Statement, 2020*, which came into effect on May 1, 2020. The policies are grouped into three main areas with a statement of purpose for each one that is grounded in the concept of sustainable development and worth recalling in the context of Bill 257:

Cont'd

1) *Building Strong and Healthy Communities*

“Ontario’s long-term prosperity, environmental health and social well-being depend on wisely managing change and promoting efficient land use and development patterns. Efficient land use and development patterns support sustainability by promoting strong, liveable, healthy and resilient communities, protecting the environment and public health and safety, and facilitating economic growth.”

2) *Wise Use and Management of Resources*

“Ontario’s long-term prosperity, environmental health and social well-being depend on conserving biodiversity, protecting the Great Lakes, and protecting natural heritage, water, agricultural, mineral and cultural heritage and archaeological resources for their economic, environmental and social benefits.”

3) *Protecting Public Health and Safety*

“Ontario’s long-term prosperity, environmental health and social-well-being depend on reducing the potential for public cost or risk to Ontario’s residents from natural or human-made hazards.”

January 2021, CLOCA Board of Director’s Comments

In response to a recent provincial consultation on expanded MZO powers enacted in 2020, the CLOCA Board of Directors endorsed the commentary contained in Staff Report 5722-21, which included the following specific commentary for the Minister:

“Regarding best practices and guidance, CLOCA comments that a key best practice would be to ensure that any Minister’s decisions are consistent with the Provincial Policy Statement, 2020 (PPS)...”

The transmittal letter for the previous consultation and Staff Report are appended to this Report in **Attachment No. 2**.

Analysis

The proposed changes to facilitate the zoning of land via MZO in a manner that is not required, and deemed to never have been required to be consistent with policy statements, is antithetical to the purposes of the *Planning Act* articulated at section 1.1, disregards the purpose and intent of the practice of contemporary land use planning in the Province of Ontario and is directly opposite of CLOCA’s previously expressed commentary on the use of MZO’s, as expressed earlier this year in the aforementioned provincial consultation.

The Minister’s statement of provincial policy, issued last year, stress, Ontario’s long-term prosperity, environmental health and social well-being depend on development and planning decisions that lead to strong and healthy communities, wise use and management of resources and public health and safety that is protected. These are the suite of public interest considerations that every previous minister entrusted with administration of the *Planning Act* has been bound-by since the policy statement concept was enacted in 1983. It is not reasonable that these considerations should only be binding for lands that fall within the Greenbelt Plan Area, as good land use planning outcomes are needed across the entire landscape of the province. Finally, since there are no public notice or appeal provisions associated with the current MZO power, and since the MZO power overrides all previously agreed municipal plans and associated public and agency consultation, it is therefore doubly important that a transparent set of public-interest policies guide the Minister in his decision-making, as is currently required by the Act. *It is therefore recommended that the Minister be requested to withdraw Schedule 3 from Bill 257.*

Conclusion

In considering the use of the MZO powers, the Minister should continue to be bound to making decisions that are consistent, in the public interest, and which seek good planning outcomes, as articulated in the *Provincial Policy Statement, 2020*. It is recommended that the Minister withdraw Schedule 3 from Bill 257.

RECOMMENDATION

WHEREAS The Purpose of the Planning Act is to promote sustainable economic development in a healthy natural environment and to provide for a land use planning system led by provincial policy; and,
WHEREAS The requirement for all decision-makers under the Planning Act to make decisions in a manner that is consistent with the Provincial Policy Statement is longstanding and necessary for good planning outcomes;

BE IT RESOLVED

THAT The Minister of Infrastructure and the Minister of Municipal Affairs and Housing be requested to withdraw Schedule 3 from Bill 257;
THAT the Analysis Commentary in Staff Report 5733-21 be endorsed and submitted to the appropriate Legislative Assembly of Ontario Standing Committee, the Province of Ontario and Conservation Ontario as CLOCA's comments regarding Bill 257 and Environmental Registry Posting 019-3233; and,
THAT Staff Report 5733-21 be circulated to Watershed Municipalities, Members of Provincial Parliament, Members of Parliament and adjacent Conservation Authorities for their information and corresponding action.

Attachment 1- Environmental Registry of Ontario (ERO) Posting

Attachment 2- Letter and Staff Report 5722-21

Proposed changes to Minister’s zoning orders and the Planning Act

ERO (Environmental Registry of Ontario) number	019-3233
Notice type	Act
Act	Planning Act, R.S.O. 1990
Posted by	Ministry of Municipal Affairs and Housing
Notice stage	Proposal
Proposal posted	March 4, 2021
Comment period	March 4, 2021 - April 3, 2021 (30 days) Open
Last updated	March 4, 2021

This consultation closes at 11:59 p.m. on:
April 3, 2021

Proposal summary

The government is proposing changes to the *Planning Act* so that certain Minister’s zoning orders do not have to be consistent with the Provincial Policy Statement.

Proposal details

The *Planning Act* gives the Minister of Municipal Affairs and Housing the authority to zone and thereby control the use of any land in the province. Zoning orders can be used to protect a provincial interest (e.g. (for example), to protect an environmentally sensitive feature by prohibiting uses) or to help overcome potential barriers or delays to critical projects (e.g. (for example), to speed up planning approvals for long-term care homes and affordable housing projects).

