



Council Report

DATE: Tuesday, November 29, 2022

WARD: ALL

TITLE: CITY OF VAUGHAN'S RESPONSE TO BILL 23

FROM:

Michael Coroneos, Deputy City Manager, Corporate Services, City Treasurer and Chief Financial Officer

Wendy Law, Deputy City Manager, Administrative Services and City Solicitor

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ACTION: DECISION

Purpose

To seek Council endorsement on comments on Bill 23, the More Homes Built Faster Act, 2022. These comments will be forwarded to the Province by December 9, 2022 for their review.

Report Highlights

- The Province of Ontario introduced Bill 23, the More Homes Built Faster Act, 2022, on October 25, 2022.
- Bill 23 proposes significant changes in land use planning, parkland dedications, and Development Charges (DC) and Community Benefit Charges (CBC) collections.
- Bill 23 proposes to remove planning responsibilities from the four upper tier municipalities in the GTA, as well as the County of Simcoe and the Region of Waterloo; and impose limits on Conservation Authorities to comment on planning applications.
- The deadline to submit comments on Bill 23 has been extended to December 9, 2022.
- This report provides staff comments on Bill 23.

Recommendations

1. THAT staff report "City of Vaughan's Response to Bill 23" be received; and
2. THAT a copy of this report be submitted to the Province of Ontario as the City's comments to Bill 23.

Background

On October 25, 2022, the government of Ontario introduced Bill 23, the More Homes Built Faster Act, 2022, which proposes a series of changes to help deliver 1.5 million new homes by 2031.

Bill 23 proposes to amend multiple statutes and create a new statute:

- Planning Act, 1990
- Development Charges Act, 1997
- Conservation Authorities Act, 1990
- Ontario Land Tribunal Act, 2021
- Ontario Heritage Act, 1990
- Municipal Act, 2001
- City of Toronto Act, 2006
- New Home Construction Licensing Act, 2017
- Ontario Underground Infrastructure Notification System Act, 2012
- Supporting Growth and Housing in York and Durham Regions Act, 2022 (new)

Bill 23 proposes significant changes in land use planning, parkland dedications, and Development Charges (DC) and Community Benefit Charges (CBC) collections at the municipal level. It also proposes to remove planning responsibilities from the four upper tier municipalities in the GTA, as well as the County of Simcoe and the Region of Waterloo; and imposes limits on Conservation Authorities to comment on development applications under the *Planning Act*.

On November 23, 2022, the Province of Ontario extended the comment period of Bill 23 to December 9, 2022. Details can be found at: <https://ero.ontario.ca/notice/019-6163>

The following section provides a summary of the key changes together with staff review/comments.

Analysis and Options

1. Affordable and Attainable Housing

Bill 23 has introduced a new definition of affordable housing, generally defined as being priced at no greater than 80% of the average purchase price/market rent in the year a unit is rented or sold. It has also introduced a category of “attainable housing”, which will be defined in future regulations. As part of the Bill 23 announcement, the Province has also made statements that there will be a proposed change to the regulations for an upper

limit of 5% of the total number of units in a development can be required to be affordable as part of a potential inclusionary zoning program, and a maximum period of 25 years over which the units would be required to remain affordable. This is not in the legislation. Bill 23 exempts affordable housing, attainable housing and inclusionary zoning units from DC, CBCs and parkland dedication requirements.

Staff are concerned that, given the high housing prices in Vaughan, the 80% of average market price as set by Bill 23 may not prove to be affordable to low or moderate income households. A clearer definition and implementation details for affordable and attainable housing would also be needed to manage issues such as household eligibility and ensuring qualifying units remain affordable long term. For instance, who is to maintain a list of eligible families to rent/purchase these units? At what level would such a list be maintained, locally, GTA-wide, or provincially? Will the resale of the affordable and attainable units be limited only to those on the eligibility list? Who will monitor whether a unit is rented or sold at 80% of the average purchase price or market rent? And what if an owner/tenant no longer meets the eligibility requirements while occupying such a unit?

