

Building Faster and Smarter by Empowering Local Planning

AMO'S SUBMISSION TO THE ENVIRONMENTAL REGISTRY OF ONTARIO &
REGULATORY REGISTRY ON MATTERS RELATED TO BILL 17, *PROTECT
ONTARIO BY BUILDING FASTER AND SMARTER ACT*

25-MMAH003
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ERO 025-0462
ERO 025-0463
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Executive Summary

The Association of Municipalities of Ontario (AMO) is pleased to provide comments on matters posted on the Environmental Registry of Ontario that are related to Bill 17, *Protect Ontario by Building Faster and Smarter Act*. Because Bill 17 was fast-tracked through the legislature and there was not a formal opportunity to comment on the legislation prior to its passage, this submission also includes AMO's comments on key elements of that Bill. This will help surface issues and priorities that we recommend be addressed prior to the Bill's full implementation, including through regulation. We trust that this additional commentary will support the government's implementation of its latest in a series of changes to the development system in Ontario.

Changes related to Development Charges (25-MMAH003)

AMO welcomes this opportunity to provide comments on its proposal to modernize Ontario's development charges (DCs) regime. We recognize the province's intent to streamline development approvals and modernize DCs to boost housing and economic growth, which remains a shared priority for municipalities. Development Charges are a critical tool for ensuring municipalities can fund the infrastructure necessary to support growth, and we agree that modernization is needed.

AMO is pleased that this proposed legislation incorporates several joint recommendations from AMO and the Ontario Home Builders' Association (OHBA) regarding DC modernization. This approach contrasts significantly with the broad, across-the-board reductions introduced by Bill 23, offering instead a framework for changes with details to be developed through further consultation. We welcome this collaborative approach, as it provides municipalities a valuable opportunity to apply their expertise and shape effective on-the-ground implementation. We believe this bill highlights what can be achieved when all partners – the province, municipalities, and the development sector – work together towards a shared goal.

Context for modernization: The current DC framework, while workable for decades, faces unprecedented strain due to:

- Unprecedented increases in residential construction costs at 4 times the rate of CPI growth have required fundamental rethinks of project economics.
- Non-residential construction costs have also increased sharply and much faster than overall inflation, with major implications for the cost of municipal infrastructure.
- Sharp interest rate hikes over a very short period squeezed homebuyers out of the market and increased costs for builders and municipalities.

- Steep increases in land values over the past 5-10 years particularly in the GTA add costs to municipal infrastructure and raise questions regarding how much is needed and who should pay.
- Ontarians' incomes have not kept pace with these cost drivers, putting significant pressures on both the ability to buy homes and pay property taxes.

These factors have pushed many municipalities in addition to developers to the brink of fiscal sustainability, amplifying long-standing tensions within the DC framework. Improving the transparency and predictability of the DC framework in a way that makes building affordable for both developers and municipalities must be a critical shared priority for all partners. This is why AMO is so pleased with the province's approach to establish framework legislation and engage in robust consultation with development partners – including municipalities – before the vast majority of DC changes are implemented.

Specific analysis on proposals and future considerations

The complexity of Ontario's DC framework and the degree of variation across local municipalities make it impossible to anticipate the full impacts of policy changes, particularly under short timelines. This reality, combined with the very atypical market conditions currently playing out in Ontario, create a need to commit to assess the impacts of changes and making necessary adjustments.

AMO and the OHBA are continuing to work together to think through specifics of how to implement joint recommendations. We encourage the province to consult broadly with experts and co-design approaches to address the following:

- **Merging DC service categories to increase developer credit for work completed:** AMO and OHBA's original recommendation sought to merge municipal reserve categories to increase municipal and developer flexibility, but success will require balancing this flexibility with approaches that ensure that there is sufficient funding for types of infrastructure. Reduced funds in specific municipal reserve accounts could disrupt cash flow, delay planned capital projects and increase municipal financing costs due to less predictable DC revenue. The viability of merging depends heavily on the specific services involved and their inter-relationship.
 - **Recommendations for consultation:** Provisions should enable enhanced municipal flexibility across reserve service categories. Consultation is needed to ensure the right new service categories for developer credit purposes to avoid unduly disrupting municipal finance and capital plans.