Under the *Planning Act*, a decision of a Minister in respect of the exercise of any authority that affects planning matter (e.g. (for example), a Minister’s zoning order) shall be consistent with policy statements issued under the

Planning Act (e.g., the Provincial Policy Statement) that are in effect on the date of the decision.

Through Schedule 3 of Bill 257 (the proposed Bill 257, Supporting Broadband and Infrastructure Expansion Act, 2021) it is proposed to amend the *Planning Act*, so that a Minister's zoning order would not have to be consistent with the Provincial Policy Statement. This proposed amendment would not apply to lands located within the Greenbelt Area. In addition, the changes would provide that any existing Minister's zoning orders, never had to be consistent with the Provincial Policy Statement.

The proposed changes would permit the Minister of Municipal Affairs and Housing to take other considerations into account when making decisions to support strong communities, a clean and healthy environment and the economic vitality of the Province.

The Minister's zoning authority is a critical tool that can be used to support and expedite the delivery of government priorities, including transit-oriented communities, affordable housing, long-term care homes and strategic economic recovery projects by removing potential barriers and delays. These changes would ensure that the Minister, acting at their discretion, has the authority to provide their complete support for these critical projects.

Supporting materials

Related links

[Planning Act \(https://www.ontario.ca/laws/statute/90p13\)](https://www.ontario.ca/laws/statute/90p13)

[Provincial Policy Statement, 2020 \(https://www.ontario.ca/page/provincial-policy-statement-2020\)](https://www.ontario.ca/page/provincial-policy-statement-2020)

[O. Reg. 59/05 Designation of Greenbelt Area \(https://www.ontario.ca/laws/regulation/050059\)](https://www.ontario.ca/laws/regulation/050059)

[Bill 257, Supporting Broadband and Infrastructure Expansion Act, 2021 \(https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-257\)](https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-257)

View materials in person

Important notice: Due to the ongoing COVID-19 pandemic, viewing supporting materials in person is not available at this time.

Please reach out to the Contact listed in this notice to see if alternate arrangements can be made.

Comment

Let us know what you think of our proposal.

Have questions? Get in touch with the contact person below. Please include the ERO (Environmental Registry of Ontario) number for this notice in your email or letter to the contact.

[Read our commenting and privacy policies. \(/page/commenting-privacy\)](/page/commenting-privacy)

Submit by mail

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Member of Conservation Ontario

January 27, 2021

via upload to the Environmental Registry

Planning Consultation
Provincial Planning Policy Branch
Ministry of Municipal Affairs and Housing
777 Bay Street, 13th floor
Toronto ON M7A 2J3

Dear Provincial Planning Policy Branch:

**Subject: Central Lake Ontario Conservation Authority Comments for
Proposed Implementation of Provisions in the Planning Act that Provide the
Minister Enhanced Authority to Address Certain Matters as Part of a Zoning
Order
Environmental Registry of Ontario Notice Number 019-2811
CLOCA IMS No: ASLA3**

At their meeting of January 19, 2021 the Central Lake Ontario Conservation Authority (CLOCA) Board of Directors passed the following Resolution:

Res. #14 Moved by D. Mitchell
Seconded by D. Pickles

***THAT the Analysis Commentary in Staff Report 5722-21 be endorsed and
submitted to the Province of Ontario and Conservation Ontario as CLOCA's
comments regarding Environmental Registry Posting 019-2811; and,
THAT Staff Report 5722-21 be circulated to Watershed Municipalities and
adjacent Conservation Authorities for their information. CARRIED***

Accordingly, please find the attached report and attachments enclosed with this letter for detailed commentary.

What we do on the land is mirrored in the water



Ministry of Municipal Affairs and Housing

January 27, 2021

In summary:

- CLOCA requests, in relation to site plan control powers, that the site planning functions, which are very technical and require local expertise to be implemented properly, be left exclusively with municipalities through a corresponding repeal of that power from Section 47 of the Planning Act.
- With respect to the use of the new MZO powers, CLOCA recommends that the Minister should consult with CLOCA on the application review and the proponent should be required to submit the review fees that would otherwise be due if the application was reviewed locally.
- Regarding best practices and guidance, CLOCA comments that a key best practice would be to ensure that any Minister's decisions are consistent with the Provincial Policy Statement, 2020 (PPS). It is recommended that Section 47 of the Planning Act be amended to explicitly make this a requirement in the section. Further, the Minister should commit to consult with conservation authorities if an application has a relationship to natural hazards such as flooding or erosion that is within a Regulated Area under the Conservation Authorities Act, or a natural heritage issue where the Region of Durham or a local municipality would rely on CLOCA for expert technical input.

Yours truly,



Chris Jones, MCIP, RPP

Director of Planning and Regulation

CJ/

Encl. CLOCA Staff Report 5722-21 and attachments

cc: Hon. Mark Holland, MP (Ajax), Mark.Holland@parl.gc.ca
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REPORT

CENTRAL LAKE ONTARIO CONSERVATION AUTHORITY

DATE: January 19, 2021
FILE: ASLA3
S.R.: 5722-21
TO: Chair and Members, CLOCA Board of Directors
FROM: Chris Jones, Director, Planning and Regulation
SUBJECT: **Provincial Consultation on Implementation of Minister's Zoning Orders (MZO) Powers**

APPROVED BY C.A.O. 

