

# Town of Whitby Staff Report

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**Report Title: Bill 23, More Homes Built Faster Act, 2022**

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**Report to: Council**

**Date of meeting:** November 24, 2022

**Report Number: PDP 65-22**

**Department(s) Responsible:**

Planning and Development Department  
(Planning Services)

**Submitted by:**

R. Saunders, Commissioner of Planning  
and Development

**Acknowledged by M. Gaskell, Chief  
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## 1. Recommendation:

1. That Report PDP 65-22 be endorsed as the Town's comments on key elements of the Province of Ontario's Bill 23 – the More Homes Built Faster Act, 2022, and other associated proposed changes;
2. That the Clerk forward a copy of Report PDP 65-22 to the Honourable Steve Clark, Minister of Municipal Affairs and Housing, the Premier of Ontario, Doug Ford, and MPP Lorne Coe; and,
3. That the Clerk forward a copy of Report PDP 65-22 to Durham Regional Council and the area municipalities.

## 2. Highlights:

- The Province introduced Bill 23 - More Homes Built Faster Act, 2022 on October 25. The Bill was in its second reading at the time this staff report was prepared.
- Bill 23 is one of three (3) omnibus style bills introduced and/or passed by the Provincial government since 2019 to address housing supply.
- Bill 23 introduces changes to the *Planning Act*, *Development Charges Act, 1997*, and eight other Acts, as well as Provincial Policy documents, with the goal of providing 1.5 million new homes by 2031. Most of the proposed changes have a 30-day comment period closing on November 24, 2022.
- In principle, the Town of Whitby supports the Province's efforts to address housing needs in Ontario, including affordable housing. However, the Town has several concerns on how these efforts will affect the Town's ability to support those housing goals.
- The proposed changes in Bill 23 would significantly reduce municipal collections from developers to pay for and deliver infrastructure to support population growth (e.g. development charges for road improvements, stormwater infrastructure, parks, recreational facilities, libraries, etc.).
- The Town supports the principle that growth should pay for growth. With the proposed reduction in municipal revenues from development charges (DCs), community benefit charges and cash-in-lieu of parkland dedication fees collected from developers, a larger burden of the growth-related infrastructure costs will shift to property taxes / existing residents and businesses.
- The proposed mandatory five-year phase-in of DC fees included in Bill 23 would have reduced the Town's DC collections by \$18.8 million over the same five-year period. In infrastructure terms, this would have meant \$9.9 million less DC spending for roads infrastructure and \$6.2 million less in parks and recreation infrastructure.
- The Region has estimated a significant increase in growth for Whitby's population, to reach 245,000 by 2051. A shift to property taxes would be required to fund a larger share of this future growth-related infrastructure, which may result in delays in the delivery of infrastructure, as municipalities balance limited tax funding to reinvest in existing/aging infrastructure and new infrastructure to support growth.

- The Province has proposed a housing target for Whitby of 18,000 new homes by 2031. Whitby currently has approximately 18,000 units either under review, approved, and/or registered, with more to come through new subdivisions in Brooklin, remaining subdivisions in West Whitby, and infill elsewhere across Whitby.
- However, the Town does not have control over when developers submit applications for building permits, and/or build approved units. Whitby has the second fastest approval times for development applications, compared to other municipalities across the GTA, as reported in a recent [Municipal Benchmarking Study](#). Many developers wait for favorable market conditions, often related to interest rates, to begin building units.
- While Bill 23 may provide for more housing units, significantly reducing land use and infrastructure planning oversight of upper and lower tier municipalities, as well as conservation authorities, has the potential to cause public safety impacts (e.g. traffic, parking, flooding issues, water quality, air quality), as well as the loss of natural heritage and culture heritage resources, parkland, and overall good land use planning practices that would otherwise provide for a mix of housing options in sustainable, livable communities.
- By limiting third-party appeal rights, Bill 23 may result in faster approval processes, but limits public participation in a process that has long-term impacts on the local community. It also limits the ability of neighbours to bring forward concerns about a development that may directly affect the use of their property.
- Bill 23 will require that Heritage registers be reviewed and decisions made whether listed properties are to be designated, and if not, then removed from the register within 2 years. Once removed, those properties cannot be added back to the Register for another 5 years.
- Bill 23 provides no mechanisms to ensure, and it is unclear how, any potential savings from the proposed changes would be passed on to the homebuyer to ensure long-term affordability. An increase in supply does not necessarily mean an increase in affordability.
- Bill 23 will create a significant burden on municipal staff resources to implement the proposed changes, at a time when many municipalities are dealing with increased (financial and staffing) constraints.