2. Development Charges and Community Benefit Charges

The proposed amendment to the *Development Charges Act, 1997*, by Bill 23 include:

- For all new DC by-laws passed since January 1, 2022, DC rates would be phased in over a 5-year period. In year one, the maximum DC that could be charged would be discounted at 20%. This discount would decrease by 5% each year until year five, where the full rates would apply.
- Historical service level for DC eligible capital costs (except transit) is proposed to be extended from 10 to 15 years, thereby effectively reducing funding envelopes and rate calculations.
- DC by-laws will expire every 10 years, instead of every five years. However, DC by-laws can still be updated any time before the expiry date.
- Removal of growth studies and land costs from the rate calculation.
- Cap the interest paid on phased DCs for rental and institutional to average quarterly prime rate plus 1%. The City's current DC interest policy is set at 5% whereas the new rate under the Bill would be 6.95% based on current prime rate.
- DC/CBC/parkland exemptions for affordable and attainable housing: The City would be required to enter into agreements with the developers that require the residential unit to be affordable for a period of 25 years or more from the time the unit is first rented or sold, or that require the residential unit to be attainable when it is first sold. The affordable residential unit agreements will be registered on title for 25 years, similar to restrictive covenants.
- The addition of second and third residential units on a parcel of land zoned for residential use is exempt from DCs.

- Reduced DC for rental housing development by:
 - 25% in relation to rented residential premises with three or more bedrooms,
 - 20% for two-bedroom units, and
 - 15% for all other residential units.

These changes will restrict and reduce the City's ability to collect revenue for growth related infrastructure projects, ultimately delaying projects or require the City to find new funding sources or shift the burden of paying for growth to the tax base.

The proposed amendments in Bill 23 would also affect the collection of CBC:

- Maximum CBC payable would be based only on the value of land proposed for new development, not the entire parcel that may have existing development.
- Maximum CBC would be capped at 4% of land value, further reduced by a ratio of proportionate new gross floor area to existing building square footage.

Further reduction of this revenue collection for growth related projects would ultimately delay implementation of these projects.

3. Parkland Dedication and Cash-in-lieu

Under Bill 23, the maximum amount of land that can be conveyed or paid in lieu is capped at 10% of the land or its value for sites under 5 ha, and 15% for sites greater than 5 ha, and the maximum alternative dedication rate is reduced to 1 ha/600 units for land conveyance and 1 ha/1000 units for the cash in lieu calculation. Furthermore, the Bill expands CIL exemptions mentioned under Section 2.

Bill 23 also proposes a parkland rate freeze as of the date that a zoning by-law or site plan application is filed. The freeze remains in effect for two years following approval. If no building permits are issued in that time, the rate in place at the time the building permit is issued would apply. This change may result in lower valuations resulting in lower CIL collections. Furthermore, encumbered parkland/strata parks, as well as privately owned publicly accessible spaces (POPS) will be eligible for parkland credits. It also allows landowners to identify land they intend to provide for parkland, and if the municipality disagrees with the land that is to be conveyed, the municipality shall provide notice and the landowner may appeal to the Ontario Land Tribunal. The Tribunal shall order that the land be conveyed as identified and the land will be counted towards parkland dedication under municipal by-law, if the land satisfied the prescribed criteria (yet to be proposed by the Province). This is a new requirement that could see municipalities being obligated to take lands that they do not want to use for parkland but will be counted towards the overall parkland requirements under their by-law.

Under Bill 23, the City would be required to prepare parks plans prior to the passing of any future parkland dedication by-law. However, it will not apply to by-laws already passed. Parkland dedication will apply to new units only and no dedication can be imposed for existing units.

Municipalities will be required to spend or allocate 60% of parkland reserve funds at the start of each year. Municipalities will be required to spend or allocate 60% of its parkland reserve funds at the beginning of each year. This may result in the inability to acquire strategic lands or a delay in funding for park renewals.

Under Bill 23, staff has estimated that the City may lose 70% to 90% in cash-in-lieu collection for parkland, and 45% in city-wide parkland provision. This leads to an estimated cash-in-lieu collections reduction from \$608M to \$61M. There will also be reduced DCs for park and trail design and construction, and less funding for park renewal , which could delay park development.

Bill 23 will also have a significant social impact as there will be more people but less parks. It is estimated that the City will have 60%-80% less parks locally as we move forward to service a larger population, down to only 5 sq ft of parkland per person locally.

Bill 23 will also lead to less public space and more private space, fewer programable outdoor facilities (sports fields, playgrounds, tennis courts), and a disparity between communities, which could impact public health and quality of life.

4. Removal of Upper Tier Municipal Planning Responsibilities

Bill 23 proposes that all upper tier municipalities in the Greater Toronto Area, as well as Waterloo and Simcoe will be removed from the *Planning Act* approval process for both lower tier official plans amendments and plans of subdivision. It adds a new definition of “upper-tier municipality without planning responsibilities”, which applies to York Region. If Bill 23 is enacted, York Region may still provide advice and assistance to the lower tier municipalities by agreement, but would no longer have the authority or requirement to adopt official plans or amendments, approve lower tier official plans or amendments, or appeal any planning decision. The Minister would (unless otherwise provided) therefore become the approval authority for all lower tier Official Plans and Official Plan Amendments, whose decisions are not subject to appeal.

