PRACTICE GUIDE

PLANNING LEGISLATIVE FRAMEWORK IN ONTARIO

Ontario Professional Planners Institute

CONTENTS

This Guide does not incorporate legislative changes associated with Bill 17 which received Royal Assent on June 5, 2025

CHAPTER 1:
INTRODUCTION TO MUNICIPAL GOVERNMENT

In Ontario, land use planning responsibility is led by the province and implemented by municipalities.

As such, to properly understand land use planning in the province, we will start with an Introduction to Municipal Government.

1.1 LEVELS OF GOVERNMENT

In Ontario, we are governed by three levels of government:

- The Government of Canada, or the federal government;
- The Government of Ontario, or the provincial government; and
- Municipal Governments. The guide contains information and key concepts to support planning adaptation and interventions across various community and service area contexts.

Each level of government is responsible for providing different services. The *Constitution Act, 1982* provides for the distribution of legislative powers between the Parliament of Canada for the federal government under Section 91 and provincial legislatures under Section 92.

Under Section 92, the power to make laws in relation to municipal institutions in the province lies exclusively with the provincial government. Municipalities do not have direct powers under the *Constitution Act, 1982*. Rather, municipalities are creatures of the province and municipal governments only have those powers that are given to them by the province through various acts and associated regulations.

In the planning sphere, the legislation from which Ontario municipalities derive their authority includes, but is not limited to, the *Municipal Act, 2001; City of Toronto Act, 2006; Planning Act; Expropriations Act; Environmental Protection Act; Development Charges Act; Building Code Act, 1992; Ontario Heritage Act; Endangered Species Act; Conservation Authorities Act, Aggregate Resources Act;* and associated regulations.

Federal

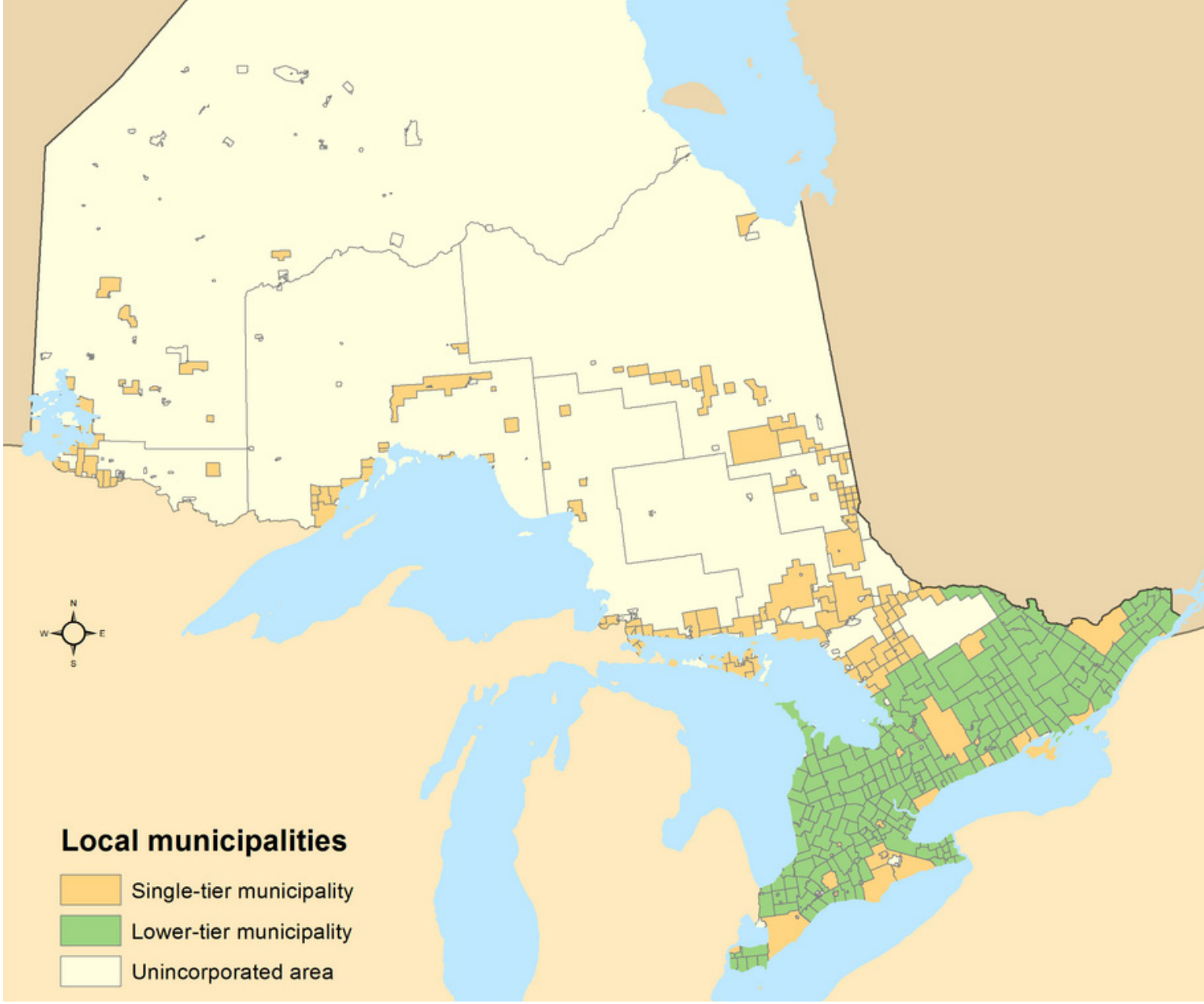
- Banking
- Food Safety
- National Defence
- Postal Service
- Radio and Telecommunication
- International and interprovincial Transportation