- The 30-day comment period for the majority of changes proposed under Bill 23 is insufficient to understand the long-term impacts on local communities. Adequate consultation needs to be undertaken for such substantial and far-reaching changes.
- The Province is also proposing to change the Greenbelt Plan Boundary to allow for more housing. The Region of Durham recently released Phase 2 of the Growth Management Study for Envision Durham, which proposes to expand Whitby's urban boundary by approximately 500 hectares, to accommodate future population and employment growth to 2051. While no lands are proposed to be removed from the Greenbelt Plan Area in Whitby, it is unclear if the removal of certain lands elsewhere in Durham will have an effect on the proposed expansions to Whitby's urban area.

### 3. Background:

Bill 23 is the third step in the government's changes to the *Planning Act* and other related legislation, following on the *More Homes, More Choice Act, 2019*, and the *More Homes for Everyone Act, 2020* (Refer to Report PDP 31-22).

The *Strong Mayors, Building Homes Act, 2022* was also passed earlier this year, affecting the mayors of Toronto and Ottawa. (Refer to Report CAO 24-22.) On Nov 16, the [Better Municipal Governance Act, 2022](#), was introduced to expand similar powers to municipalities in Durham and other regions.

Bill 23 impacts legislation and regulations related to the following:

- Planning Act;
- Development Charges Act;
- Municipal Act;
- Conservation Authorities Act;
- Ontario Heritage Act;
- Ontario Land Tribunal Act;
- Ontario Building Code Regulatory Changes;
- City of Toronto Act;
- New Home Construction Licensing Act;
- Ontario Underground Infrastructure Notification System Act; and,
- Supporting Growth and Housing in York and Durham Regions Act.

The [Environmental Registry of Ontario \(ERO\)](#) notices and regulatory registry postings provide details on changes proposed for each Act/Regulation subject to Bill 23. Comments regarding the ERO postings are also being sought.

The Province is considering changes to the boundary of the Greenbelt Plan to remove lands from the Greenbelt to allow for residential development ([ERO Notice 019-6216](#)). Comments on the Greenbelt Plan changes are due Dec 04, 2022.

In addition, the province is proposing to update and integrate the Provincial Policy Statement (PPS) and A Place to Grow: Growth Plan for the Greater Golden Horseshoe ([ERO Notice 019-6177](#)), as well as revoke the Parkway Belt West Plan and the Central Pickering Development Plan. Comments on the PPS and Provincial Plan changes are due December 22, 2022.

The Region of Durham has submitted comments to the Province on Bill 23, as well as the proposed changes to the Greenbelt. Refer to Regional Reports [#2022-INFO-92](#) and [#2022-INFO-93](#).

#### 4. Discussion:

A high-level overview of the key changes proposed by Bill 23 is provided in this section. Given the volume of information on all proposed changes, staff will report back to Council as needed, when more information and time for analysis is available.

##### Key Changes to the Planning Act:

The Planning Act, together with the Provincial Policy Statement and other provincial policy tools (e.g. the Growth Plan for the Greater Golden Horseshoe) regulate land use planning in Ontario and aim to direct population growth in a sustainable manner over the long-term planning horizon.

Several changes to the Planning Act under Bill 23, and the potential impacts on the municipality, are summarized in the table below.

