



**City of Kingston
Information Report to Council
Report Number 21-110**

To: Mayor and Members of Council
From: Paige Agnew, Commissioner, Community Services
Resource Staff: Sukriti Agarwal, Acting Manager, Policy Planning
Date of Meeting: March 23, 2021
Subject: Bill 257, Supporting Broadband and Infrastructure Expansion Act, 2021, First Reading

Council Strategic Plan Alignment:

Theme: Corporate business

Goal: See above

Executive Summary:

Bill 257, Supporting Broadband and Infrastructure Expansion, 2021, was introduced for first reading on March 4, 2021 and proposes modifications to Section 47 of the *Planning Act* relating to Minister's Zoning Orders (MZOs). MZOs are a unique tool within the *Planning Act* as they do not have a formal process for application, consultation, notification, or appeal. Section 3(5) of the *Planning Act* requires that all land use planning decisions to be consistent with policy statements, whereas Bill 257 proposes to exempt MZOs from this requirement, unless the lands are located within the Greenbelt Area. This proposed modification contributes to the existing uncertainty associated with the MZO process and may undermine municipal planning processes.

A 30-day posting to the [Environmental Registry of Ontario](#) has been initiated by the Province on the proposed changes to the *Planning Act*, with comments due by April 3, 2021. Staff will be submitting comments prior to the April 3, 2021 deadline on the proposed exemption and requesting that additional modifications to Section 47 be considered to provide greater clarity to the MZO process.

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Recommendation:

This report is for information only.

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Authorizing Signatures:

ORIGINAL SIGNED BY COMMISSIONER

**Paige Agnew, Commissioner,
Community Services**

ORIGINAL SIGNED BY CHIEF
ADMINISTRATIVE OFFICER

**Lanie Hurdle, Chief
Administrative Officer**

Consultation with the following Members of the Corporate Management Team:

Peter Huigenbos, Commissioner, Business, Environment & Projects	Not required
Brad Joyce, Commissioner, Corporate Services	Not required
Jim Keech, President & CEO, Utilities Kingston	Not required
Desirée Kennedy, Chief Financial Officer & City Treasurer	Not required
Sheila Kidd, Commissioner, Transportation & Public Works	Not required

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Options/Discussion:

Bill 257, *Supporting Broadband and Infrastructure Expansion Act, 2021* ("Bill 257"), was introduced for first reading on March 4, 2021. Bill 257 proposes to:

1. Enact the *Building Broadband Faster Act, 2021* which seeks to expediate the delivery of broadband projects that are of provincial significance.
2. Amend the *Ontario Energy Board Act, 1998* to update regulations for electricity infrastructure and to establish new regulations for transmitters and distributors.
3. Amend the *Planning Act* to clarify that ministerial zoning orders made under Section 47 are not required and are deemed to never have been required to be consistent with policy statements issued under Section 3(1) of the Act, provided the lands are located outside of the Greenbelt Area.

A 30-day posting to the Environmental Registry of Ontario has been initiated by the Province on the proposed changes to the *Planning Act*, with comments due by April 3, 2021. This information report focuses on the proposed modification to the *Planning Act* and the potential land use planning implications.

Background on Ministerial Zoning Orders

Section 47 of the *Planning Act* provides the Minister of Municipal Affairs and Housing the ability to exercise any of the powers conferred upon councils for zoning by-law amendments (Section 34), interim control by-laws (Section 38), temporary use by-laws (Section 39) and deeming orders to remove certain lands from plans of subdivision (Section 50(4)). Through a Minister's Zoning Order (MZO), the Minister may also provide an exemption from site plan control, exercise inclusionary zoning or require a property owner to enter into agreements for various matters.

The MZO process is unique from other land use planning approvals outlined within the *Planning Act* in that there are no formal public notification, consultation, or appeal procedures, nor is there a formal application process or minimum submission standards for a complete application. The Minister is not required to give notice or hold a public hearing prior to making an order but is required to provide notice within 30 days of making an order with the notice being provided in a manner determined by the Minister. Applications can be made to amend or revoke a MZO and the Minister may refer the applications to the Local Planning Appeals Tribunal (LPAT) for a recommendation on whether the order should be amended or revoked. The Minister is not compelled to amend or revoke any order or implement the recommendations from the LPAT.

