



Report to: Development Services Committee

Meeting Date: January 25, 2021

SUBJECT: City of Markham Comments on *Planning Act* Provisions Regarding Enhanced Ministerial Authority to Address and Implement Site Plan Matters and Inclusionary Zoning as Part of a Zoning Order (Environmental Registry of Ontario Posting #019-2811)

PREPARED BY: Liliana Da Silva, R.P.P., M.C.I.P., Senior Planner, Policy & Research (x. 3115)
Darryl Lyons, R.P.P., M.C.I.P. Manager of Policy, Policy & Research (x. 2459)

REVIEWED BY: Marg Wouters, R.P.P., M.C.I.P., Senior Manager, Policy & Research (x. 2909)
Ron Blake, R.P.P., M.C.I.P., Senior Manager, Development (x. 2600)

RECOMMENDATION:

- 1) That the report entitled, “City of Markham Comments on *Planning Act* Provisions Regarding Enhanced Ministerial Authority to Address and Implement Site Plan Matters and Inclusionary Zoning as Part of a Zoning Order (Environmental Registry of Ontario Posting #019-2811)”, dated January 25, 2021, be received;
- 2) That this report be forwarded to the Ministry of Municipal Affairs and Housing as the City of Markham’s comments on the Province’s request for input on *Planning Act* provisions regarding enhanced ministerial authority to address and implement site plan matters and inclusionary zoning as part of a Zoning Order;
- 3) That the City of Markham not support the enhanced authority to address site plan matters in a Minister’s Zoning Order and recommends that it be repealed;
- 4) That should the Minister maintain the enhanced authority to address site plan matters through a Minister’s Zoning Order, the City of Markham recommends that it only apply to situations where the site plan is supported by the Council of that municipality;
- 5) That the City of Markham supports the minister’s enhanced authority to require inclusionary zoning for affordable housing and recommends that the Minister only exercise this authority following consultation with the affected municipality to address local planning and implementation matters and where the Council of the municipality supports the issuance of the MZO;
- 6) And further that staff be authorized and directed to do all things necessary to give effect to the resolution.

PURPOSE:

This report provides City of Markham comments on the Province’s Environmental Registry proposal (ERO #019-2811) that seeks input regarding recent changes to the *Planning Act* that give the Minister authority to address and implement site plan control and inclusionary zoning as part of a Minister’s Zoning Order (MZO).

BACKGROUND:

Section 47 of the *Planning Act* provides the Minister of Municipal Affairs and Housing with the authority to make MZOs to control the use of land anywhere in Ontario. MZOs prevail over local official plans and zoning by-laws and they are intended to be used to protect matters of provincial interest and are required to be consistent with the Provincial Policy Statement (PPS). On July 21, 2020, the *COVID-19 Economic Recovery Act, 2020* (also known as Bill 197) received Royal Assent and amended section 47 of the *Planning Act*, providing the Minister with enhanced MZO authority to address site plan matters, or to require affordable housing units through inclusionary zoning that could be applied to lands located outside of the Greenbelt Area.

More specifically, the enhanced authority allows the Minister to:

- require inclusion of affordable housing units in the development or redevelopment of specified lands, buildings or structures (inclusionary zoning);
- remove municipal use of site plan control of specified lands, and the Minister may give direction to require agreements between the municipality and development proponent (or landowner) concerning site plan matters of specified lands, and;
- make amendments to MZOs with respect to any of these enhanced authorities without first giving public notice.

Although section 47 provisions of the *Planning Act* are currently in effect, on December 16, 2020, the Ministry issued an ERO request for comments on whether or not the legislative changes made by Bill 197 for inclusionary zoning and site plan control should be expanded, repealed or otherwise adjusted. The Ministry is also looking for feedback regarding circumstances where this enhanced authority could be particularly helpful and circumstances where it should or should not be used. The deadline for comments is January 30, 2021.

According to the ERO posting page, the Province's intent for this enhanced authority is to help overcome potential barriers and development delays; support the delivery of transit station infrastructure and optimize surplus lands (e.g. by accommodating affordable housing and long term care homes). The enhanced authority also proposes to increase certainty for strategic projects; remove potential approvals delays; increase the availability of affordable housing; and provide additional value capture to enable economic recovery.

DISCUSSION:

Markham Council received an information staff report on August 25, 2020, that provided an overview of Bill 197 following Royal Assent in July, in particular the changes relating to planning and development, and outlined the implications to the City of Markham regarding the Minister's enhanced MZO authority noted above.