Staff understand that, to deliver 1.5 million homes by 2031, some extraordinary measures must be taken to streamline the planning approval process and reduce/eliminate

duplications. If the upper tier municipal planning responsibilities are to be removed, a new body, or a new system of approval, needs to be created to coordinate the service delivery.

5. Conservation Authorities

Under Bill 23, a planning application within a Conservation Authority's regulated area (including wetlands) will not require a permit. Conservation Authorities will still comment on planning applications but limited only to natural hazards and flooding.

Staff understand that this provincial initiative is intended to reduce/eliminate duplications and help expedite the planning approval process. It is noted that the City currently relies heavily on in-house expertise of the Toronto and Region Conservation Authority (TRCA) to review/comment on planning applications in some specific environmental areas beyond natural hazards and flooding. Since it would be unrealistic to maintain all required expertise in-house, if Bill 23 is enacted, the City will need to decide on the most effective way to address these needs. This could also potentially lead to higher costs on the municipality in order to obtain all the necessary expertise to assist in development approvals within a short period of time as imposed by other provincial legislation.

6. Ontario Land Tribunal

Bill 23 proposes to increase the power of the Ontario Land tribunal (OLT) to order costs against the unsuccessful party and dismiss appeals for undue delay by the party who brought the proceeding. It will also allow the Lieutenant Governor in Council to make regulations requiring the OLT to prioritize the resolution of specified classes of proceedings. The Minister may make regulations governing the practices and procedures of the OLT which may include prescribed timelines for specified steps for certain classes of proceedings.

Currently, costs are not awarded in an OLT hearing against the losing party unless "the conduct or course of conduct of a party has been unreasonable, frivolous or vexatious or if the party has acted in bad faith" (OLT Rules of Practice and Procedures). With Bill 23, it is anticipated that the OLT Rules of Practice and Procedures will be amended to allow for costs to be awarded generally to the losing party, similar to civil litigation. This will add a layer of OLT proceedings for lawyers to argue on costs, similar to the civil court system. Clearly, the intent of the legislation is to discourage parties from proceeding with any appeal to the OLT without a strong case on its merits.

7. No third-party Appeal and No Public Meeting for Subdivisions

Bill 23 proposes that no one other than the applicant, the municipality, certain public bodies, and the Minister will be allowed to appeal Committee of Adjustment decisions under the Planning Act, including consents and minor variances. All existing third-party appeals in this category, where no hearing date has been set as of October 25, 2022 will be dismissed. The scheduling of a case management conference or mediation will not be sufficient to prevent an appeal from being dismissed.

Bill 23 also proposes that public meetings will no longer be required for approval of a draft plan of subdivision.

While these proposed changes can certainly save time and resources for both staff and the developers, staff are concerned that the removal of third-party appeal rights for minor variances and consents and public meetings for plans of subdivision may place members of our existing community at a disadvantage in planning decisions and disputing over a next-door development.

8. Lifting of 2-year moratorium

Bill 23 proposes deletion of the prohibition from filing amendments or minor variances, as applicable, to a new Official Plan, a Secondary Plan, and a Zoning By-law before the second anniversary. As a result, interested parties and individuals may file an application to amend the respective parts of the Official Plan and Zoning By-law sooner. While it may provide greater flexibility for developers, it will impact the authority of the City's Official Plan and Zoning By-law in guiding City-wide developments.

9. Architecture, Landscape and Cultural Heritage

Bill 23 Proposes to remove architectural details and landscape design aesthetics from the scope of site plan control. Under Bill 23, a heritage property cannot be designated unless it has been listed on the City's heritage register when a planning application is received. In other words, the City cannot add the property to its heritage register if there is a planning application received. Furthermore, those that have already been listed on the City's heritage register will need to be reviewed and removed if not designated.

Staff are of the opinion that, as a rapidly growing city, the City of Vaughan needs to enhance urban design and the preservation of its cultural heritage to ensure it stays as a highly attractive destination for people and investors. Since the City of Vaughan is taking measures to ensure all site plan applications will be processed and a decision delivered within 60 days pursuant to Bill 109, there is no risk of delaying a planning application if

these important issues can continue to be considered through the site plan approval process. Since municipalities vary significantly from each other, staff is of the opinion that the Province shall leave it with each municipality to decide if it wishes to continue including architectural details and landscape design aesthetics in site plan approval.

Bill 23 gives no time to the City to review, assess, and add properties that are of heritage value or interests to the heritage register, or to designate those that have already been on the list. As a result, significant heritage properties may be lost to new developments.