Provincial

- Natural Resources
- Provincial Court
- Health Care
- Driver's Licenses
- Education
- Incorporation of Companies

Municipal

- Water and Sewer
- Garbage Collection
- City Parks
- Fire Prevention
- Roads and Sidewalks
- Local Public Transportation
- Building Permits and Zoning
- Planning and Zoning



1.2 MUNICIPALITIES IN ONTARIO

There are 444 municipalities in Ontario. Municipal structures vary and include lower tier, upper tier, and single tier, as follows:

- 173 single tier;
- 241 lower tier; and
- 30 upper tier.

Single-tier municipalities assume all municipal responsibilities as per provincial legislation. In upper- and lower-tier municipalities, these powers are split between the two tiers. Sections 10 and 11 of the *Municipal Act* sets out specific rules relating to the spheres of jurisdiction for single-, upper- and lower-tier municipalities.

It is imperative that landowners understand the municipal framework that applies because the applicable policies and guidelines can change. For example, some upper-tier municipalities have their own official plans and have the power to approve lower-tier official plans, and in these situations, an evaluation of both tiers' official plan policies is required.

1.3 MUNICIPAL GOVERNANCE

The powers of a municipality are given by the province and are exercised by its elected council. The primary legislation that defines municipal governance is the *Municipal Act, 2001*. The *Municipal Act, 2001* applies across the province, excepting the City of Toronto where the *City of Toronto Act, 2006* performs a similar governance function. For the purposes of this guide, we will refer to the *Municipal Act, 2001* but do note that analogous sections are found in the *City of Toronto Act, 2006*.

The Municipal Act, 2001 gives broad authority to municipalities to provide services and things that a municipality considers necessary or desirable for the public. This authority is exercised by a municipal council through the enactment of by-laws unless the municipality is specifically authorized to do otherwise.

To the extent that there are any conflicts between a by-law passed by a lower-tier municipality and an upper-tier municipality, the by-law of the upper-tier municipality prevails. A by-law of any municipality that conflicts with a provincial or federal act or regulation has no effect.

1.4 PLANNING IN ONTARIO

The key players in Ontario's land use planning system include:

- The Government of Canada (federal government);
- The Province of Ontario (provincial government);
- Approval authorities;
- Upper and lower tier municipalities;
- Committees of adjustment, etc;
- The public; and
- The Ontario Land Tribunal (**OLT**).

Role of the Federal Government:

The federal government's role is limited in the context of land use planning as set out in the *Constitution Act, 1982*. However, some aspects of land use planning are governed by the federal government, including, for example, the development of lands in airports and harbours. In addition, development around certain bodies of water engage *Fisheries Act* considerations if there is a threat to fish habitat.

Role of the Provincial Government:

- Passing or amending legislation and regulations in the provincial legislature;
- Issuing provincial policy statements under the *Planning Act;*
- Preparing provincial plans;
- Setting the policy foundation for regulating the development and use of land province-wide, helping achieve the provincial goal of meeting the needs of a fast-growing province while enhancing the quality of life of all Ontarians;
- Promoting provincial interests, such as protecting farmland, natural resources, and the environment, as well as promoting development that is designed to be sustainable, supportive of public transit, and oriented to pedestrians;
- Giving advice to municipalities and the public on land use planning issues; and
- Administering local planning controls and providing approvals where required.

Role of Municipal Governments:

- Making local planning decisions that have regard to matters of provincial interest as set out in the *Planning Act*, are consistent with the Provincial Planning Statement, 2024 (PPS, 2024), and conform to provincial plans;
- Preparing municipal planning documents such as official plans and zoning by-laws;
- Reviewing and making decisions on amendments to official plans and zoning by-laws, in accordance with the *Planning Act*;
- Reviewing and making decisions on all other *Planning Act* applications within their jurisdiction, in accordance with the *Planning Act*;
- Ensuring planning decisions and planning documents are consistent with the PPS, 2024 and conform with provincial plans; and
- In the case of upper-tier municipalities, addressing broad, land use planning issues that concern more than one local municipality within its jurisdiction.