Topic	Proposed Changes	Impact on the Municipality
Removal of Upper Tier Planning Approval powers	<p>The Region of Durham will be defined as an “Upper-Tier Municipality without Planning Responsibilities.</p> <p>The Minister would become the approval authority for certain Official Plan matters, not subject to appeal.</p>	<p>Provides a more streamlined approvals process.</p> <p>Increases burden on lower-tier municipal staff to take on planning responsibilities downloaded from the Region.</p> <p>Will result in uncoordinated planning for critical infrastructure that crosses local municipal boundaries, as well as uncoordinated long term planning for intensification, population and employment growth.</p>

<p>Additional Units</p>	<p>Up to three (3) residential units to be permitted on a residential property.</p> <p>Additional units would be exempt from Development Charges (DCs) / Community Benefit Charges (CBCs) and Parkland dedication.</p> <p>No more than one additional parking space can be required.</p>	<p>Would increase housing options in mature areas, without significantly impacting the overall built form character of the area.</p> <p>Will cause safety issues if additional units are not appropriate for the building/lot size (e.g. stormwater, sewer, flooding; emergency service access, other building code issues).</p> <p>Will in some cases, cause or exacerbate on-street parking issues and traffic impacts; other impacts related to noise, garbage, snow removal, etc.</p> <p>Increases burden on municipal by-law staff to enforce compliance.</p>
<p>Inclusionary Zoning/Affordable and Attainable Housing</p>	<p>The number of affordable units that may be created through inclusionary zoning will be reduced from 10 per cent to 5 per cent.</p> <p>The threshold for affordability will be 80 per cent of average resale price for ownership housing, or 80 per cent of average market rent for rentals.</p> <p>A new category of “attainable housing” will be defined in future regulations.</p> <p>Affordable housing, attainable housing and inclusionary zoning units will be exempt from DC, CBCs and Parkland dedication.</p>	<p>Exemptions from DCs/CBCs and Parkland dedication may encourage the development of more affordable/attainable units.</p> <p>Will result in additional residents, placing increased demand on infrastructure, such as parks, recreational facilities, libraries, fire services and stormwater infrastructure. Maintaining service levels to meet this increased demand will need to be funded through property tax increases.</p> <p>The municipality should be able to financially secure DCs/CBCs and/or parkland dedication against a property in order to ensure that affordable/attainable housing remains affordable/attainable for the entire affordability period.</p>

<p>Zoning in Major Transit Station Areas (MTSAs)</p>	<p>Zoning must be updated to include minimum heights and densities within approved MTSA and Protected MTSAs within one year of MTSA/PMTSA being approved.</p> <p>Current protections from Zoning appeals in PTMSAs would no longer apply if the zoning is not updated within 1-year.</p>	<p>Currently, the Town has one PMTSA around the Whitby GO Station.</p> <p>Will increase burden on municipal staff resources to ensure zoning compliance within a year timeframe.</p> <p>The Region passed Regional Official Plan Amendment (ROPA) 186 in December of 2021, which establishes policies and delineates the Whitby GO PMTSA.</p> <p>The Town's ongoing Comprehensive Zoning review is a multi-year project that would address zoning compliance in the Whitby GO PMTSA.</p>
<p>Subdivision approvals</p>	<p>Statutory Public Meetings will no longer be required for draft plan of subdivision applications.</p>	<p>Streamlines the approvals process.</p> <p>Limits public participation/say on more complex/detailed plans of subdivision where Zoning amendments or other planning approvals are not required.</p>
<p>Site plan control</p>	<p>Developments of up to 10 residential units will be exempted from site plan control.</p> <p>Architectural detail, environmentally sustainable design elements and landscape design will be removed from the scope of site plan control.</p>	<p>Prevents local area municipalities from incorporating sustainable design practices in new development, including the Whitby Green Standards, which are designed to address energy efficiency and climate change.</p> <p>Limits the ability of staff to work with developers to create good urban design and pedestrian friendly environments in new development.</p> <p>Reduces efforts to support the conservation of heritage properties and their significant</p>