10. Wetlands

Bill 23 is leaning toward allowing development over wetlands if it can prove a net positive impact on wetlands is provided.

Staff are very concerned about this proposed change. While it would be hard to deny such a development if there is indeed a “positive impact” demonstrated and provided, wetlands are amongst the most sensitive environmental areas in our natural heritage system, which is often the habitats of some endangered species found in our area, such as Jefferson’s Salamander and Redside dace. It would be very difficult to evaluate and prove a “positive impact” if the habitat of a Jefferson’s Salamander is destroyed.

11. Gentle Density and Intensification

Bill 23 permits up to three residential units per lot, with no minimum unit sizes, without the need to apply for a rezoning. A new unit built under this permission would be exempt from DC, CBC, and parkland requirements, and no more than one additional parking space per additional unit can be required. Furthermore, developments of up to 10 residential units will be exempted from site plan control.

Staff are concerned with the increased demand for required parking as it could be a challenge with potential complaints for unauthorized street parking, emergency services access and may further cause issue for snow clearance during winter. Staff also anticipate greater number of applications for variances to permit accessory structures.

11. Federal Funding

While Federal funding is not part of Bill 23, staff noticed that the Federal government is to provide \$4 billion over the next five years in its Housing Accelerator Fund, to help cities and communities to create 100,000 new housing units. The Federal government has also promised to provide cities and communities with support, such as an annual per-door

incentive or up-front funding for investments in municipal housing planning and delivery processes that will speed up housing development.

There is also an Affordable Housing Innovation Fund launched by the Federal government in 2016 and a Rapid Housing Initiative (RHI) launched by Canada Mortgage and Housing Corporation (CMHC) in 2020 that provide funding to facilitate the rapid construction of new housing and the acquisition of existing buildings for the purpose of rehabilitation or conversion to permanent affordable housing units.

Staff believe housing is the responsibility of all levels of government. The Province should help make sure the Federal funds are made available to municipalities in a timely manner.

Financial Impact

There are no financial requirements for new funding associated with this report, however these amendments do represent a significant financial strain on the City’s ability to generate funds that are used to pay for growth related infrastructure.

As illustrated by the chart below, potentially, the proposed amendments are estimated to result in the cumulative annual revenue loss of approximately \$169 to \$194 million.

Item	Cumulative ('000s)	
	Low	High
Impact of DC 5yr Phase-in	\$15,400	\$23,900
Affordable Housing exemption (assume 5%)	\$7,900	\$12,200
Growth Studies removed from DC study	\$6,100	\$6,100
Land Removed from DC study - Soft Services	\$18,520	\$18,520
Land Removed from DC study - Eng Services	\$78,800	\$78,800
CIL/Parkland	\$42,700	\$54,900
Total Impact	\$169,420	\$194,420
Tax Impact	76.9%	88.2%

These lost revenues are currently used to build new roads, sewers, community centres, libraries, fire stations and parks to serve the rapid growth across the City. The loss of these revenues will result in delays in building new infrastructure, possible decreased service levels, delayed growth and/or significant increases to property taxes to fund necessary infrastructure.

The City may have no choice but to reduce service levels in new communities. This would impact how new communities are planned and would create inequities across the City with existing communities having easier access to libraries, community centres and parks, while new communities would have to travel longer distances to access those same services.

Without other funding sources, the financial burden will fall to the property tax base. This could result in a 77-88% increase to property taxes to maintain existing service levels. The impact of the property tax increase would be an estimated \$1,374-1,570 property tax increase per year to the average homeowner. Although the proposed changes may theoretically produce homes that are affordable initially, there is very little in the proposed legislation that would suggest that these cost savings for the development industry would be passed down and directly translated into more affordable housing for the community, resulting in increasing property taxes that will impact the long-term affordability for new and existing homeowners. The premise that growth pays for growth will no longer be applicable as the burden shifts from developers to the taxpayer.

Broader Regional Impacts/Considerations

If Bill 23 is enacted, the role York Region has in the processing of official plan amendment and draft plan of subdivision applications may be reduced/eliminated. However, York Region can continue to influence local planning decisions unless a new mechanism is created to coordinate the planning, allocation, and delivery of services.

Conclusion

Bill 23 contains some extraordinary measures by the Province to increase housing supply and improve housing affordability. While Bill 23 may help reduce duplications and streamline planning approvals, it potentially poses a serious threat to municipal finance, rights of homeowners, natural heritage features, and the outdoor space of future communities.

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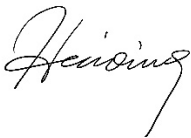
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