Role of the Public

- Reviewing and commenting on municipally initiated or privately initiated development applications by or to the municipality;
- Providing oral and written submissions to council to ensure their views are made known; and
- In certain circumstances, appealing a decision made on a development application (municipally or privately initiated) to the OLT.

Role of the Ontario Land Tribunal

- The Ontario Land Tribunal is an independent tribunal responsible for resolving a variety of municipal and land use planning matters. The OLT's mandate is to fairly, effectively, and efficiently resolve disputes related to land use planning.
- The OLT hears and decides appeals that can be filed under various statutes including, but not limited to, the *Planning Act; Conservation Authorities Act*; the *Development Charges Act, 1997; Expropriations Act; Municipal Act, 2001; City of Toronto Act, 2006*; and *Ontario Heritage Act*.
- Chapter 10 of this guide provides more detail on the OLT process.

1.5 ROLES OF VARIOUS MUNICIPAL DEPARTMENTS

Efficient municipal governance depends on a number of roles and tasks that are fulfilled by elected council members, appointed members, and staff.

Staff within municipalities tend to have expertise in their respective areas and provide expert advice to elected officials to allow them to make appropriate land use planning decisions. In addition, the decision-making authority for some planning applications, such as site plans, have now been delegated to staff.

Many municipalities have a planning department, whose staff review applications and prepare recommendations to the various decision-making bodies to assist them in deciding on land use planning matters. As part of the planning process, landowners may also deal with the engineering, building, and legal departments and the municipal clerk's office.

A municipal council is made up of democratically elected members of the public who have the legislated authority to approve most planning applications. However, in many municipalities, prior to a planning matter coming before the council for a decision, it will come before a committee of council who will make a recommendation to council. These committees, which can be made up of members of council or community members or a combination of the two, will hear from staff and from members of the public about the planning matters before them.

In many municipalities, a Committee of Adjustment makes decisions with respect to, among others, minor variance and consent applications. The Committee of Adjustment is appointed by council in accordance with section 44 of the *Planning Act.*

1.6 INDIGENOUS CONSULTATION

Only the Crown (i.e. the federal and provincial governments) owes a legal "duty to consult" to Indigenous communities when their interests are at stake. Since municipalities are "creatures of the Province," they do not owe a legal duty to consult; however, they do hold statutory obligations, since the Crown can delegate its procedural duties to third parties.[1]

That said, the PPS, 2024 states that the province recognizes the unique role Indigenous communities have in land use planning and development and recognizes the importance of consulting with these communities on planning matters that may affect their treaty rights and, therefore, requires that the PPS, 2024 shall be implemented in a way that is consistent with the recognition of existing treaty rights in Section 35 of the *Constitution Act*, 1982.

To that end, policy 6.2.2 of the PPS, 2024 requires planning authorities (typically municipalities) to undertake early engagement with Indigenous communities and coordinate on land use planning matters to facilitate knowledge-sharing, support consideration of Indigenous interests in land use decision-making, and support the identification of potential impacts of decisions on the exercise of Aboriginal or treaty rights.

In addition, policy 4.6.5, which addresses cultural heritage and archaeology, requires planning authorities to engage early with Indigenous communities and ensure their interests are considered when identifying, protecting, and managing archaeological resources, built heritage resources, and cultural heritage landscapes.

1 https://www.queensu.ca/pwip/sites/pwipwww/files/uploaded_files/publications/ crown-duty-to-consult.pdf, p. 3.

CHAPTER 2:

THE PLANNING ACT, R.S.O. 1990, C.P.13

The Planning Act (*the Act*) is the cornerstone provincial legislation that sets out the rules, requirements, and processes for the land use planning sphere in Ontario.

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Land use planning in Ontario is a policy-led system.

2.1 OVERVIEW

In many ways, the Act can be considered the "how to" guide for land use planning in Ontario and sets out the basis for planning considerations in the province.

The purpose of the Act, as set out, in section 1.1 is to:

- Provide for planning processes that are fair by making them open, accessible, timely and efficient;
- Promote sustainable economic development in a healthy natural environmental within a provincial policy framework;
- Provide for a land use planning system led by provincial policy;
- Integrate matters of provincial interest into provincial and municipal planning decisions by requiring that all decisions be consistent with the any policy statement issued by the Province and conform/not conflict with provincial plans;
- Encourage cooperation and coordination among various interests; and
- Recognize the decision-making authority andaccountability of municipal councils in planning.

2.2 KEY PROVISIONS AND PRINCIPLES

The Act is divided into seven parts, as follows: Provincial Administration, Local Planning Administration, Official Plans, Community Improvement, Land Use Controls and Related Administration, Subdivision of Land, and General.

All development in the province must comply with the Act and the applicable regulations.

