

REPORT TITLE: Response to Provincial Consultation on Minister's Zoning Orders

FROM: Andrea Warren, Interim Commissioner of Public Works

RECOMMENDATION

That the staff comments on the proposed implementation of amendments to the *Planning Act* that provide the Minister of Municipal Affairs and Housing enhanced authority to address certain matters as part of a Minister's Zoning Order as outlined in the report of the Interim Commissioner of Public Works, listed on the February 18, 2021 Planning and Growth Management Committee agenda, titled "Response to Provincial Consultation on Minister's Zoning Orders", be endorsed;

And further, that a copy of the subject report be forwarded to the Ministry of Municipal Affairs and Housing, the City of Brampton, the Town of Caledon and the City of Mississauga.

REPORT HIGHLIGHTS

- *Bill 197: The COVID-19 Economic Recovery Act, 2020* received Royal Assent on July 21, 2020 and introduced enhanced authority for the Minister of Municipal Affairs and Housing to address site plan matters and apply inclusionary zoning under Section 47 of the *Planning Act* when making a Ministerial Zoning Order (MZO).
 - On December 16, 2020, the Province sought public comment on the use of enhanced MZOs and whether the new authority could be used to support strategic opportunities.
 - The Region of Peel recommended that the Minister work with municipalities to develop a transparent process to be followed prior to issuing MZOs, including engagement protocols, communication tools, advance notice for municipalities and the public, and conditions for its use,
 - Where transparency and municipal collaboration is considered, the Region could be supportive of the use of a MZO for strategic initiatives where there is a demonstrated need for urgency that aligns with provincial, Regional, and local interests.
 - The Region does not support the use of MZOs on a routine basis as they can undermine important planning considerations, such as public consultation, technical review standards, municipal autonomy in planning decisions, and may by-pass elements of 'good planning'.
 - The Region remains committed to continuing to work with the Province to advance affordable housing objectives, while assisting in Ontario's economic recovery from the COVID-19 pandemic.
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DISCUSSION

1. Background

On December 16, 2020, the provincial government released a posting on the Environmental Registry of Ontario (No. 019-2811) seeking comments on the enhanced authority of the Minister of Municipal Affairs and Housing to address site plan matters and apply inclusionary zoning under Section 47 of the *Planning Act*, which authorizes MZOs.

The enhanced authority is already in-effect, having originally been introduced through *Bill 197: COVID-19 Economic Recovery Act, 2020* which received royal assent on July 21, 2020. The purpose of *Bill 197* was to stimulate Ontario's economy and recovery after the COVID-19 pandemic. Prior to the enactment of *Bill 197*, the Minister's authority to zone land did not include the ability to address site plan matters, or to require affordable housing units through inclusionary zoning.

The Ministry of Municipal Affairs and Housing (MMAH) is seeking public comment on the use of these enhanced powers regarding site plan control and inclusionary zoning in zoning orders. The province specifically identifies that the new authority could be used to support strategic opportunities in the Province. This could include, but is not limited to:

- The development of transit-oriented communities;
- The development of projects of strategic importance;
- The optimization of surplus lands (e.g. affordable housing and long-term care); and
- Other recovery efforts (e.g. economic development and job creation).

This report provides an overview of Regional staff comments that were provided to the Province through municipal consultation on MZOs and these enhanced powers. A copy of the Region's staff comments is included as Appendix I of this report.

2. Regional Comments on Amendments to Section 47 of the *Planning Act*

a) General Comments

The Region recognizes the Province's objectives to use MZOs to overcome potential barriers and development delays associated with the construction of affordable housing, as well as to advance strategic projects such as transit-oriented communities, health facilities, long-term care homes and economic development opportunities.

An important aspect of building complete communities in Peel is ensuring the principles of good land use planning are adhered to, including public consultation and municipal autonomy. Regional staff recommended that the Minister work with municipal partners to develop a transparent process to be followed prior to issuing MZOs. The process should include:

- A clear procedure that is to be followed including engagement protocols with all impacted municipalities, as well as with members of the public;
- Explicit guidelines, conditions and planning rationales that support the use of an MZO;

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- A requirement that advanced notice be provided to all relevant municipalities and members of the public prior to the issuance of an MZO; and
- Improved communication tools for MZOs, such as a mapping platform or online repository that allows municipalities and members of the public to quickly determine the status and details of an MZO.

Where transparency and municipal collaboration is considered, Regional staff could be supportive of the use of an MZO for strategic initiatives where there is a demonstrated need for urgency that aligns with provincial and local interests. The Region does not support MZOs on a routine basis as they can undermine important planning principles and considerations.

b) Inclusionary Zoning

The recently enacted changes to Section 47 of the *Planning Act* provide the Minister with authority, as part of a MZO outside the Greenbelt Area, to use inclusionary zoning to require affordable housing units in proposed developments.