In the report, staff stated that the lack of opportunity for public input is of concern, as the use of planning instruments such as Official Plans and zoning by-laws, along with the

involvement of the public in a transparent process is paramount to the achievement of planning outcomes that represent local community input and reflect the community's vision. Staff continues to see the application of an MZO without public input as an issue.

Additionally, staff also stated that the enhanced authority to include site plan approvals and to set conditions in development agreements are of concern as these are matters best left to the local municipality. This concern is discussed in further detail below.

1. Minister's Site Plan Authority

Site plan control is best addressed locally and staff recommends the Minister's authority to address site plan matters through a Zoning Order be repealed

Site plan control is an optional tool under section 41 of the *Planning Act* that allows the council of a local municipality to show or propose a site plan control area in the official plan and subsequently pass a by-law to designate the area and outline the land use designations to which it would apply. Site plan control addresses certain matters on and around a site proposed for development, including location of buildings on a site, site layout and building footprints, exterior design and massing of buildings, and relationship to adjacent buildings and /or properties, as well as other matters such as access, walkways, lighting, waste facilities, landscaping, drainage, layout and design of surface parking areas. Site plan control ensures that a development proposal is properly planned and designed, fits in with the surrounding uses and minimizes any negative impacts. The July 2020 changes to section 47 of the *Planning Act* have given the Minister the authority to address site plan matters through an MZO, where it is deemed appropriate. The Minister's authority prevails over a municipal planning authority, can require a municipality to enter into an agreement with a development proponent (or landowner) dealing with matters related to site plan control and provide binding direction concerning the site plan agreement to scope or specify the matters that need to be addressed.

The City of Markham has a comprehensive, well-established site plan approval process involving the participation of the City, the applicant and where appropriate, external agencies. This process addresses a wide variety of matters that affect the interests and mandates of the City, external agencies (TRCA, York Region) and the public interest. Typically these matters often include:

- implementing the City's and external agencies' engineering, urban design, and planning guidelines and requirements through the site plan approval process;
- implementing the City's environmental sustainability policies and guidelines such as bird friendly design, wind impact and mitigation measures, sun and shadow studies, and tree planting through the Trees for Tomorrow program;
- ensuring proposed site plans minimize or mitigate negative impacts on surrounding residents and businesses;
- ensuring that adequate securities are posted by applicants to ensure that required works are built in accordance with approved site plans;

- ensuring that all fees required by the local municipality and external agencies are fully paid;
- ensuring that matters such as requirements for cash in lieu of parkland and contributions to community benefits are secured through site plan agreements; and
- ensuring that all required conveyances (i.e. greenways and hazard lands, parkland, cash in lieu of parkland, land dedications for road widenings, public and private easements and other transportation infrastructure) are implemented through the site plan approval process.

During the site plan application review process, staff from the City and external agencies including planners, engineers, urban designers, and other disciplines as appropriate, meet with the applicant at one or more “pre application meetings” to identify the key City and agency objectives to be addressed through site plan review and identify required supporting studies and their scope to be submitted with the application. Once an application is submitted, staff reviews the submitted plans and documents in conformity with city policies and guidelines, while external agencies perform similar reviews with regard to their agency’s mandates. During the process, City and agency staff negotiate with the applicant to ensure that review comments and matters raised by other departments are satisfactorily addressed. City staff also works with the applicant and commenting agencies/departments to resolve outstanding or conflicting matters. Once these issues have been resolved to the City’s and external agencies’ satisfaction, staff prepare recommendations for endorsement and approval.

Site plan agreements, among other matters, secure the applicant’s responsibilities regarding matters that are important to the City, such as the construction of public and private works; provision of required sustainability measures; design and construction standards to comply with applicable legislation, requirements for certification by licensed professionals; site specific access for inspections (to ensure construction meets all municipal and provincial standards); recourse for deficiencies through the posting of securities; and specific clauses and requirements to address payment of fees. These matters are technical in nature and often very detailed and complex.

In light of the above considerations, City staff believes that site plan control is best addressed locally with all of the appropriate participation from the City, the applicant, and external agencies. City staff process site plan applications in a timely manner and ensure the interests of the City and external agencies are met through that process. City staff is not supportive of the Minister’s enhanced authority to address site plan matters and recommends that it be repealed.

Recommendation #1- That the City of Markham not support the enhanced authority to address site plan matters in a Minister’s Zoning Order and recommends that it be repealed.

If the Minister's authority is maintained, City staff recommends the site plan authority within an MZO only be applied where supported by a local Council

Staff question whether application of site plan control through MZOs will achieve the time-savings anticipated by the Province. City staff is well positioned to address complex issues that arise in the review of site plans that may cause development delays. The site plan control process under the *Planning Act* is also efficient by not requiring public meetings and limiting appeals to only the landowner. City staff's deep understanding and familiarity of these issues ensure that they are identified and addressed, and assists the City in moving through the site plan approval process as expeditiously as possible. A local Council's support will ensure that the unique interests or needs across municipalities, sometimes within various areas of an individual municipality, are being met. Councils of these municipalities are best placed to ensure that such unique interests are met.