THE MOST COMMON SECTIONS OF THE ACT THAT LAND USE PLANNERS USE IN THEIR DAY-TO-DAY PRACTICE ARE SET OUT IN THE CHART BELOW.

SECTION	OVERVIEW
1	Interprets the Act and provides a list of definitions of terms in the Act.
2	Requires that any authority carrying out responsibilities under the Act have regard to matters of provincial interest and includes a list of such matters.
3	Allows the Minister the ability to issue policy statements on matters relating to municipal planning that are of provincial interest. Subsection 3(5) requires that decisions of planning bodies be consistent with policy statements and conform with provincial plans that are in effect on that date.
16	Specifies what an Official Plan must contain, what it may contain, and what it cannot contain. Official Plans will be reviewed in detail in Chapter 4 of this guide.
17	Sets out the approval process for Official Plans as well as the related appeal provisions to the Ontario Land Tribunal.
22	Sets out the process for requesting an amendment to an Official Plan as well as the related appeal provisions to the Ontario Land Tribunal.
34	Sets out the criteria for Zoning By-laws, and Zoning By-law amendments, as well as the related appeal provisions to the Ontario Land Tribunal. Zoning By-laws will be reviewed in detail in Chapter 5 of this guide.
35.1	Allows for the addition of up to three residential units as of right in certain scenarios.
36	Deals with holding provisions, which are used to require certain matters to be achieved before a Zoning By-law amendment is brought into force.
37	Deals with community benefit charges, including noting the charges that can be imposed, the types of development exempt from the charge, and the processes related to the passing of a community benefits charge by-law. Community benefit charges will be reviewed in detail in Chapter 9 of this guide.
38	Stipulates the conditions of an interim control by-law that freezes development pending the outcome of necessary studies. Interim control by-laws will be reviewed in detail in Chapter 6 of this guide.
39	Provides provisions for a temporary use of land, buildings, or structures.
41	Directs the Site Plan Control process, including the appeal process to the Ontario Land Tribunal. Site Plan Control will be reviewed in detail in Chapter 6 of this guide.
42 / 51.1	Deals with the conveyance of land for park purposes. Parkland dedication will be reviewed in detail in Chapter 9 of this guide.
45	Sets out the powers of Committees of Adjustment and the process for minor variance applications, which is described more detail in Chapter 8 of this guide.
51	Sets out the subdivision approvals process, including the appeals process to the Ontario Land Tribunal. Subdivision of land is reviewed in detail in Chapter 7 of this guide.
53	Sets out the consent application process. Consent applications will be reviewed in detail in Chapter 7 of this guide.

2.3 RELATIONSHIP WITH OTHER RELEVANT LEGISLATION

The *Planning Act* works in conjunction with various other legislation and policies. To that end, the Act requires that decisions on planning matters:

- Shall ***have regard to***: Provincial Interests and decisions of municipal councils and approval authorities;
- Shall ***be consistent with***: Provincial Planning Statement, 2024; and
- Shall c***onform with*** (and not conflict with): Provincial Plans.

"Shall have regard to" has been found by the Ontario Land Tribunal and its predecessors to mean that the requirements need to be carefully considered but don't have to be followed. Moreover, "shall have regard to" is less deferential than "shall be consistent with."

"Shall be consistent with" is a less deferential standard than "shall conform with" and generally means that the intent of the policy is achieved.

"Shall conform with" is the most rigorous standard and is typically interpreted that a policy must be followed.

Provincial Planning Statement, 2024

The Provincial Planning Statement, 2024 (**PPS, 2024**) provides policy direction on matters of provincial interest related to land use planning and development and was in force and effect as of October 20, 2024. The PPS, 2024 is issued under Section 3 of the Act, which requires that all decisions affecting planning matters shall be consistent with the minimum standards set in the Provincial Planning Statement. The PPS, 2024 is discussed in more detail in Chapter 3.

Provincial Plans

Planning decisions under the Act must also conform with the applicable provincial plans which provide more specific direction for certain geographies within Ontario. Examples of these provincial plans include:

- Greenbelt Plan;
- Oak Ridges Moraine Conservation Plan;
- Niagara Escarpment Plan;
- Growth Plan for Northern Ontario; and
- Parkway Belt West Plan.