The purpose of this report is to introduce and provide commentary in relation to a provincial consultation on Minister's Zoning Orders (MZO) powers in response to a recent policy proposal posted to the *Environmental Registry of Ontario*.

Background

On December 16, 2020, the Ministry of Municipal Affairs and Housing (MMAH) posted a notice on the *Environmental Registry of Ontario* regarding changes to Minister's Zoning Order powers in Section 47 of the *Planning Act* that were enacted in 2020 and came into force as of July 21, 2020 (Bill 197, *COVID-19 Economic Recovery Act, 2020*). A copy of Section 47, as amended, is included as **Attachment No. 1** to this report.

The *Planning Act* gives the Minister of Municipal Affairs and Housing the authority to zone any property in Ontario by issuing a zoning order (MZO). Currently, when a zoning order is issued by the Minister, a municipality's Site Plan Control powers are used to implement the zoning to address site plan matters for the subject lands (i.e. even with a provincially ordered zoning for a parcel of land, municipal site planning implements the finer points of detailed design for a development including important issues reviewed by CLOCA such as grading, stormwater management and landscape design in relation to environmental features).

The recently enacted legislative changes to the *Planning Act* provide more powers to the Minister's authority for zoning orders across the province including the ability to remove municipal implementing roles related to Site Plan Control and to make amendments to existing MZO without giving public notice. This enhanced authority does not apply to lands within the Greenbelt Area, which encompasses around half of the CLOCA watershed.

MMAH is now inviting comment on the use of the new additional MZO powers, including Site Plan Control. According to the registry posting, feedback is requested as to whether the new MZO powers:

- should be expanded, repealed or otherwise adjusted;
- how the new MZO powers ought to be used;
- circumstances where new powers would be helpful and circumstances where it might be better not used;
- whether there are best practices that might be articulated to guide implementation.

A copy of the full environment registry posting is included as **Attachment No. 2** to this report.

Analysis

Previously, the Minister's MZO powers under the *Planning Act* were infrequently used and most site-level planning decisions in Ontario were left with municipalities to administer through the normal course of land use planning, including public notice and local democratic implementation. The current provincial government has chosen to make use of the Minister's MZO power more frequently.

On December 3rd, 2020, the Ontario Professional Planners Institute (OPPI) –the organization that represents professional planners in Ontario– wrote to the Minister with respect to the increased use of the MZO powers and articulated several concerns including the potential creation of new delays as planning approvals shift from the local municipal level to Queen’s Park, the introduction of new uncertainty and risk into real estate markets and an overall undermining of public trust in the land use planning process. OPPI recommended that the province commit to establishing transparent provincial criteria on the use of MZO’s for provincially significant priority projects and commit to reduced reliance on MZO and instead rely on measures to streamline the overall municipal planning process. A copy of OPPI’s letter to the Minister is included as **Attachment No. 3** to this report.

The remainder of the analysis in this report is scoped specifically to CLOCA’s policy, regulatory and operational interests in the MZO’s in its role as a public commenting body on land use applications within the watershed, specifically in relation to natural hazards associated with flooding and erosion.

Should the additional MZO powers be expanded, repealed or otherwise adjusted?

In relation to site plan control, *it is recommended that the site planning functions, which are very technical and require local expertise to be implemented properly, be left exclusively with municipalities through a corresponding repeal of that power from Section 47 of the Planning Act.*

Where appropriate, CLOCA provides input into the site plan control process with respect to stormwater management, including low-impact stormwater management measures, grading and landscaping measures where there are natural hazards or environmental features that require conservation, protection or management in relation to the development of a site. Often, the site plan review at the municipal level allows for CLOCA’s technical review under the Section 28 regulation to be undertaken up front and thereby streamlining the permit approval process for sites that have a natural hazard component and are subject to the regulation.

How should the new MZO powers ought to be used?

In considering an application that has a relationship to natural hazards such as flooding or erosion, that is within a Regulated Area under the *Conservation Authorities Act*, or a natural heritage issue where the Region of Durham or a local municipality would rely on CLOCA for expert technical input, *it is recommended that the Minister should consult with CLOCA on the application review and the proponent should be required to submit the review fees that would otherwise be due if the application was reviewed locally.*

Whether there are best practices that might be articulated to guide implementation?

A key best practice would be to *ensure that any Minister’s decisions are consistent with the Provincial Policy Statement, 2020 (PPS).* *It is recommended that Section 47 of the Planning Act be amended to explicitly make this a requirement in the section.* The PPS contains basic, fundamental planning policy directions related to the wise use and management of resources and protecting public health and safety through the management of hazards. In 2020, following recommendations of the Provincial Special Advisor on Flooding, the following critical directions were added to the PPS:

“Mitigating potential risk to public health or safety or of property damage from natural hazards, Including the risks that may be associated with the impacts of a changing climate, **will require the Province, planning authorities, and conservation authorities to work together**” [emphasis added]

Working together to achieve this critical provincial objective for protecting public health and safety through good land use planning should place an obligation on the Minister, in considering an MZO decision, to first work with the local conservation authority in relation to any natural hazard issues that might exist.