MZOs have traditionally been used sparingly by the Minister and limited to situations that protect, advance, or balance competing provincial interests. The use of MZOs has increased substantially in recent months, with 38 such orders being issued in 2020 and the first quarter of 2021 and only 28 such orders issued between 1991 and 2019. The majority of the orders are focused in the Greater Toronto Area and southern Ontario; MZOs have not been used within the City of Kingston or surrounding area in the past.

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Proposed Modifications to Ministerial Zoning Orders

Section 3(5) of the *Planning Act* requires decisions from various bodies, including municipal councils, a minister of the Crown or the LPAT to be consistent with policy statements issued by the Minister that outline matters of provincial interest. This is the clause within the *Planning Act* that requires all municipal land use planning decisions, including the preparation of an Official Plan, to be consistent with the Provincial Policy Statement.

Bill 257 proposes to modify Section 47 of the *Planning Act* to clarify that Section 3(5) of the *Planning Act* does not apply to a MZO issued by the Minister unless the lands are located within the Greenbelt Area. Further, the proposed modifications would be retroactive to MZOs that were issued prior to Bill 257.

No other modifications to the *Planning Act* are proposed through Bill 257.

Discussion

The lack of formal process for application, notification, consultation, or appeal creates a degree of uncertainty associated with MZOs. The modification to the *Planning Act* proposed by Bill 257 would further contribute to this uncertainty by removing the requirement for orders to be framed within the context of the Provincial Policy Statement (PPS) (2020). The proposed modification may exacerbate demand for MZOs by creating the perception within the development community of an approvals process that is not bound by policy, which may undermine the municipal planning processes that are required to be consistent with the PPS.

It is understood that MZOs are not a standard planning tool to be utilized by municipalities and that, traditionally, they have been reserved for exceptional situations that require input from the Minister directly. The recent increased usage of this tool by the Minister has raised questions about the MZO process and the amendment to Section 47 of the *Planning Act* proposed by Bill 257 represents an opportunity to provide greater clarity on the process. Examples of beneficial modifications include:

- Clarifying the intended purpose of MZOs;
- Explanation of provincial interests and how the interests will be evaluated and/or balanced if there are competing interests;
- Establishing a formal application process and submission requirements;
- Identifying evaluation criteria and a formal approval process;
- Seeking input from local municipalities prior to an order being issued;
- Prescribing public notification prior to an order being issued; and
- Strengthening the LPAT appeal process and requiring their recommendations to be implemented by the Minister.

Conclusion

Ministerial Zoning Orders are a unique tool within the *Planning Act* that Bill 257 proposes to modify to be exempt from policy statements. The proposed amendment is anticipated to

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increase uncertainty associated with the process and potentially undermine municipal planning processes by creating the perception of an approvals process that is not regulated by policy. Staff will be providing comments on Bill 257 prior to the April 3, 2021 deadline on the proposed changes and suggest additional modifications to Section 47 of the *Planning Act* be considered to provide greater clarity to the process.

Existing Policy/By-Law:

Bill 257 proposes to enact the *Building Broadband Faster Act, 2021* and amend the Acts listed below:

- The *Ontario Energy Board Act, 1998*; and
- The *Planning Act*.

Notice Provisions:

None

Accessibility Considerations:

None

Financial Considerations:

There are no immediate financial implications resulting from the amendments to the *Planning Act* proposed by Bill 257, however the municipality would not receive any planning application fees associated with developments authorized by a Minister Zoning Order.

Contacts:

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Other City of Kingston Staff Consulted:

None

Exhibits Attached:

Exhibit A - Explanatory Note for Bill 257

Bill 257, Supporting Broadband and Infrastructure Expansion Act, 2021

Explanatory Note

Schedule 1

Building Broadband Faster Act, 2021

The Schedule enacts the *Building Broadband Faster Act, 2021*. The purpose of the Act is to expedite the delivery of broadband projects of provincial significance. The Act applies with respect to broadband projects that are designated by regulation.