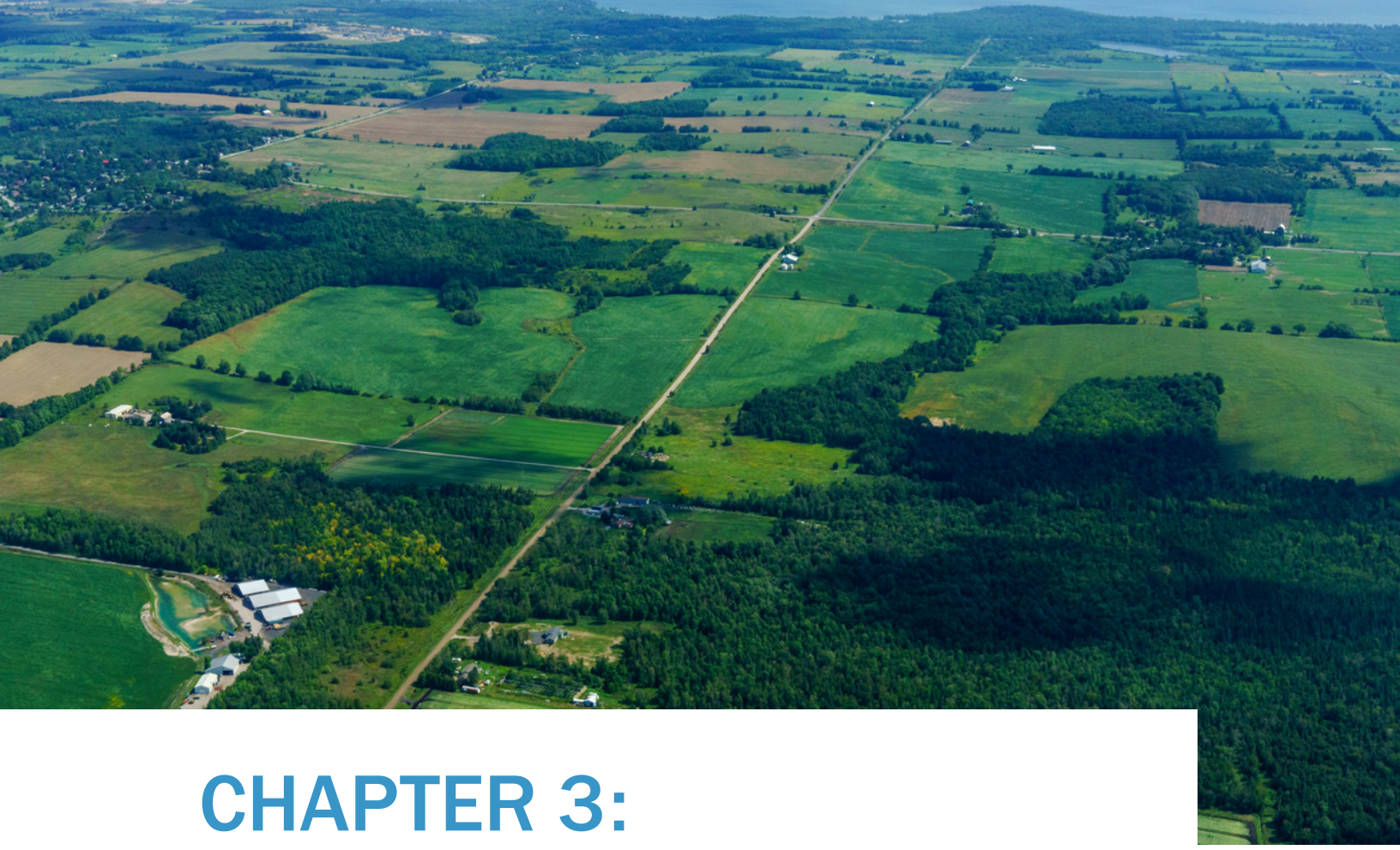
Provincial plans are discussed in more detail in Chapter 3.

OTHER LEGISLATION

All land use planning in the province must conform to the *Planning Act*. However, is it not the only piece of legislation that directs land use planning. Depending on the nature of the proposed development and its location, other pieces of legislation may be engaged. The chart below provides a brief look at frequently used legislation and its purpose and provides some examples of how it may be relevant to land use planning.

LEGISLATION	PURPOSE	SOME APPLICABLE ELEMENTS
Municipal Act, 2001	Outlines the powers and duties given to municipalities under the *Municipal Act* and many other acts.	• Tree cutting by-laws • Jurisdiction over highways • Taxation
Ontario Heritage Act	Protects heritage buildings, heritage districts, and archaeological sites.	• Designation of properties/districts • Demolition or alteration of designated properties
Conservation Authorities Act	Provides for the organization and delivery of programs and services that further the conservation, restoration, development, and management of natural resources in watersheds in Ontario.	• Establishes conservation authorities and their jurisdiction
Environmental Protection Act	Provides for the protection and conservation of the natural environment.	• Prohibits discharge of contaminants into the natural environment • Regulates waste management systems and waste disposal sites
Species Conservation Act, 2025	The purposes of this Act are to identify species at risk based on the best available scientific information; and to provide for the protection and conservation of species while taking into account social and economic such as sustainable economic growth.	• Defines habitat • Sets out the requirements for permits
Environmental Assessment Act	Provides for the protection, conservation, and wise management of the environment in Ontario	• Sets out the requirements for various types of Environmental Assessments
Development Charges Act	Provides municipal councils with the authority to impose development charges to pay for the increasevd need in services arising from new development	• Provides for a mechanism associated with payment for growth related infrastructure • Permits developers to build municipal services in anticipation of future growth and to be reimbursed for costs beyond their fair share
Building Code Act	Promotes public safety through the application of uniform building standards	• Regulates construction and demolition of buildings and structures • Establishes municipal authority over property standards

It is important that those involved in land development are aware of the various relevant pieces of legislation to ensure that land use planning questions are considered comprehensively.