Accordingly, *the Minister should commit to consult with conservation authorities if an application has a relationship to natural hazards such as flooding or erosion that is within a Regulated Area under the Conservation Authorities Act, or a natural heritage issue where the Region of Durham or a local municipality would rely on CLOCA for expert technical input.*

Conclusion

In considering the use of the MZO powers, the Minister should enable local municipal expertise with respect to site plan control, should commit to make decisions in conformity with the *Provincial Policy Statement* while consulting with local conservation authorities when natural hazards are present.

RECOMMENDATION

THAT the Analysis Commentary in Staff Report 5722 -21 be endorsed and submitted to the Province of Ontario and Conservation Ontario as CLOCA's comments regarding Environmental Registry Posting 019-2811; and, THAT Staff Report 5722-21 be circulated to Watershed Municipalities, Members of Provincial Parliament, Members of Parliament and adjacent Conservation Authorities for their information.

Attachment 1- Section 47

Attachment 2- Environmental Registry of Ontario (ERO) Posting

Attachment 3- Ontario Professional Planners Institute (OPPI) Letter

Power of Minister re zoning and subdivision control

47 (1) The Minister may by order,

- (a) in respect of any land in Ontario, exercise any of the powers conferred upon councils by section 34, 38 or 39, but subsections 34 (11) to (34) do not apply to the exercise of such powers; and
- (b) in respect of any land in Ontario, exercise the powers conferred upon councils by subsection 50 (4). R.S.O. 1990, c. P.13, s. 47 (1); 1994, c. 23, s. 27 (1).

Power of Minister to allow minor variances

(2) Where an order has been made under clause (1) (a), the Minister, in respect of the lands affected by the order, has all the powers in respect of such order as a committee of adjustment has under subsections 45 (1) and (2) in respect of a by-law passed under section 34, but subsections 45 (4) to (8) and (10) to (20) do not apply to the exercise by the Minister of such powers. R.S.O. 1990, c. P.13, s. 47 (2).

Order prevails over by-law in event of conflict

(3) In the event of a conflict between an order made under clause (1) (a) and a by-law that is in effect under section 34 or 38, or a predecessor thereof, the order prevails to the extent of such conflict, but in all other respects the by-law remains in full force and effect. R.S.O. 1990, c. P.13, s. 47 (3).

Deemed by-law of municipality

(4) The Minister may, in the order or by separate order, provide that all or part of an order made under clause (1) (a) and any amendments to it in respect of land in a municipality, the council of which has the powers conferred by section 34, shall be deemed for all purposes, except the purposes of section 24, to be and to always have been a by-law passed by the council of the municipality in which the land is situate. 2001, c. 9, Sched. J, s. 2 (1).

Interpretation, “specified land”

(4.1) In subsections (4.3) to (4.16),

“specified land” means land other than land in the Greenbelt Area within the meaning of the *Greenbelt Act, 2005*. 2020, c. 18, Sched. 17, s. 3.

Exclusion of land in Greenbelt Area

(4.2) For greater certainty, the land in the Greenbelt Area that is excluded from the definition of “specified land” in subsection (4.1) is the area of land designated under clause 2 (1) (a) of the *Greenbelt Act, 2005* which, pursuant to subsection 2 (2) of that Act, includes,

- (a) the areas covered by the Oak Ridges Moraine Conservation Plan established under section 3 of the *Oak Ridges Moraine Conservation Act, 2001*;
- (b) the areas covered by the Niagara Escarpment Plan established under section 3 of the *Niagara Escarpment Planning and Development Act*; and
- (c) such areas of land as may be described in the regulations made under the *Greenbelt Act, 2005*. 2020, c. 18, Sched. 17, s. 3.

Site plan control and inclusionary zoning, specified land

(4.3) The Minister may, in an order made under clause (1) (a) that applies to specified land,

- (a) provide that section 41 of this Act and section 114 of the *City of Toronto Act, 2006* do not apply in respect of all or a specified part of the specified land described in the order;
- (b) require that a person who owns all or any part of the specified land described in the order enter into one or more agreements with a municipality in which all or part of the specified land is situate dealing with some or all of the matters listed in subsection (4.4); and
- (c) exercise any of the powers conferred on councils by subsections 35.2 (1) and (2) in respect of all or a specified part of the specified land described in the order. 2020, c. 18, Sched. 17, s. 3; 2020, c. 18, Sched. 17, s. 3.

Matters that may be dealt with in agreement

(4.4) The matters referred to in clause (4.3) (b) are the following, subject to subsection (4.6):

1. A requirement that any development, within the meaning of subsection 41 (1), on all or a specified part of the specified land described in the order be undertaken in accordance with,

- i. plans showing the location of all buildings and structures to be erected and showing the location of all facilities and works to be provided in conjunction therewith and of all facilities and works as may be required by a condition imposed under paragraph 2, including facilities designed to have regard for accessibility for persons with disabilities, and
 - ii. drawings showing plan, elevation and cross-section views for each building to be erected, except a building to be used for residential purposes containing fewer than 25 dwelling units, which drawings are sufficient to display,
 - A. the massing and conceptual design of the proposed building,
 - B. the relationship of the proposed building to adjacent buildings, streets and exterior areas to which members of the public have access,
 - C. the provision of interior walkways, stairs, elevators and escalators to which members of the public have access from streets, open spaces and interior walkways in adjacent buildings,
 - D. matters relating to exterior design, including without limitation the character, scale, appearance and design features of buildings, and their sustainable design,
 - E. matters relating to exterior access to each building that will contain affordable housing units or to any part of such a building, but only to the extent that it is a matter of exterior design,
 - F. the sustainable design elements on any adjoining highway under a municipality's jurisdiction, including without limitation trees, shrubs, hedges, plantings or other ground cover, permeable paving materials, street furniture, curb ramps, waste and recycling containers and bicycle parking facilities, and
 - G. facilities designed to have regard for accessibility for persons with disabilities.
2. Anything that may be imposed as a condition by a municipality under subsection 41 (7) of this Act or subsection 114 (11) of the *City of Toronto Act, 2006*.
 3. Anything that may be imposed as a condition by an upper-tier municipality under subsection 41 (8). 2020, c. 18, Sched. 17, s. 3.