Should the Province continue to maintain its authority to address site plan control matters in MZOs, staff recommends that the Province be required to consult with the City, to identify what is to be included in the site plan approval process in an MZO, and to identify how the City requirements for site plan approval processes are being addressed. The Province should also determine whether or not revisions to the site plan control processes will lead to efficiencies and how municipal interests can be addressed through a site plan control process led by the Province. City staff also recommends that should this authority be maintained, that MZO requests only be applied in situations supported by the Council of that municipality.

The Ministry is also looking for feedback regarding circumstances where the enhanced authority could be particularly helpful, and circumstances where it should or should not be used. In response to this request, staff does not believe there are circumstances where this enhanced authority would be helpful, as it would replace the municipal site plan control process that the municipality is already set up to undertake. In fact, the enhanced authority with involvement of Ministry staff in local planning could lead to unnecessary delays in the planning process. As discussed above, site plan control is best carried out at the municipal level because the municipalities have intimate familiarity with their needs and needs of their residents.

Recommendation #2 – That should the Minister maintain the enhanced authority to address site plan matters through a Minister's Zoning Order, the City of Markham recommends that it only apply to situations where the site plan is supported by the Council of that municipality.

2. Inclusionary Zoning Authority

Staff generally supports Minister's enhanced authority to require inclusionary zoning for affordable housing in appropriate locations, but recommends that the Minister only consider use of this authority in situations where a local Council is supportive

Inclusionary zoning is an optional land use planning tool under the *Planning Act* that may be used to require affordable housing units to be built in proposed developments under certain conditions. The July 2020 changes to section 47 of the *Planning Act* has given the Minister the enhanced authority to require affordable housing units in proposed developments in MZOs. 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 by the developers with affordable housing requirements.

Inclusionary zoning is being considered as part of the City's updated Affordable and Rental Housing Strategy. The *Planning Act* only permits municipalities to apply inclusionary zoning within Major Transit Station Areas (MTSAs) or where the Minister has ordered adoption of a Community Planning Permit System (CPPS).

A potential benefit of the enhanced MZO authority, through Bill 197, is that it allows the Minister to apply inclusionary zoning requirements in an MZO to lands outside of MTSA or where the Minister has ordered adoption of a CPPS. The Minister's enhanced authority could also assist in situations where a municipality may want to apply inclusionary zoning to a site or area more quickly than it may take to implement inclusionary zoning through an Official Plan Amendment and Inclusionary Zoning By-law.

Based on what is known to date about inclusionary zoning, affordable housing obtained through inclusionary zoning needs to consider long term implications, such as appropriate locations, which provide access to amenities and transit, agreements and implementation criteria, and the long-term affordability and management of the units. Since inclusionary zoning is a relatively new tool and municipalities, including Markham, are still working on how to implement it, there may be more implications that staff is currently not aware of. A local Council's support will also ensure that the unique interests or needs for affordable housing are being met. As such, it is recommended that the Minister be required to consult with affected municipalities prior to applying inclusionary zoning to specified lands through an MZO.

Recommendation #3 – That the City of Markham supports the Minister's enhanced authority to require inclusionary zoning for affordable housing in appropriate locations and recommends that the Minister only exercise this authority following consultation with the affected municipality to address local planning and implementation matters and where the Council of the municipality supports the issuance of the MZO.

NEXT STEPS:

Staff recommends that this report be forwarded to the Ministry of Municipal Affairs and Housing as the City of Markham's comments on the Province's request for input on *Planning Act* provisions regarding enhanced ministerial authority to address and implement site plan matters and inclusionary zoning as part of a Zoning Order.

HUMAN RESOURCES CONSIDERATIONS:

Not applicable.

FINANCIAL CONSIDERATIONS:

Not applicable.

ALIGNMENT WITH STRATEGIC PRIORITIES:

The comments in this report support Goal 3 – Safe, Sustainable and Complete Community of Building Markham’s Future Together, 2020-2023.

BUSINESS UNITS CONSULTED AND AFFECTED:

Planning and Urban Design, Engineering and Legal Services were consulted in the preparation of this report.

RECOMMENDED BY:

Biju Karumanchery, R.P.P., M.C.I.P.
Director, Planning and Urban Design

Arvin Prasad, R.P.P., M.C.I.P.
Commissioner of Development Services