



New Year, New Provincial Policies

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As we head into 2011 we look to a year that will likely see the issuance by the Province of Ontario of significant new planning policies, most notably a new Provincial Policy Statement (PPS) and an amendment to the Growth Plan for the Greater Golden Horseshoe (the “Growth Plan”). These initiatives represent the latest in a co-ordinated effort by the McGuinty government to direct growth toward intensification and away from sprawl. As these new policy directives could shape development patterns for years to come, the development industry and other stakeholders should be taking a keen interest in these processes.

A New Provincial Policy Statement

Section 3 of the *Planning Act* requires that all planning decisions made in the Province “shall be consistent with” the PPS. As we know, the PPS consists of a series of general high level policies focused on the efficient and sustainable development of land throughout the Province. The present PPS policy framework directs growth within existing settlement areas, seeks to conserve employment areas, requires the provision of a wide range of housing types, particularly affordable housing, and protects prime agricultural areas, the environment and significant built heritage resources and significant cultural heritage landscapes.

To remain current, the PPS is required to be reviewed by the Province every five years. At the present time, the Province is in the process of reviewing the PPS 2005 and has been seeking input from stakeholders on what changes, if any, need to be made to that instrument. Promoting growth while protecting other competing priorities results in a balancing of interests that makes this review of the PPS more important than ever before for industry stakeholders.

The Province has promised to soon release a draft of the proposed new PPS for further comment. The development industry will be looking for limits on further regulation, flexibility in dealing with development proposals, particularly for sensitive areas, and consistency with the provincial policies set out in the more prescribed Provincial plans. Environmentalists, heritage advocates and resident groups will be looking for increased regulation and stronger protection from development.

It will be interesting to watch as the government reveals its position on these issues, particularly given that regulating growth necessarily increases costs to developers— costs which are typically passed on to consumers— and leads to denser neighbourhoods. How much appetite will there be among Ontario residents to accommodate this type of sustainable development? It will also be interesting to see the impact of decisions of the Ontario Municipal Board (OMB), for example to recognize major retail development as employment uses, on the new policies. Finally, there is a real question

as to whether the new PPS will be ready to be approved by the government before the next provincial election in October of 2011.

Landowners, developers and investors are encouraged to provide comments to the Ministry of Municipal Affairs and Housing (the “Ministry”) regarding the new PPS to ensure that their interests are properly addressed.

Proposed Amendment 1 to the Growth Plan

In 2005 the Province passed the *Places to Grow Act, 2005*, the purpose of which is to provide for the coordination of (sustainable) growth policies among all levels of government in prescribed areas. This is to be done through the growth plans established by the Province. The Growth Plan, approved in 2006, sets population and employment targets for municipalities subject to the Growth Plan and requires that upper and lower tier official plans be amended to achieve those targets. This has led to the comprehensive review of, and amendment to, many of those official plans, a process that has been the subject of some controversy, as evidenced by the recent decision of the Province not to accept certain portions of Durham Region Official Plan Amendment No. 128¹.

One of the most important issues for industry stakeholders with respect to new policy implementation is the impact of such policies on development rights. This matter of transition was addressed by the Province through O. Reg. 311/06 which set out which approvals would be subject to the Growth Plan and which would be exempt. For example, official plan (amendments) commenced before 16 June 2006 that do not result in the addition of 300+ hectares to settlement areas are not subject to the Growth Plan.

In 2009, the Province released a draft growth plan for the Simcoe Sub-Area (the County of Simcoe and the cities of Barrie and Orillia) entitled *Simcoe Area: A Strategic Vision for Growth*. That document, and the feedback received back from stakeholders on it, formed the basis for Proposed Amendment 1 to the Growth Plan (“Amendment 1”) released in October of this year. Amendment 1 allocates population growth targets (really caps) to four proposed urban nodes and other identified settlement areas². and employment growth to strategic employment areas along the Highway 400 corridor

Staff at the Province have stated that a prime objective of Amendment 1 is to “rationalize uncoordinated planning” in an area where too much land has been designated for development, and to thus make development in this area “more financially sustainable”. Amendment 1 is also intended to complement recent Provincial legislation in this area through the resolution of the Barrie-Innisfil boundary issue and the adoption of the Lake Simcoe Protection Plan.

Most notably and controversially, Amendment 1 requires that the County and its constituent municipalities delineate interim settlement area boundaries to accommodate the density targets set out in Schedule 7 over a 20 year time horizon³. Lands outside of that interim boundary, even if within the existing settlement area, will not be approved for further development, and development will not be able to occur in designated greenfield areas outside of that boundary, until the interim settlement area has been built up. Even at that point, if a municipality has reached the cap on population growth imposed by Amendment 1, further development may not be permitted until the Schedule has been revised to allow for a new population target⁴. No interim boundary may be changed without a municipality first going through a municipal comprehensive review.

This approach represents a significant change with respect to settlement areas and has given rise to confusion and concern over what development rights remain for current approvals/ designations granted for lands located within the settlement area but outside of the interim boundary. While the Province continues to claim that Amendment 1 would not remove existing development approvals, staff at the Province have not been able to say with any certainty how approvals will be dealt with in the transition provisions that will accompany the implementation of Amendment 1. This concern

has been compounded by the current position of the Province that the transition regulation will not be released in draft form for comment prior to its implementation, a position which amazes these writers given that the very substance of the transition provisions has dominated all of the stakeholders submissions on Amendment 1. Many landowners and developers in Simcoe County are understandably concerned with this approach.

Amendment 1 has also thrown a wrench into the growth plan conformity exercise undertaken recently by the County of Simcoe. That exercise resulted in a new draft County official plan, which has been appealed to the OMB. The County will now be required to undergo a further conformity exercise if Amendment 1 comes into force, which places the draft official plan and the OMB appeal in limbo.

Schedule 8 of Amendment 1 identifies both the urban nodes and the strategic employment areas and economic employment districts. Major retail and residential uses will not be permitted in these areas/districts and the uses/lot sizes permitted will likely be set out in detail. How this limitation will fit in with the concept of a “complete” community- a major objective of the growth plans- is yet to be determined.

The Province has set a deadline of 31 January 2011 for all submissions on Amendment 1. Any person with land holdings in the Simcoe Sub-area should familiarize him/herself with Amendment 1 and provide comments directly to the Province. We would be pleased to review with you the impact of Amendment 1 on your property and to assist in communicating your views on Amendment 1 to the Ministry.

As a final comment, we will continue to monitor whether the government will be able to approve Amendment 1 in final form prior to the election.

Conclusion

The McGuinty government has been an activist one in the area of regulating land development. Notwithstanding the upcoming election, 2011 promises to be no different with a proposed new PPS and the proposed Amendment 1 to the Growth Plan. While these two significant policy initiatives share the same objectives of intensifying and rationalizing growth, the planning tools they propose may differ in some significant ways. Thus the consistency landowners and developers are seeking across the policy spectrum will likely not be a resolution the Province shares.

Stay Tuned in the New Year! ■

¹ Last month the Province issued its decision on much of ROPA 128, refusing to approve expansions of urban areas proposed by the Region in northeast Pickering, in Courtice, in north Whitby and north Oshawa.

² The targets/caps are set out in Schedule 7 of Amendment 1.

³ The cities of Barrie and Orillia are not subject to this requirement.

⁴ The position of the government on this point is that these caps are subject to review every five years and any shift in population will be recognized.