Same, Minister's direction

(4.5) If an order made under clause (1) (a) includes a requirement described in clause (4.3) (b) to enter into an agreement, the Minister may, at any time before or after the agreement has been entered into, provide the parties with written direction concerning the agreement. 2020, c. 18, Sched. 17, s. 3.

Contents of Minister's direction

- (4.6) Without limiting the generality of subsection (4.5), the Minister's direction may,
- (a) provide that one or more of the matters listed in subsection (4.4) shall not be dealt with in an agreement; or
 - (b) specify how any matter listed in subsection (4.4) shall be addressed in an agreement. 2020, c. 18, Sched. 17, s. 3.

Compliance with Minister's direction

- (4.7) The parties that are required under clause (4.3) (b) to enter into an agreement shall ensure that,
- (a) if the Minister gives direction under subsection (4.5) before the agreement is entered into, the agreement complies with the direction; and
 - (b) if the Minister gives direction under subsection (4.5) after the agreement is entered into, the agreement is amended to comply with the direction. 2020, c. 18, Sched. 17, s. 3.

Effect of non-compliance

(4.8) A provision of an agreement entered into pursuant to a requirement described in clause (4.3) (b) is of no effect to the extent that it does not comply with a direction the Minister gives under subsection (4.5). 2020, c. 18, Sched. 17, s. 3.

Same, timing of Minister's direction

(4.9) Subsection (4.8) applies whether the Minister's direction is given before or after the agreement has been entered into. 2020, c. 18, Sched. 17, s. 3.

Non-application of *Legislation Act, 2006*, Part III

(4.10) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a direction given by the Minister under subsection (4.5). 2020, c. 18, Sched. 17, s. 3.

Restriction on matters in subs. (4.4), par. 1

(4.11) The following matters relating to buildings described in subparagraph 1 ii of subsection (4.4) shall not be dealt with in an agreement entered into pursuant to a requirement described in clause (4.3) (b):

1. The interior design.
2. The layout of interior areas, excluding interior walkways, stairs, elevators and escalators referred to in subparagraph 1 ii C of subsection (4.4).
3. The manner of construction and construction standards. 2020, c. 18, Sched. 17, s. 3.

Enforceability of agreement

(4.12) If an agreement is entered into between the owner of land and a municipality in accordance with a requirement described in clause (4.3) (b),

- (a) the agreement may be registered against the land to which it applies; and
- (b) the municipality may enforce the agreement against the owner and, subject to the *Registry Act* and the *Land Titles Act*, any and all subsequent owners of the land. 2020, c. 18, Sched. 17, s. 3.

Inclusionary zoning policies

(4.13) If an order is made under clause (1) (a) in which the Minister exercises a power described in clause (4.3) (c), the Minister may do one or both of the following:

1. Require that any owner of lands, buildings or structures that are to be developed or redeveloped under the order and the municipality in which all or part of the specified land is situate enter into one or more agreements dealing with any or all of the matters mentioned in clauses 35.2 (2) (a) to (h) and ensuring continued compliance with the matters dealt with in the agreement.
2. Require that any owner of lands, buildings or structures that are to be developed or redeveloped under the order enter into one or more agreements with the Minister dealing with any or all of the matters mentioned in clauses 35.2 (2) (a) to (h) and ensuring continued compliance with the matters dealt with in the agreement. 2020, c. 18, Sched. 17, s. 3.

Same

(4.14) An order containing a requirement described in paragraph 1 of subsection (4.13) is deemed to be a by-law passed by the council of the relevant local municipality for the purposes of subsections 35.2 (3) to (9) and a municipality that is a party to an agreement mentioned in that paragraph shall take the steps required under those subsections. 2020, c. 18, Sched. 17, s. 3.

Same

(4.15) If an agreement is entered into in accordance with a requirement described in subsection (4.13),

- (a) the agreement may be registered against the land to which it applies; and
- (b) the Minister may enforce the agreement against the owner and, subject to the *Registry Act* and the *Land Titles Act*, any and all subsequent owners of the land. 2020, c. 18, Sched. 17, s. 3.

Same

(4.16) An order made under clause (1) (a) in which the Minister exercises a power described in clause (4.3) (c) applies regardless of whether the official plan in effect in the relevant local municipality contains policies described in subsection 16 (4). 2020, c. 18, Sched. 17, s. 3.

Notice

(5) No notice or hearing is required prior to the making of an order under subsection (1) but the Minister shall give notice of any such order within thirty days of the making thereof in such manner as the Minister considers proper. R.S.O. 1990, c. P.13, s. 47 (5); 2017, c. 23, Sched. 3, s. 15 (1).