- **Definition of local services:** AMO/OHBA's recommendation focused on enhanced clarity and consistency. Currently, there is significant variation across municipal "local services" policies and definitions, resulting in unnecessary complexity and confusion. Providing principles, guidance and best practices with respect to local services definitions and approaches can enhance predictability for developers and speed up processes. However, over-standardization without local flexibility could compromise core infrastructure services or result in inaccurate financial projections (i.e. underfunding or overcharging).
 - **Recommendations for consultation:** Consult on mechanisms and processes for determining the required elements of a local service policy and how its methodology can be made more transparent. Consider which elements can and should be embedded in regulation, and where provincial guidance or policies may be more appropriate to allow for sufficient local flexibility as needed. Consider requirements that ensure a sufficient degree of transparency and predictability in cases where municipalities may need to deviate from established approaches.
- **Prescribe "Benefits to Existing" (BTE):** This was an AMO/OHBA recommendation focused on enhancing transparency and disclosure. BTE calculations are a frequent source of Ontario Land Tribunal (OLT) appeals, so AMO supports measures to reduce friction between municipal-developer interpretation of BTE calculations. Complete standardization is impractical due to the locally specific nature of facilities and developments as well as varying data availability. While AMO remains open to a broad range of approaches, overly prescriptive approaches may not be practical.
 - **Recommendations for consultation:** Consult with a wide range of municipalities to determine appropriate methodological principles and best practices for BTE calculation that increase objectivity and transparency without undermining local context. Consider which elements can and should be embedded in regulation, and where provincial guidance or policies may be more appropriate to allow for sufficient local flexibility as needed. Consider requirements that ensure a sufficient degree of transparency and predictability in cases where municipalities may need to deviate from established approaches.
- **Set limits on recoverable capital costs, including land:** AMO/OHBA jointly recommended exploring adjustments to how land value is included in DC rates to mitigate its impact, while ensuring municipalities can acquire needed land. Rapid growth in land values over the past 10 years, particularly in the GTHA, makes it challenging to predict actual future costs while also having the potential to significantly increase the cost of municipal infrastructure. The Bill goes beyond the

scope of AMO/OHBA recommendations and grants broad authority to regulation to set limits on recoverable capital costs, not just land, in a way that threatens the integrity of the DC cost recovery foundation. Applying limits to other critical capital cost categories could significantly impacts municipalities' ability to fund the actual costs of infrastructure required for housing.

- **Recommendations for consultation:** Focus exclusively on the question of how land value is approached as part of DC methodology without setting limits on other capital categories that undermine the ability to recover costs. Creating separate service categories for land and removing land from service standards could increase transparency and address concerns about mismatches between estimated and actual land costs. While AMO is open to different ways of estimating and including future land costs in the DC calculation methodology, there is still a need to ensure that DCs provide municipalities with sufficient funds to acquire lands when it is needed. Approaches that defer collection of land costs until after land is purchased would not seem to meet this criteria.
- **Defer payment of residential DCs to building occupancy:** This shifts significant financing costs from developers to municipalities to help kickstart new housing starts. The change raises multiple implementation issues for municipalities, from an operational and budgetary standpoint. Many municipalities do not issue occupancy permits, raising capacity, cost, feasibility and timeline risks for implementation. Given potentially significant cashflow impacts for specific municipalities, there will be a need to consider budgeting cycles and status of current DC by-laws as part of the timing of any transition strategy. There is concern about developers, especially smaller ones, defaulting on payments. These defaults would lead to significant municipal resources being expended on collection. Furthermore, the Province's current authority to make this change may be insufficient, potentially requiring additional legislative amendments to the Ontario's *Building Code Act* to define "occupancy permit." Finally, while large municipalities have access to low capital costs, many mid-sized or smaller municipalities that rely on development charges will now need to absorb additional financing costs through the property tax base.
 - **Recommendations for consultation:** Develop the authority for municipalities to withhold occupancy permits until DC payment is secured. Significant collaboration is needed with the municipal sector to address operational barriers and risks before implementation. We also flag the need for further legislative clarification on this authority. Consult on ways to lower financing costs for smaller and mid-sized municipalities.

- **Enhance Transparency/Reporting:** AMO generally support proposals to improve transparency, especially clarity between developers and municipalities to maximize and smooth relationships on the ground. In particular, measures to create additional transparency regarding the relationship between DC reserve balances and existing infrastructure commitments has the potential to reduce confusion regarding the availability of these funds and friction at the local level. AMO notes that over-standardization of DC background studies could lead to inaccurate financial projections (underfunding or overcharging), risks removing local flexibility, and potentially compromises core infrastructure services due to varying asset needs, service levels, and construction costs across the province.
 - **Recommendations for consultation:** Consult on changes to avoid over-standardizing DC background studies and identify additional ways to improve overall municipal DC information transparency without stifling local planning. Consider measures that set clear definitions, formats and processes and ensure that municipalities have access to aggregated data. Explore how to improve an enhanced understanding of the relationship between reserve balances and liabilities or committed funds.

