

City Planning

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Planning Consultation
Provincial Planning Policy Branch
777 Bay Street, 13th floor
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Re: Proposed Changes to Minister's Zoning Orders and the Planning Act (ERO 019-3233)

On behalf of the City of Toronto I am pleased to submit comments from City Planning staff regarding posting ERO 019-3233 on the Environmental Registry of Ontario. We understand the Province is seeking comments regarding the proposed changes to certain legislative provisions in the *Planning Act*, introduced through Schedule 3 of Bill 257 (the proposed Bill 257, Supporting Broadband and Infrastructure Expansion Act, 2021) which would provide that a Minister's Zoning Order would not have to be consistent with the Provincial Policy Statement As long as the lands are not 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 (PPS).

The proposed amendments clarify that the existing Minister Zoning Order tool does not need to be consistent with the Provincial Policy Statement pursuant to section 3(5)(a) of the Planning Act. In essence the proposed amendments mean that section 3(5)(a), which requires that decisions of the Minister be consistent with the Provincial Policy Statement (or other policy statements), does not apply and is deemed to never have applied to Minister Zoning Orders. The proposed amendments apply retroactively, meaning that any past Minister Zoning Order issued by the Minister of Municipal Affairs and Housing will not be required to be consistent with the Provincial Policy Statement. The proposed amendments clarify that despite the exemption, the Provincial Policy Statement (or other policy statements) do apply and have always applied to Minister Zoning Orders for lands that are located within the Greenbelt.

Importance of Being Consistent with the PPS

The Provincial Policy Statement (PPS), 2020 provides policy direction on matters of provincial interest related to land use planning and development. The PPS is intended to be a consolidated statement of the government's policies on land use planning. It gives provincial policy direction on key land use planning issues that affect communities, such as:

- efficient use and management of land and infrastructure;
- the provision of sufficient housing to meet changing needs, including affordable housing;
- the protection of the environment and resources including farmland, natural resources (for example, wetlands and woodlands) and water;
- opportunities for economic development and job creation;

- the appropriate transportation, water, sewer and other infrastructure needed to accommodate current and future needs; and
- the protection of people, property and community resources by directing development away from natural or human-made hazards, such as flood prone areas

The PPS is issued under section 3 of the Planning Act and according to the act all decisions affecting planning matters shall be consistent with the Provincial Policy Statement, including decisions by the Minister. The policies provide for good planning principles relevant for all communities based on the intent that provincial interests are to be upheld. Furthermore the "shall be consistent with" standard ensures that the policies in the PPS are applied as an essential part of the land use planning decision-making process while requiring that provincial interests remain an essential part of decision making so that provincial policies are implemented within the local context. Currently the PPS provides a safeguard for the use of MZOs as it averts potential impacts by ensuring that a planning test is still applied and ensures a degree of fairness and consistency that others passing through the usual process still have come to rely on especially given that appeal rights have been removed by the MZO. The proposed amendments in Bill 257 would remove all these checks and balances embedded in Ontario's land-use planning system currently in place when using MZOs.

As a senior level of government, the province establishes the ground rules for land use planning in Ontario through the Planning Act, and it too should adhere to its own policy direction and guidance. The Minister of Municipal Affairs and Housing has the responsibility for overseeing and enforcing the provisions of the Planning Act. As such, the Ministry is the primary contact for advice and information on land use planning issues. The Ministry ensures that municipalities, in carrying out their responsibilities under the Act, shall be consistent with matters of provincial interest. The proposed legislative changes which would broaden MZO making powers is unsupportable as it proposes almost unfettered power combined with limited accountability. By retroactively rewriting planning laws, the Minister would be allowing projects that may have otherwise been prohibited by the Provincial Policy Statement, to now have another path forward without public consultation or comment.

Without an ability to rely on the PPS one must ask what is left to depend upon for policy direction on matters relating to land use planning that are of provincial interest. Bill 257 illustrates the government's willingness to ensure that potentially disagreeable and undesirable policies do not interfere with solicited development regardless of provincial policies about managing growth, using and managing natural resources, protecting the environment, and public health and safety. It also represents a retroactive abrogation on the public's right to seek judicial review of unlawful and unsupportable decisions. No one minister should be able to wield this kind of land use permission power without a basis in good planning as it is contrary to good governance. Ultimately, City staff believe the use of the MZO powers should be limited to demonstrated Provincial interests guided by planning principles in the PPS.

Conclusion

These proposals, found in Schedule 3 of the Bill, appear designed to retroactively legitimize the prohibited decision by the Minister of Municipal Affairs and Housing to allow development that does not comply with the PPS. The considerations for the use of the Ministers Zoning Order should be the same whether it is being used to advance works on provincially owned property, or other

publicly owned or privately owned property. The use this tool should not by-pass the consideration of the provincial land use planning policy directions.

City planning staff always welcome the opportunity to work with provincial staff to effectively implement the provincial policy led planning system, drawing on each of our strengths to create sustainable, healthy complete communities.

Thank you for the opportunity to provide these comments. City staff would be pleased to have further dialogue with the Province regarding the s.47 tool. Please feel free to follow up with me directly or with Mario Giambattista, Mario.Giambattista@toronto.ca, 416-338-4995.

A handwritten signature in blue ink, appearing to read "G. Lintern".

Gregg Lintern, MCIP, RPP
Chief Planner and Executive Director,
City Planning Division