Idem

(6) The Minister shall cause a duplicate or certified copy of an order made under clause (1) (a),

- (a) where the land affected is situate in a local municipality, to be lodged in the office of the clerk of the municipality, or where the land affected is situate in two or more local municipalities, in the office of the clerk of each of such municipalities; and
- (b) where the land affected is situate in territory without municipal organization, to be lodged in the proper land registry office, where it shall be made available to the public as a production. R.S.O. 1990, c. P.13, s. 47 (6); 2002, c. 17, Sched. B, s. 17.

Registration

(7) The Minister shall cause a certified copy or duplicate of an order made under clause (1) (b) to be registered in the proper land registry office. R.S.O. 1990, c. P.13, s. 47 (7).

Revocation or amendment

(8) An amendment to any order made under subsection (1), or the revocation in whole or in part of such an order, may be initiated by the Minister or on request to the Minister by any person or public body. 2017, c. 23, Sched. 3, s. 15 (2).

Consolidated Hearings Act

(8.0.1) Despite the *Consolidated Hearings Act*, the proponent of an undertaking shall not give notice to the Hearings Registrar under subsection 3 (1) of that Act in respect of a request under subsection (8) unless the Minister has referred the request to the Tribunal under subsection (10). 2017, c. 23, Sched. 3, s. 15 (2).

Information

(8.1) A request under subsection (8) shall include the prescribed information and material and such other information or material as the Minister may require. 1993, c. 26, s. 57 (2).

Refusal to consider

(8.2) The Minister may refuse to accept or further consider a request under subsection (8) until the prescribed information and material and the required fee are received. 1994, c. 23, s. 27 (3).

Action by Minister

(9) If the Minister initiates an amendment or revocation of an order made under subsection (1) or receives a request to amend or revoke the order, the Minister shall give notice or cause to be given notice of the proposed amendment or revocation in such manner as the Minister considers proper and shall allow such period of time as he or she considers appropriate for the submission of representations in respect of the proposed amendment or revocation. 2017, c. 23, Sched. 3, s. 15 (3).

Exception re notice — order exercising powers under subs. (4.3)

(9.1) Subsection (9) does not apply with respect to an order under clause (1) (a) if, in the order, the Minister has exercised any of the powers in subsection (4.3). 2020, c. 18, Sched. 17, s. 3.

Referral of request under subs. (8)

(10) The Minister may refer a request made under subsection (8) to the Tribunal. 2017, c. 23, Sched. 3, s. 15 (3).

(10.1) REPEALED: 2017, c. 23, Sched. 3, s. 15 (3).

Hearing by Tribunal

(11) If the Minister refers the request to the Tribunal, the Tribunal shall conduct a hearing. 2017, c. 23, Sched. 3, s. 15 (3).

Notice of hearing

(12) Notice of the hearing shall be given in such manner and to such persons as the Tribunal may determine. 2017, c. 23, Sched. 3, s. 15 (3).

(12.1)-(12.3) REPEALED: 2017, c. 23, Sched. 3, s. 15 (3).

Recommendation

(13) At the conclusion of the hearing, the Tribunal shall make a written recommendation to the Minister stating whether the Minister should approve the requested amendment or revocation, in whole or in part, make modifications and approve the requested amendment or revocation as modified or refuse the requested amendment or revocation, in whole or in part, and giving reasons for the recommendation. 2017, c. 23, Sched. 3, s. 15 (3).

(13.1)-(13.5) REPEALED: 2017, c. 23, Sched. 3, s. 15 (3).

Notice of recommendation

(14) A copy of the recommendation of the Tribunal shall be sent to each person who appeared at the hearing and made representations and to any person who in writing requests a copy of the recommendation. 2017, c. 23, Sched. 3, s. 15 (3).

Decision to amend or revoke

(15) After considering representations received under subsection (9), if any, and the recommendation of the Tribunal under subsection (13), if there is one, the Minister may, by order, amend or revoke in whole or in part the order made under subsection (1). 2017, c. 23, Sched. 3, s. 15 (3).

Notice of decision

(16) The Minister shall forward a copy of his or her decision to amend or revoke in whole or in part the order to the clerk of each municipality or secretary-treasurer of each planning board which is within the area covered by the amendment and any person who in writing requests a copy of the decision. 2017, c. 23, Sched. 3, s. 15 (3).

(17) REPEALED: 1994, c. 23, s. 27 (8).

Effect of land use order

(18) An order of the Minister made under clause (1) (b) has the same effect as a by-law passed under subsection 50 (4). R.S.O. 1990, c. P.13, s. 47 (18).

Deemed by-law

(19) The Minister may, in the order or by separate order, provide that all or part of an order made under clause (1) (a) and any amendments to it in respect of land in the planning area of a planning board shall be deemed to be and to always have been a by-law passed under section 34 by the planning board in which the land is situate. 2001, c. 9, Sched. J, s. 2 (2).