Beyond DCs and Bill 17's scope, municipalities continue to advocate for predictable, sustainable, and adequate funding for municipal infrastructure to support unprecedented growth, address aging assets, and increase climate resilience. While the DC framework is vital for funding growth infrastructure, it alone is insufficient to meet the scale and pace of investment required to address the housing crisis and support the provincial economy. Ontario's municipalities anticipate needing more than \$250 billion in capital investments over the next 10 years. Therefore, all partners in the economy – including all orders of government, the business community, builders, and lenders – must engage in more fundamental conversations about how best to pay for these critical investments.

Changes to the *Planning Act* (ERO 025-0461, ERO 025-0462 and ERO 025-0463)

As AMO has previously communicated, municipalities understand the importance of being able to approve land use planning applications efficiently in order to respond to the economic and housing pressures facing our community. Municipalities experience the impacts of the housing crisis and changing economic realities more directly than any other level of government. For this reason, we support the outcomes that the province is seeking to accomplish with Bill 17 – faster approvals, and an expedited path to construction starts.

We are also thankful that the government has committed to engaging with the municipal

sector on a number of the proposed changes. However, AMO remains concerned about the cumulative impact of continued changes to the land use planning framework that increasingly places the onus directly on municipal governments to enable faster growth, while simultaneously removing tools that municipalities use to ensure livability, health and safety, and to coordinate the delivery of growth-enabling infrastructure needed to support development.

As-of-Right Minor Variances and Streamlined Planning Approvals for Schools

AMO supports streamlining the minor variance process. The proposed as-of-right approach will reduce the number of applications that must be reviewed by Councils and Committees of Adjustment, leading to faster approvals for more projects. However, a blanket approach to setback variances may have unintended consequences such as narrow setbacks between buildings that hinder emergency services or accessible access. An alternative approach would be to require that municipalities delegate minor variance approval to municipal staff within the same prescribed percentage of the required setback. This would retain the goal of proposals not having to appear before a committee of adjustment and encouraging faster approval of variances, while ensuring appropriate case-by-case evaluation of proposed variances to meet other important public policy outcomes.

AMO also supports efforts to exempt portable classrooms from site plan control, and to allow Kindergarten to Grade 12 public schools on urban land zoned for residential uses as-of-right to remove the need for rezoning applications. However, while we understand that portable classrooms are intended to be for temporary uses, they are increasingly used for long-term applications. Municipalities have raised concerns that the long-term use of portables can have impacts such as increasing flood risks by reducing the amount of permeable ground on a site. We encourage the province to work with school boards to reduce reliance on portable classrooms to reduce these risks.

Study Requirements (Complete Application) and Certified Professionals

AMO supports efforts to standardize development approvals to help deliver effective, timely approvals. Clarity on what constitutes a complete application, and removing the number of studies required will reduce the time needed to assess and evaluate an application. However, we recommend careful review and consideration of what site-specific technical studies municipalities can require because timely decision making needs to be informed by accurate, detailed information. Further, many of the studies municipalities currently request as part of complete applications are required by provincial ministries. We encourage the province to consider opportunities to streamline these studies in their consideration of what constitutes a complete application.

Municipalities are concerned that limiting the ability to review documents stamped by

certified professionals would remove the ability to ensure that these applications and reports are complete, and to identify and mitigate potential impacts to public infrastructure off-site. For example, while a qualified engineer may certify that a wastewater infrastructure design for a proposed development is adequate to support that development, a municipality may need to conduct a secondary review of the stamped document to ensure that it has assessed whether the new system is compatible with the pre-existing wastewater infrastructure that it will connect to. This could cause damage to existing municipal infrastructure that would result in property taxpayers shouldering the cost of repairs.

If the province intends to proceed with removing studies or secondary reviews, we recommend standardizing study requirements to outline what issues studies must address to be considered complete. They should also provide clarity that if a municipality is required to accept a study without secondary review, the municipality cannot be held liable for any impacts to public health and safety caused by an error, inaccuracy, or omission in the study.

Minister's Zoning Orders and Decisions Under the *Planning Act*

AMO supports changes to allow the Minister of Municipal Affairs and Housing to impose conditions that must be met before a use permitted by a Minister's Zoning Order (MZO) comes into effect. AMO has previously stressed that MZOs should only be used in extraordinary situations where regular approval timelines need to be exempted, and that MZOs should only be used with the support of host communities. We repeat our previous call for the province to entrench in legislation a requirement to obtain a supportive resolution from the host municipality as a condition of an MZO. We also recommend including automatic lapsing provisions if the conditions for an MZO are not met within a reasonable timeframe reflecting the extraordinary importance of a project.