CHAPTER 3:

PROVINCIAL PLANNING STATEMENT, 2024 AND PROVINCIAL PLANS

The Provincial Planning Statement, 2024 and provincial plans are key components of the land use planning process.

Section 3(1) of the *Planning Act* states:

Policy statements

The Minister, or the Minister together with any other minister of the Crown, may from time to time issue policy statements that have been approved by the Lieutenant Governor in Council (i.e. Cabinet) on matters relating to municipal planning that in the opinion of the Minister are of provincial interest.

Section 3(5) of the *Planning Act* states:

Policy statements and provincial plans

A decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission, or agency of the government, including the Tribunal, in respect of the exercise of any authority that affects a planning matter,

> (a) subject to a regulation made under subsection (6.1), shall be consistent with the policy statements issued under subsection (1) that are in effect on the date of the decision; and
>
> (b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be.

Currently, land use planning decisions must be consistent with one policy statement that applies province-wide, the Provincial Planning Statement, 2024 (PPS, 2024).

Land use planning decisions must also conform with provincial plans, which apply to certain geographic areas in the province, largely within the Greater Golden Horseshoe region. When working in the land development process, it is important to determine any applicable provincial plans that may be applicable to the project/file.

All decisions made by Council or the Ontario Land Tribunal (among others) must be consistent with the PPS, 2024 and conform to any relevant provincial plan except to the extent of a conflict, in which case, the relevant legislation speaks to whether the PPS, 2024 or the provincial plan prevails.

A brief summary of the various provincial plans is provided later in this chapter.

Provincial Planning Statement

The PPS, 2024 provides policy direction on matters of provincial interest related to land use planning and development. The PPS, 2024 establishes the policy framework for protecting matters of provincial interest across the province, which is then implemented in more detail through local official plans.

The PPS, 2024 is implemented through local Official Plans to recognize the local context. That said, when considering a development application, the PPS, 2024 is to be reviewed independently from any implementing Official Plan policies.

The PPS, 2024 is to be read in its entirety and the relevant policies are to be applied to each situation. The PPS, 2024 notes that when more than one policy is relevant, a decision-maker should consider all relevant policies to understand how they work together. There is no implied priority in the order in which the policies appear. Policies reference minimum standards, and decision-makers may go beyond the minimum standards to address matters of importance to a specific community, unless doing so would conflict with any policy of the PPS, 2024.

The specific language of the PPS, 2024 is important and intentional. Some policies set out positive directives such as with the use of the word “shall”; some policies set out limitations and prohibitions such as “shall not be permitted”; other policies use enabling or supportive language such as “should” and “promote” and “encourage.”

The PPS, 2024 is broken into seven sections, which are briefly summarized, with notable policies being identified, below.

Section 1: Introduction

Section 1 sets out the vision for the PPS, 2024. The Province of Ontario’s goal of building at least 1.5 million homes by 2031 is noted in the vision section. PPS, 2024 notes that the province will increase the supply and mix of housing options to address the full range of housing affordability needs.

Other priorities are also noted in the vision, including supporting a strong and competitive economy, compact and transit-supportive design, prioritizing growth and development within urban and rural settlements, and recognizing the unique role of Indigenous communities in land use planning and development. The protection of resources, including natural areas, water, aggregates, and agricultural lands, is also noted.

SECTION 2:
BUILDING HOMES, SUSTAINING STRONG AND COMPETITIVE COMMUNITIES

SECTION	OVERVIEW
2.1	**Planning for People and Homes** • Population and employment growth forecasts shall be based on Ontario Population Projections published by the Ministry of Finance. • At the time of creating a new Official Plan and each Official Plan update, sufficient land shall be made available to accommodate an appropriate range and mix of land uses to meet projected needs for a time horizon of at least 20 years but not more than 30 years. • Planning authorities should support the achievement of complete communities as defined in the PPS, 2024.
2.2	**Housing** • Planning authorities shall provide for an appropriate range and mix of housing options and densities to meet projected needs of current and future residents of the regional market area.
2.3	**Settlement Areas and Settlement Area Boundary Expansions** • Settlement areas shall be the focus of growth and development, with growth focused in strategic growth areas, including major transit station areas (MTSAs). • Land use patterns in settlement areas should incorporate a mix of land uses • Subsection 2.3.2.1 sets out the considerations for identifying a new settlement area or a settlement area boundary expansion.
2.4	**Strategic Growth Areas** • Planning authorities are encouraged to identify and focus growth and development in strategic growth areas. • MTSAs on higher-order transit corridors shall be delineated through a new Official Plan or Official Plan amendment. The delineation shall define an area of approximately 500–800 metre radius of a transit station. • The minimum density targets for various types of transit corridors are also set out in this section of the PPS, 2024.