Proposed implementation of provisions in the Planning Act that provide the Minister enhanced authority to address certain matters as part of a zoning order

ERO (Environmental Registry of Ontario) number	019-2811
Notice type	Policy
Act	Planning Act, R.S.O. 1990
Posted by	Ministry of Municipal Affairs and Housing
Notice stage	Proposal
Proposal posted	December 16, 2020
Comment period	December 16, 2020 - January 30, 2021 (45 days) Open
Last updated	December 16, 2020

This consultation closes at 11:59 p.m. on:

January 30, 2021

Proposal summary

We are inviting comments concerning changes to certain legislative provisions in the *Planning Act* now in force with the enactment of Bill 197, the *COVID-19 Economic Recovery Act, 2020* that enable the Minister to address site plan matters and apply inclusionary zoning as part of a zoning order.

Proposal details

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 that uses the site plan control tool in the Act has the authority to address site plan matters for that area. The recently enacted legislative changes to the *Planning Act* enhance

Attachment 2

the Minister's authority for zoning orders across the province. This enhanced authority does not apply to lands within the Greenbelt Area. The enhanced authority allows the Minister to:

- require inclusionary zoning affordable housing (inclusionary zoning),
- remove municipal use of site plan control and require agreements between the municipality and development proponent (or landowner) concerning site plan matters, and;
- make amendments to Minister's Zoning Orders that use any of these enhanced authorities without first giving public notice.

An enhanced Minister's Zoning Order could help to overcome potential barriers and development delays. The proposed new authority could be used to support the delivery of transit station infrastructure and the optimization of surplus lands (e.g. (for example), affordable housing and long term care homes), provide increased certainty for strategic projects, remove potential approvals delays, increase the availability of affordable housing, provide additional value capture to enable economic recovery.

Amendments to section 47 the *Planning Act* in force as of July 21, 2020 with the enactment of Bill 197, the *COVID-19 Economic Recovery Act, 2020*:

Section 47 of the *Planning Act* now provides the Minister of Municipal Affairs and Housing the authority to zone any property in the province. Prior to the enactment of Bill 197, the *COVID-19 Economic Recovery Act, 2020*, the Minister's authority to zone land did not include the authority to address site plan matters, or to require affordable housing units through inclusionary zoning.

Recent changes to section 47 of the *Planning Act* were set out in Schedule 17 of Bill 197, the *COVID Economic Recovery Act, 2020*. This bill received Royal Assent on July 21, 2020. These recent amendments to section 47 of the *Planning Act* give the Minister enhanced powers related to site plan control and inclusionary zoning. However, this enhanced authority would not be available to be used within the Greenbelt Area (i.e. (in other words), lands in the Niagara Escarpment Plan, Oak Ridges Moraine Conservation Plan, Greenbelt Plan Protected Countryside and Urban River Valleys). Ontario Regulation 59/05, Designation of Greenbelt Area, provides all the specific geographical detail and references the precise legal boundaries of the Greenbelt Area.

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These recent legislative changes to section 47 of the *Planning Act* also provide authority for the Minister to amend an enhanced zoning order without giving notice beforehand.

Inclusionary Zoning

Inclusionary zoning is a land-use planning tool that may be used to require affordable housing units to be built in proposed developments. The recently enacted changes to section 47 of the *Planning Act* provide the Minister with authority, as part of an order zoning land outside the Greenbelt Area, to use inclusionary zoning to require affordable housing units in proposed developments. These changes would also allow the Minister to require agreements between the landowner and the municipality or the landowner and the Minister to address inclusionary zoning matters and to ensure continued compliance with affordable housing requirements.

Site Plan Control

Site plan is an optional tool under the *Planning Act* that allows the council of a local municipality to control certain matters on and around a site proposed for development. This control over detailed site-specific matters, such as access (for pedestrians and vehicles), walkways, lighting, waste facilities, landscaping, drainage, and exterior design, ensures that a development proposal is properly planned and designed, fits in with the surrounding uses and minimizes any negative impacts. The recent amendments to section 47 of the *Planning Act* allow the Minister to address site plan matters in areas covered by a zoning order, where needed. The new authority to address site plan matters could be used in conjunction with a new Minister's Zoning Order or an amendment to an existing Minister's Zoning Order.

This authority, if utilized by the Minister, would supersede municipal site plan authority, where the Minister so provides in a zoning order. Through the zoning order the Minister could require a municipality and a development proponent (or landowner) to enter into an agreement dealing with matters related to site plan control (i.e., in other words, the same types of matters that may be addressed through typical site plan control). However, the Minister will be able to give binding direction outside the zoning order concerning the agreement to scope the matters that need to be addressed or to specify how the matters are to be addressed.

Implementation of Enhanced Minister's Zoning Orders

Attachment 2

The Ministry is inviting public comment on the use of these enhanced powers regarding site plan control and inclusionary zoning in zoning orders. The Ministry is interested in hearing feedback as to whether the legislative changes made in this regard by Bill 197, the *COVID-19 Economic Recovery Act, 2020* should be expanded, repealed or otherwise adjusted. Further the Ministry is interested in feedback as to how this enhanced authority, subject to any potential changes that might be made to it, ought to be used. As noted above, the new authority could be used to support the development of transit-oriented communities, the development of projects of strategic importance, the optimization of surplus lands (e.g. (for example), affordable housing, long term care homes and other health care facilities) or other recovery efforts (e.g. (for example), economic development and job creation). The Ministry is interested in feedback regarding circumstances where this enhanced authority could be particularly helpful and circumstances where it might be better not used.