We understand that the province intends to consult on opportunities to make provincial policy tests inapplicable to Minister's decisions under the *Planning Act* on a case-by-case basis. This could apply to extraordinary decisions such as issuing an MZO, or routine decisions such as approving a municipal Official Plan. AMO has previously commented that Minister's decisions are most effective when they are made in alignment with good planning practices, and provincial policy. Ensuring that Minister's decisions are in alignment with provincial policy provides clarity, transparency, and more importantly, certainty for all stakeholders in the development process. Removing this consistency would undermine the efficiency and effectiveness of municipal planning, and introduce uncertainty that could delay development applications from moving forward if applicants cannot anticipate how decisions will be made.

Standardizing and Limiting Land Use Designations in Official Plans

AMO understands that the province intends to consult on standardizing and limiting the number of land use designations municipalities could use in Official Plans. We understand and support the intended outcome of bringing more standardization and consistency to Official Plans in different municipalities.

As the province plans to move forward with exploring this idea, it will be critical to ensure that there remains a wide range of designations to accommodate different land uses across Ontario. For example, the designations would need to accommodate the wide spectrum of housing density options including accounting for mixed-use developments that may not be compatible with all densities. Flexibility would also need to be in place to accommodate zoning for different agricultural and industrial uses, and to allow for case-by-case zoning changes to accommodate new projects. For example, an overly restrictive agricultural zoning designation could limit the ability of municipalities to approve energy projects, or food processing facilities.

Finally, a streamlined set of designations needs to account for the reality that zoning in Ontario is often complex and nuanced where mixed-uses come into play. To build complete communities, municipalities need to ensure that housing, employment land, and amenities are conveniently located, and that Official Plans and zoning by-laws are designed to accommodate mixed uses, while also addressing impacts such as noise, pollution, vibration, traffic, and odours to ensure that mixed-use communities can be thriving, good communities to live in.

Changes to the *Building Transit Faster Act*, and Accelerating Delivery of Transit-Oriented Communities (ERO 025-0450, ERO 025-0504)

MTO approvals

AMO applauds the province for taking **concrete** steps to speed up and improve its MTO corridor management permitting process, a measure AMO has previously called for to reduce provincial review and approval times.

Transit

The province expanded the definition of priority transit projects and transit-oriented communities (TOCs) to apply to a wider range of provincial initiatives. This aims to simplify collaboration between the province and municipalities in advancing provincial transit and infrastructure development. As part of this effort, the Minister of Infrastructure has been assigned Minister's Zoning Order (MZO) authority for land use planning matters affecting TOCs.

AMO broadly supports efforts to improve transit and create livable communities.

However, there is some concern that MZO's could override local planning processes and disregard community needs. Therefore, AMO recommends that the Minister of Infrastructure only use MZO's in collaboration with local municipalities, including securing a formal council resolution. This would ensure coordinated efforts on ToCs and their integration with surrounding communities and infrastructure. These changes are anticipated to impact only a small subset of municipalities.

Standardizing road construction design

AMO would like to offer early input on the province's stated intention to initiate consultations for a framework that standardizes road building specifications and design across Ontario.

AMO generally supports exploring increased road construction standardization. However, this support is contingent on thorough consultation to address potential challenges. It's crucial to identify and mitigate unintended consequences, such as increased costs for municipalities or the capacity of local contractors to meet new standards. Furthermore, the framework must account for the diverse range of road uses and maintenance demands across the province, from low-traffic rural gravel or dirt roads to northern roads with unique temperature and climate-based maintenance requirements.

In principle, harmonizing specifications is a positive step that can deliver significant benefits, including cost savings, improved construction efficiency, and streamlined procurement. The key challenge, however, will be reaching consensus on standards that are fair and workable for all 444 municipalities in Ontario. Depending on what is ultimately adopted, some municipalities may face increased costs due to factors such as local material availability, existing terrain, or current road geometry. Introducing minimum standards or tiered specification levels could help address these concerns and provide necessary flexibility.

Changes related to the Ontario Building Code

Bill 17 makes several changes related to the Ontario Building Code (OBC) intended to provide greater consistency for developers who want to build in Ontario. This includes the removal of duplicative processes for innovative construction materials and processes so builders who have obtained approval under the National Construction Codes (NCC) do not have to seek subsequent approvals in Ontario.