Provisions are made to require co-operation from electricity distributors and transmitters to complete work that is necessary for the deployment of a project. The Minister may give a distributor or transmitter a notice requiring the completion of work. A notice may be given only if the Minister has determined that the distributor or transmitter has not met a prescribed requirement relating to when something must be done. The proponent of the project and the distributor or transmitter are required to enter into negotiations to co-ordinate the work. Provision is made for the apportionment of costs of the work. If the distributor or transmitter fails to complete the work the Minister may order them to do so or may authorize the proponent to carry out the work. A distributor or transmitter who fails to complete the work is also required to compensate the proponent.

Provisions are made for requiring municipal service and right of way access. The Minister may give a municipality a notice of what the Minister has determined is required. The proponent of the project and the municipality are required to enter into negotiations to agree on terms. If terms cannot be agreed upon, the Minister may make a municipal service and right of way access order. A municipality is required to compensate the proponent if the municipality fails to negotiate as required or fails to comply with a municipal service and right of way access order. If a municipality fails to comply with a municipal service and right of way access order the Minister may authorize a person to do the work required under the order and the municipality is required to compensate the Minister for related costs incurred by the Minister.

Provisions are made relating to notifications requiring the location of underground infrastructure under the *Ontario Underground Infrastructure Notification System Act, 2012* for a proposed excavation or dig that relates to a broadband project. If the required work is not done within 10 business days, the Minister may authorize a person to do the proposed excavation or dig. The proponent of a project may claim compensation for prescribed losses or expenses if the required work is not done properly.

Provisions providing for the following are also included:

1. The delegation of certain functions to the Ontario Infrastructure and Lands Corporation.

2. Administrative penalties.
3. The preclusion of certain causes of action.
4. Consequential amendments to other Acts.

Schedule 2

Ontario Energy Board Act, 1998

The Schedule amends the *Ontario Energy Board Act, 1998*.

Notably, the Act is amended by adding a new Part VI.1 (Electricity Infrastructure). The Part applies with respect to the development of, use of or access to electricity infrastructure that is wholly or partly for a purpose other than the generation, transmission, distribution, consumption, sale or demand management of electricity, if the development, use or access is specified by regulations made under the Part. The term “electricity infrastructure” is defined in section 104.1 of the Part. Section 104.5 identifies new objectives of the Ontario Energy Board in relation to its powers and duties under the Part.

The new Part VI.1 consists primarily of a broad regulation-making authority to identify and govern the electricity infrastructure development, use and access to which it applies, in section 104.3. In addition, section 104.4 provides discretion for the Minister of Energy, Northern Development and Mines to compensate, in accordance with the regulations, transmitters, distributors and any other persons licensed under Part V of the Act that may be specified by the regulations for any lost revenue arising from the application of the Part. Such compensation would be paid out of money appropriated by the Legislature for the purpose. Complementary amendments are made to section 42 of the *Electricity Act, 1998*.

Other amendments made to the *Ontario Energy Board Act, 1998* include the following:

1. Amendments to sections 71 and 88 of the Act to expressly provide that the restriction on transmitter and distributor business activities in subsection 71 (1) of the Act is subject to regulations that may provide otherwise.
2. A new subsection 78 (5.0.0.1) of the Act, which provides that specified payments that transmitters and distributors may be required to make under the *Building Broadband Faster Act, 2021*, set out in Schedule 1 to the Bill, shall not be considered by the Ontario Energy Board in its setting of electricity rates.

Finally, a number of housekeeping amendments are made to the *Ontario Energy Board Act, 1998*, such as repealing the definition of “designated consumer” in section 56 since the term is no longer used in the Act. A consequential amendment is made to the *Private Hospitals Act*.

**Schedule 3
Planning Act**

The *Planning Act* is amended to provide that ministerial zoning orders made under section 47 are not required and are deemed to never have been required to be consistent with policy statements issued under subsection 3 (1). However, any part of such an order that applies to land in the Greenbelt Area is and always has been required to be consistent with a policy statement issued under subsection 3 (1).