The Ministry will meaningfully consider all feedback received and determine whether changes should be made to the provisions of section 47 of the *Planning Act* enacted by Bill 197, the *COVID-19 Economic Recovery Act, 2020* and, assuming the provisions are maintained, at least in part, whether there are best practices that might be articulated to guide the implementation of this enhanced authority.

Supporting materials

Related links

[Planning Act \(https://www.ontario.ca/laws/statute/90p13\)](https://www.ontario.ca/laws/statute/90p13)

[Bill 197, COVID-19 Economic Recovery Act, 2020 \(See Schedule 17\) \(https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-197\)](https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-197)

View materials in person

Important notice: Due to the ongoing COVID-19 pandemic, viewing supporting materials in person is not available at this time.

Please reach out to the Contact listed in this notice to see if alternate arrangements can be made.

Provincial Planning Policy Branch
777 Bay Street
13th floor
Toronto, ON
M7A 2J3
Canada

Comment

Let us know what you think of our proposal.

Have questions? Get in touch with the contact person below. Please include the ERO (Environmental Registry of Ontario) number for this notice in your email or letter to the contact.

[Read our commenting and privacy policies. \(/page/commenting-privacy\)](/page/commenting-privacy)

Submit by mail

Planning Consultation
Provincial Planning Policy Branch
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Connect with us

Contact

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December 3, 2020

DELIVERED ELECTRONICALLY ONLY

Hon. Steve Clark
Minister of Municipal Affairs and Housing
17th Floor, 777 Bay Street
Toronto, ON
M7A 2J3

Dear Minister,

Re: Increased Use of Minister's Zoning Orders

The Ontario Professional Planners Institute (OPPI) represents over 4,000 Registered Professional Planners (RPPs) from across the province. RPPs have gone through an extensive education, experience, and examination process to become qualified and are employed in municipalities, public agencies, private sector, not-for-profits, academia, and senior levels of government. OPPI, on behalf of the planning profession in Ontario, is a trusted and reliable source of information about land use planning and the planning process.

We recognize the Ontario government's interest in streamlining the planning process as it relates to priority projects integral to COVID-19 recovery including affordable housing, senior living environments and transit projects. Separately, OPPI has worked with Ministry staff and industry stakeholders including AMO, RPCO, OHBA, BILD and OBOA, to provide you with recommendations around delegation of approvals from elected Councils to qualified municipal staff and measures to strengthen oversight of the planning profession. We believe these measures are integral to COVID - 19 recovery efforts.

OPPI appreciates the potential efficacy of Section 47 of the Planning Act and the use of Minister's Zoning Orders (MZO's) to assist with economic recovery. MZO's are effective in substantially streamlining timelines associated with planning applications, public notice, consultation, Committee and Council deliberations and appeals. However, the significant increase in use of MZO's over the past several months warrants a cautionary approach as they have the potential to:

- **Create delays as planning approvals shift from the local community level to Queen's Park.**
During the 1980s and 1990s, previous Progressive Conservative governments recognized the benefits of a policy-led planning system. Routine approvals such as Plans of Subdivision were transferred from MMAH to municipalities. The provincial role was focused on setting policy through legislation, the Provincial Policy Statement(s) and Provincial Plans. Municipalities and their planners were given responsibility for local approvals. The opportunity for project proponents to obtain an MZO "fast track" has the potential to create significant bottlenecks at Queen's Park which would negate the intent of the MZOs. Including some level of local expertise

is necessary to ensure efficient and effective local planning that is sensitive to the wider range of issues affecting the host community and their neighbours – particularly on matters as close to the ground as zoning or site plan control and the preservation of the public interest in development agreements with municipalities.

- **Introduce uncertainty and risk into real estate markets.** Local businesses and homeowners make investments in Ontario real estate based on neighbourhood characteristics codified in planning documents like municipal Official Plans. Increased use of MZO's has the potential to introduce unexpected impacts on neighbouring properties and their mortgagees. This uncertainty and risk can further destabilize what are already volatile property markets in key Ontario locations.
- **Undermine public trust in the planning process.** Since the rationale for selecting one project over another for the use of an MZO is not transparent or published, public allegations of arbitrariness and favouritism will continue to be challenging issues for the government to manage.

OPPI offers two recommendations to help mitigate the drawbacks associated with the current increased use of MZO's:

1. **In the immediate term, commit to establishing transparent provincial criteria on the use of MZO's for provincially significant, priority projects** Transparent criteria would reduce uncertainty in the public's eye and help to lessen the likelihood of an approvals bottleneck as proponents attempt to shift routine applications from municipal to MMAH staff.
2. **Over the medium term, commit to reduced reliance on MZO's and instead, rely on measures to streamline the overall municipal planning process equitably in the provincial and municipal interests for all projects.** As noted above, OPPI has separately provided recommendations to ensure greater delegation of approvals from elected councils to qualified staff and to strengthen the oversight of the planning profession. If accepted, these recommendations would provide immediate benefit for communities using established tools and processes.

OPPI offers these recommendations as a trusted advisor with deep knowledge and understanding of community planning and its process. We are available at your convenience should you or your officials wish to discuss these matters further.

Sincerely,



Justine Giancola, RPP, MCIP
President

cc: Kailey Vokes, Director of Policy, Office of the Premier
Alex Barbieri, Director of Policy, Minister's Office, MMAH