		heritage attributes, including landscapes.
Removal of third-party appeals to the Ontario Land Tribunal (the “Tribunal”)	<p>No one, other than the applicant, the municipality, certain public bodies, and the Minister will be allowed to appeal municipal decisions to the Tribunal. This applies to <u>all</u> <i>Planning Act</i> decisions (including consents and minor variances).</p> <p>The Region would no longer be permitted to file an appeal to the Ontario Land Tribunal, nor would conservation authorities (“CAs”).</p>	<p>Streamlines the appeals process.</p> <p>Limits residents, neighbouring landowners and other bodies from participating in the appeals process.</p> <p>Limits CAs rights to appeal decisions that may impact Natural Heritage, creating challenges for municipalities who rely on CAs for environmental review and expertise.</p> <p>Limiting a Third Party appeal results in the Town being the sole party representing the local public interest in a Tribunal appeal. This could result in the Town participating in more Tribunal appeals, as Council may feel compelled to represent the interests of parties who are no longer able to represent themselves.</p>
Parkland Dedication	<p>Parkland dedication requirements will be waived for affordable and attainable housing, and significantly reduced in higher density areas like major transit station areas (MTSAs).</p> <p>Landowners could provide input into the parkland conveyance process and will have the right to appeal municipal decisions regarding the size and location of parkland that the municipality requires.</p>	<p>Reducing parkland dedication in higher density areas, and/or waived for affordable and attainable housing units, seems counter-intuitive. Would create “have” and “have-not” communities with respect to the availability of park space. New communities that would have a lower- level of service for parkland, despite the significant increase in demand brought on by a rapidly growing municipality.</p> <p>Developers may propose/offer land that the Town considers</p>



	<p>Municipalities could be compelled to accept parkland that may be encumbered.</p> <p>The current parkland dedication requirements and alternative rates will effectively be reduced by 50 per cent.</p> <p>Municipalities will be required to spend or allocate 60 per cent of parkland reserve funds at the start of each year.</p>	<p>unacceptable due to location, size, configuration, grades, or general suitability.</p> <p>Accepting encumbered parkland (e.g., parkland with underground services, or environmentally contaminated parkland) often presents significant risks to the municipality. Encumbered parkland often requires greater maintenance, resulting in greater disruption for residents using those parks.</p> <p>Spending or allocating 60 per cent of funds each year may not be practical for municipalities (e.g. building up funds for a larger park related project over time, instead of trying to spend in the short-term to meet an arbitrary 60 per cent requirement.)</p>
<p>Community Benefit Charges (CBC)</p>	<p>A CBC is an additional fee in support of infrastructure needs related to high density development (can fund the capital cost of any public service associated with new growth). CBCs are based on the land value of the property and is currently capped at 4%.</p> <p>As noted above, some housing units will be exempt from CBCs.</p> <p>The proposed changes also limit the CBC value of the charge to the land for new development.</p>	<p>The overall impact would result in less CBC's collected to pay for growth related infrastructure required to support residents in high density developments, which wouldn't otherwise be included in DCs.</p> <p>The changes do not recognize that redevelopment will impact the need for services and the type of services needed in the area (i.e. converting non-residential land to residential land).</p> <p>Currently, Whitby does not have a CBC By-law in place, but plans are to establish one in the future.</p> <p>Refer to Attachment #1 for more information.</p>

**Key changes to the Development Charges Act:**

A Development Charge (DC) is a fee that is applied to new development (residential and non-residential), expanded non-residential development, and change of use development within the Town of Whitby

DCs help fund the Town’s growth-related capital infrastructure program required to service additional residents, and businesses resulting from growth, such as road improvements, parks, recreational facilities, libraries, fire stations, and stormwater infrastructure.

DC rates are applied based on the type of residential dwelling unit (i.e. small and large apartments, single/semi-detached houses, etc.) and gross floor area for non-residential development (\$ per square metre).

Under the Bill 23 changes, the amount of DCs collected as a part of new development will be reduced, and the cost difference for the construction cost of Whitby’s construction of growth-related infrastructure needed, to support growth will likely shift to existing taxpayers.