SECTION 2:
BUILDING HOMES, SUSTAINING STRONG AND COMPETITIVE COMMUNITIES

SECTION	OVERVIEW
2.5	**Rural Areas in Municipalities** • This section sets out various ways by which rural areas should be supported. • In rural areas, rural settlement areas shall be the focus of growth and development, and planning authorities shall give consideration to locally appropriate rural characteristics.
2.8	**Employment** • Planning authorities shall plan for, protect, and preserve employment areas as defined in the PPS, 2024 for current and future uses and ensure that the necessary infrastructure is provided to support current and projected needs. • This section also sets out the requirements needed for removing lands from employment areas.

SECTION 3: INFRASTRUCTURE AND FACILITIES

SECTION	OVERVIEW
3.1	**General Policies for Infrastructure and Public Service Facilities** • Planning for infrastructure and public service facilities shall be coordinated and integrated with land use planning and growth management.
3.3	**Transportation and Infrastructure Corridors** • Planning authorities shall plan for and protect corridors and rights of way for infrastructure, including transportation, transit, and electricity generation facilities and transmission systems to meet current and projected needs.
3.5	**Land Use Compatibility** • Major facilities and sensitive land uses shall be planned and developed to avoid, or if avoidance is not possible, minimize and mitigate any potential adverse effects from odour, noise, and other contaminants to minimize risk to public health and safety.
3.6	**Sewage, Water, and Stormwater** • Planning for sewage and water services shall be provided in accordance with the requirements in this section. • Municipal sewage services and municipal water services are the preferred form of servicing for settlement areas.

SECTION 4: WISE USE AND MANAGEMENT OF RESOURCES

SECTION	OVERVIEW
4.1	**Natural Heritage** • Natural features and areas shall be protected for the long term. • Natural heritage systems shall be identified in specific areas, as shown on the mapping in the Appendix of the PPS, 2024. • This section sets out the areas in which development and site alteration are not permitted, including in significant wetlands, significant coastal wetlands, significant woodlands, significant valleylands, significant wildlife habitat, and significant areas of natural and scientific interest.
4.2	**Water** • Planning authorities shall protect, improve, or restore the quality and quantity of water, including by using watershed planning.
4.3	**Agriculture** • Prime agricultural areas, including specialty crop areas, shall be designated and protected for long-term use for agriculture. • This section also sets out the residential permissions in a lot on prime agricultural area. • Lot creation in prime agricultural areas is discouraged and may only be permitted in accordance with provincial guidance for specific uses noted in this section.
4.6	**Cultural Heritage and Archaeology** • Protected heritage property, which may contain built heritage resources or cultural heritage landscapes, shall be conserved.

SECTION 5: PROTECTING PUBLIC HEALTH AND SAFETY

SECTION	OVERVIEW
5.2	**Natural Hazards** • Planning authorities shall, in collaboration with conservation authorities where they exist, identify hazardous lands and hazardous sites and manage development in these areas in accordance with provincial guidance, and development shall generally be directed to areas outside of these areas. • Policies pertaining to special policy areas are defined in the PPS, 2024.