The Region supports the use of all available appropriate planning tools to improve housing affordability in Peel, including the use of inclusionary zoning. Where inclusionary zoning is required as part of an MZO, any requirements should be aligned with established priorities of all impacted municipalities and Housing Service Managers.

Currently, municipalities are in the process of developing comprehensive inclusionary zoning frameworks, including determining appropriate levels of affordability and rates of affordable housing inclusion in various markets, and undertaking all analysis required under the regulations. Regional staff requested additional clarity on how the province will consider the following:

- Advance notice and early engagement with municipalities and Housing Service Managers;
- Guidance on how inclusionary zoning will be determined and align with municipal and Housing Service Manager priorities; and
- How required affordable housing units will be sustainably administered and funded over the long-term.

In addition to the proposed use of inclusionary zoning in MZOs, Regional staff recommended that municipalities be given greater choice and flexibility in the use of this tool under the *Planning Act*, including expanding where inclusionary zoning can be implemented (geographically) and permitting additional municipal discretion regarding the delivery of affordable units. Further, the Region has consistently advocated for enhanced operational funding from the Province for affordable housing, and it is important that new units that come on stream through inclusionary zoning are supported by the Province.

c) Site Plan Control

Recent changes to Section 47 of the *Planning Act* allow the Minister to address site plan matters in areas covered by a zoning order, where needed. This authority, if utilized by the Minister, would supersede municipal site plan authority and could require a municipality and a development proponent (or landowner) to enter into an agreement dealing with matters related to site plan control.

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Regional staff recommended the following on the use of MZO that address site plan control:

- That the use of an MZO should not by-pass principles of good planning, healthy development, technical review standards and municipal autonomy through the site plan control process;
- That the use of an MZO should not by-pass important provincial planning policy objectives outlined in the Provincial Policy Statement, Provincial Growth Plan and Greenbelt Plan, as well as matters pertaining to public health and safety;
- That municipalities be given advance notice and encourage consultation between municipalities, the public and the province prior to issuing such orders; and
- That municipal participation is included in the terms of agreements to ensure local public interest and infrastructure requirements are properly addressed.

3. Additional Feedback on the MZO Consultation

In addition to the use of enhanced MZO powers regarding site plan control and inclusionary zoning, the Ministry of Municipal Affairs and Housing is considering municipal feedback as to whether the legislative changes made in this regard should be expanded, repealed or otherwise adjusted. The Minister is also interested in hearing feedback as to how this enhanced authority could potentially be used in the future.

The Region recommended the following considerations:

Strategic initiatives where the use of an MZO could be supported by Regional staff include:

- Affordable housing, particularly long-term affordable rental housing including supportive housing;
- Long-term care homes;
- Hospitals and health care facilities;
- Transit station infrastructure;
- Opportunities for provincial and municipal strategic initiatives to move faster through the approvals process and assist with the economic recovery of the COVID-19 pandemic; and
- Strategic economic development initiatives, particularly major job creation that add to Ontario's competitiveness and economic resiliency (e.g. auto industry, advanced manufacturing, bio-medical).

Initiatives where the use of an MZO may not be supported include:

- Low density residential or commercial developments where there is no broad community benefit such as items outlined in the strategic initiatives section above; and
- Development projects that would require substantial public infrastructure investment (e.g. water/ wastewater, transportation) where the funding for the investment is not available. Should alternative funding arrangement be made (e.g. from the Province of development proponent), this should be to the satisfaction of the responsible municipality or public infrastructure agency

The Region recommended that these strategic initiatives should be clearly identified within the transparent process identified in an earlier section of this report.

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RISK CONSIDERATIONS

To minimize risk, Regional staff are recommending a process be established to ensure transparency, municipal collaboration, and public consultation is considered prior to using a Minister's Zoning Order. This approach would allow staff the opportunity to participate in MZOs that align with the Region's strategic initiatives, and where there is a demonstrated need for urgency that aligns with provincial and local interests.

Since the use of an MZO overrides normal public consultation, development approvals and technical processes, without a clear process, there is the potential that the use of MZOs will:

1. Reduce municipal autonomy in planning-decisions;
2. Reduce public consultation and input; and
3. By-pass elements of 'good planning'

CONCLUSION

While Regional staff support the streamlining and expediting of key strategic projects within Ontario and Peel Region, staff strongly recommend that clear procedures, criteria and engagement protocols be established with municipalities, and urge the Minister to develop a transparent process that includes municipal collaboration and support for the planning direction to be furthered by MZOs, prior to issuing such orders. The changes introduced through MZOs have the potential to overcome potential barriers and development delays associated with affordable housing, but must be carefully considered so that good planning principles are maintained, including public consultation and municipal decision-making. The Region remains committed to continuing to work with the Province to advance affordable housing objectives, while assisting in Ontario's economic recovery from the COVID-19 pandemic.

APPENDICES

Appendix I – Region of Peel Comments on Environmental Registry of Ontario 019-2811

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