A high-level overview of proposed changes to the Development Charges Act is provided below. Refer to Attachment #1 for a more detailed review, which includes detailed financial impacts to the Town of Whitby, and specific recommendations related to proposed Bill 23 changes to the Development Charges Act and the Planning Act (Community Benefit Charges and Cash-in-Lieu of Parkland Dedication fees).

Topic	Proposed Changes	Impact on the Municipality
DC Increase / Exemption	<p>Five-year phase-in of DC rates proposed in all DC by-law updates from June 1, 2022 forward.</p> <p>There will be DC exemptions for certain housing units (see above).</p>	<p>Changes will result in reduced revenue from developers to pay for growth-related infrastructure and shift the burden onto existing taxpayers.</p> <p>In addition to the above, a shift to property taxes funding a larger share of growth-related infrastructure may also result in delays in the delivery of the infrastructure as limited tax dollars must be allocated towards growth-related infrastructure and funding repair/re-investment of aging infrastructure.</p>

DC Eligible Costs	Removal of land costs and studies as eligible costs recoverable through DCs.	<p>The cost of studies and land required for new roads and facilities to support population growth will need to be fully paid for by existing taxpayers in the future. The Town's current DC rates support the collection and funding of \$5.8 million of development related studies that would no longer be eligible for DC funding.</p> <p>By removing DC funding of planning studies, stormwater master plans, environmental assessments, which provide for specific planning and approval of infrastructure, could result in inefficient servicing, further limiting the supply of serviced land.</p>
DC Spending	Municipalities would be required to spend or allocate at least 60% of DC reserves for priority services (i.e., water, wastewater and roads) at the start of each year.	Similar to comments above on Parkland Dedication, requiring municipalities to spend or allocate 60% of funds on a time-restricted basis, may not be practical, depending on the need and priority for larger long-term projects vs. smaller short-term projects. More information is required and time to analyze. Refer to Attachment #1.

**Other Key Changes proposed by Bill 23:**

Several other Acts, provincial policy documents, regulations and procedures are proposed to be amended by Bill 23. Key changes are summarized in the table below.

Issue	Proposed Changes	Impact on the Municipality
Ontario Land Tribunal Act, 2022	Increased power to dismiss appeals for undue delay.	Changes will provide more clarity and certainty to help reduce backlog. However, the Tribunal already has powers to

	<p>Increased powers to order costs against a party who loses a hearing at the Tribunal.</p> <p>Regulations to establish priorities for scheduling of certain matters (e.g. prioritizing cases related to housing).</p>	<p>dismiss appeals that do not merit a hearing or are brought forward in bad faith to cause delays.</p> <p>Parties that bring forward appeals in good faith, should not be penalized because they are unsuccessful. Requiring that costs be awarded where the Town, a resident or ratepayers group seeks to defend their interests, discourages public participation in the appeals process.</p> <p>Establishing priorities for scheduling is beneficial, but should not cause unnecessary delay for other important matters (e.g. appeals related to employment land policies).</p>
<p>Natural Heritage Resources</p>	<p>The Ministry of Natural Resources and Forestry is considering developing an offset policy that would require a net positive impact to Natural Heritage Features, such as woodlands and wetlands.</p> <p>There are also proposed changes to the Ontario Wetland Evaluation System (OWES).</p>	<p>Further information and time for analysis are required.</p>
<p>Ontario Heritage Act</p>	<p>Two or more criteria (in regulation) will need to be met to warrant designation of a property under the</p>	<p>Reviewing the heritage register every two years increases burden on municipalities to evaluate</p>