AMO supports this decisive step towards making sure that builders across Canada only have to follow one consistent standard and approvals process to do business in Ontario. We understand that greater consistency can help reduce the time, cost and complexity of building. This is why we also supported the province's recent increased

harmonization the OBC with the NCC. At the same time, we understand that OBC did not harmonize with the NCC for matters related to green building standards and energy efficiency standards.

We are in the middle of a generational initiative to build new homes and economic hubs. This historic growth needs to be done sustainably, particularly as new buildings will place increased demand on Ontario's energy supply. As outlined in the province's recent Integrated Energy Plan, "Reducing energy use is one of the most cost-effective and immediate ways to meet Ontario's growing energy needs. The cheapest form of energy is the energy we do not use in the first place."¹ In this context, maintaining strong energy efficiency standards and green building standards will be critical to maintaining Ontario's affordable energy advantage. These standards are also central to mitigating the impacts of climate change on municipalities.

As the province continues to explore ways to standardize and streamline building approvals, strong green building, and energy efficiency standards should be maintained. We encourage the province to continue to consult with municipalities, builders, and Chief Building Officials to balance the goals of standardization and energy efficient construction.

Exploring Alternative Models for Water and Wastewater Systems

Public utility model

There has been a considerable focus on municipal service corporations as a different way to deliver water and wastewater. Municipalities are looking at ways to do things differently to make infrastructure more affordable and sustainable – from forming key partnerships with each other to exploring new models of delivering services.

AMO sees municipal services corporations as a tool that can provide significant benefits, particularly for communities that want to increase borrowing capacity or work across municipal boundaries and realize financing and operating benefits from economies of scale. But municipal services corporations are not a silver bullet – they come with significant risks and trade-offs and do not make sense in all contexts – in particular in areas that already benefit from economies of scale. In these instances, transitioning to a new model could create significant disruption for no clear benefit at a time when municipalities are working hard to achieve the shared goal of building 1.5 million new homes by 2031. Given how specific the benefits and risks are to each municipal context, any decision to adopt this model must be taken at the local level.

¹ Ontario's Integrated Energy Plan, Chapter 1: Energy Efficiency <https://www.ontario.ca/page/energy-generations#section-5>

As municipalities and the province explore ways to fund growth, it will be critical to work in partnership to make the best long-term decisions for residents, communities and the economy. This requires open discussion about these models with experts, the municipal sector as a whole and all of the areas of government responsible for the funding, financing, development and oversight of infrastructure.

The responsible and sustainable operation of Ontario's water and wastewater systems is a critical public service, central to residents' and communities' health, safety and prosperity. The creation of a water and wastewater municipal services corporation should always balance the opportunities it may provide to manage assets and services with transparent and accountable public stewardship of these vital systems.

AMO stands firm in its established positions on a public utility model for water and wastewater service delivery:

- Water/wastewater systems and assets must remain publicly owned.
- Voluntary, not mandatory, approaches are needed for any new water/wastewater governance structure.
- There's a need for continued DCs or "connection charges" to avoid unsustainable pressure on user rates.
- A comprehensive, phased implementation plan is needed to manage a complex transition from a financial, operational and governance perspective.

Communal servicing

Municipalities collaborate with many partners to manage infrastructure, including privately built and managed projects. In many cases relationships are good. Not all infrastructure solutions for housing require municipally-owned infrastructure systems.

There have been instances for services such as water and wastewater where municipalities are looked to as a 'backstop' if private communal systems are not well built or managed – which can put cost and risks on municipalities to bring up to high-standards.

As processes change to support building housing faster, such as streamlined environmental assessments, it'll be important to ensure there is no unfair advantages to developing larger communal water or wastewater systems between municipalities and private developers to help avoid any long-term risks.

Private developers might be incentivized by policies that prioritize speed and initial cost-savings for the development, rather than the long-term, full lifecycle costs of the water/wastewater system. If the province provides incentives that reduce upfront costs

for private systems without ensuring robust long-term financial sustainability and operational standards, developers might be able to offer seemingly cheaper solutions that actually shift hidden costs and risks onto future ratepayers or the municipality.

Conclusion

While we are supportive of efforts to standardize and streamline planning to help drive development, careful consideration needs to be given to the changes made under Bill 17, and proposed for further consultation. Successful implementation of the changes, and flexibility to allow local decision makers to easily adapt on a case-by-case basis is important to avoid having to backtrack legislative or regulatory changes in the future, and in doing so, provide clarity and predictability. AMO looks forward to collaborating with the province to help bring municipal stakeholders and perspectives forward during consultation.