	<p><i>Ontario Heritage Act</i>, instead of the current requirement of meeting one.</p> <p>Heritage registers will need to be reviewed and decisions made whether listed properties are to be designated, and if not, removed from the register within 2 years. If removed, properties cannot be added back until after 5 years.</p> <p>A process to be provided for how Heritage Conservation District (HCD) Plans can be amended or repealed, and criteria for HCDs will be established.</p>	<p>and undertake the designation process for non-designated properties on the heritage register, or potential properties not yet identified as having cultural heritage value.</p> <p>Whitby has two existing HCDs, with future planned HCDs in the Downtown Whitby area. The changes may result in requests for HCD plans to be reviewed and amended, putting increased burden on staff and resources.</p> <p>Overall, reduces ability to protect properties, which will result in the loss of Whitby's irreplaceable cultural heritage resources/ unique heritage character.</p>
<p>Conservation Authorities</p>	<p>Changes would limit conservation authority (CA) appeals of land use planning decisions.</p> <p>When acting as a public body, CAs would only be able to appeal with respect to matters related to natural hazard policies in Provincial Policy Statement.</p> <p>Limits the ability for municipalities to enter into agreements (Memorandums of Understanding) with CAs to support environmental protection/management.</p>	<p>CA expertise helps to ensure protection of public health and safety (i.e. natural hazards) as well as sustainable management of natural resources (i.e. water, natural heritage system, biodiversity, etc.) These lands are typically located in floodplains and/or are made up of significant natural features that support natural functions, protecting water quality, capturing carbon emissions, etc.</p>

	<p>Limits the ability for municipalities to engage CAs for review/advice on water quality/quantity, land conservation, ecosystem impacts.</p> <p>Limits CA ability to regulate lands (e.g. require permits) for site alteration and development in what are currently CA regulated areas adjacent to key natural heritage and natural hazard features.</p>	<p>Municipalities rely on CAs to provide review, advice and expertise that the Town does not provide in-house and may need flexibility to enter into agreements with CAs to review Planning Act applications to ensure the natural environment is protected.</p> <p>CAs should continue to have the authority needed to protect important natural heritage and natural hazard features, which is necessary for human health, safety and quality of life.</p>
<p>Rental Replacement</p>	<p>Municipal Act to give the Minister the authority to make regulations to prohibit and regulate demolition and conversation of residential rental properties under that section.</p>	<p>Further information and time for analysis are required.</p>

**Next Steps:**

Staff will continue to monitor Bill 23 and all associated changes as the bill receives Royal Assent, and changes come into effect. Staff will report back to Council on key changes as they are implemented.

**5. Financial Considerations:**

As noted earlier in this report, the proposed changes in Bill 23 challenge the principle of “growth paying for growth” as it relates the Town’s provision of infrastructure to support population growth. The Town relies on development-related fees (such as development charges and cash-in-lieu of parkland dedication fees) to pay for a significant portion of the cost to construct infrastructure to support additional residents and businesses (including employees and customers).

Over the past five years, the Town has collected \$171 million in development charges to pay for growth-related infrastructure. The proposed mandatory five-year phase-in of DC fees included in Bill 23 would have reduced the Town's DC collections by \$18.8 million over the same five-year period. In infrastructure terms, this would have meant \$9.9 million less DC spending for Roads Infrastructure and \$6.2 million less in Parks and Recreation infrastructure.

Capital projects (such as road improvements, new parks, trails, multi-use paths) requiring this funding would have been delayed, deferred, or supplemented by existing taxpayers via property taxes. More details of how Bill 23 may impact the Town's finances are provided in Attachment #1 to this report.

## **6. Communication and Public Engagement:**

Consultation on Bill 23 is the responsibility of the Provincial Government. The majority of proposed changes have a 30-day commenting period, closing on Nov 24, 2022. Further information can be found on the Environmental Registry of Ontario at [ero.ontario.ca/notice/019-6162](http://ero.ontario.ca/notice/019-6162).

## **7. Input from Departments/Sources:**

Review and input has been provided by the Planning and Development Department, as well as Financial Services, Legal and Enforcement Services, Community Services, and Strategic Initiatives.

Staff have also reviewed comments from other municipalities and related sources such as the Municipal Finance Officers Association, the Association of Municipalities of Ontario, municipality finance consultants and the Region of Durham. Staff will continue to monitor information from such sources as it is made available.

## **8. Strategic Priorities:**

The comments presented in this report align with the Town's Corporate Strategic Plan Priority to be a high performing, innovative, effective and efficient organization, and aligns with Council Goals for affordability and sustainability.

## **9. Attachments:**

Attachment #1 – Memorandum Financial Services Review of Bill 23