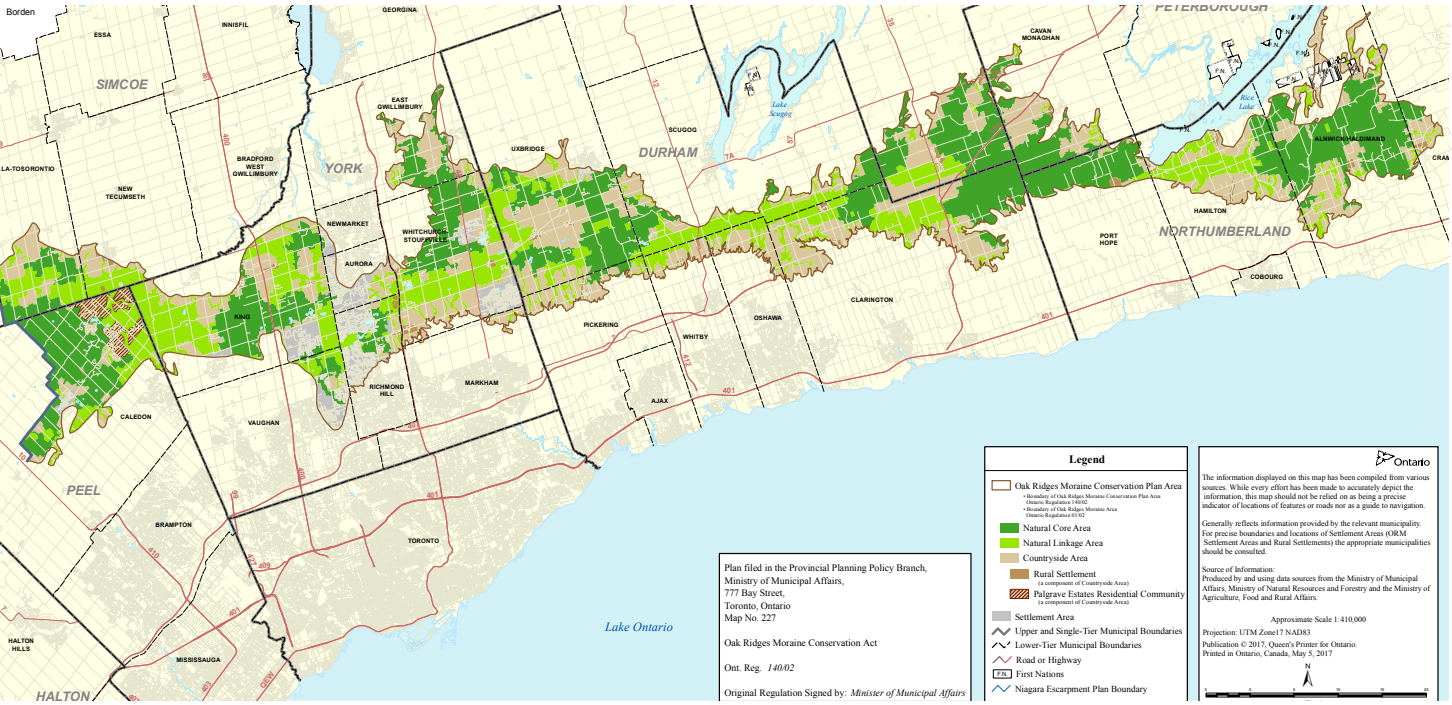
APPENDIX – SCHEDULE 1: LIST OF LARGE AND FAST-GROWING MUNICIPALITIES

The Appendix to the PPS, 2024 lists 29 "Large and Fast-Growing Municipalities," which are subject to specific policies.

Town of Ajax
City of Mississauga
City of Barrie
Town of Newmarket
City of Brampton
City of Niagara Falls
City of Brantford
Town of Oakville
City of Burlington
City of Oshawa
Town of Caledon
City of Ottawa
City of Cambridge
City of Pickering
Municipality of Clarington
City of Richmond Hill
City of Guelph
City of St. Catharines
City of Hamilton
City of Toronto
City of Kingston
City of Vaughan
City of Kitchener
City of Waterloo
City of London
Town of Whitby
City of Markham
City of Windsor
Town of Milton

PROVINCIAL PLANS

The following provincial plans apply to various parts of the province.



OAK RIDGES MORAINE CONSERVATION PLAN[1]

The Oak Ridges Moraine Conservation Plan is set out in *Ontario Regulation (O. Reg.) 140/02* under the *Oak Ridges Moraine Conservation Act, 2001*. The purpose of the Oak Ridges Moraine Conservation Plan (**ORMCP**) is to provide land use and resource management planning direction on how to protect the Moraine's ecological and hydrological features and functions.

The Oak Ridges Moraine is one of Ontario's most significant landforms and which stretches 160 kilometres from the Trent River in the east to the Niagara Escarpment in the west. The Escarpment, the Moraine, and the Greenbelt Plan's Natural Heritage System together form the foundation of south-central Ontario's natural heritage and green space systems. The Moraine divides the watersheds draining south into western Lake Ontario from those draining north into Georgian Bay, Lake Simcoe, and the Trent River system. The Moraine shapes the present and future form and structure of the Greater Toronto region, and its ecological functions are critical to the region's continuing health.

The plan divides the Moraine into four land use designations: Natural Core Areas (38% of the Moraine), Natural Linkage Areas (24% of the Moraine), Countryside Areas (30% of the Moraine), and Settlement Areas (8% of the Moraine) all of which have specific policies that apply.

To find out how the ORMCP affects a specific area or land use or development proposal on the Oak Ridges Moraine, the ORMCP regulation must be read in its entirety. In addition, the ORMCP is not intended to replace Official Plan policies. However, in the event of a conflict the ORMCP takes precedence over Official Plan policies.

In addition, the ORMCP is to be implemented in a manner consistent with the recognition and affirmation of existing Aboriginal and treaty rights in Section 35 of the *Constitution Act*, 1982. To that end, the Province of Ontario is required to consult with First Nations and Métis communities on decisions concerning the use of Crown land and resources that may affect Aboriginal and treaty rights within the area of the ORMCP.

1 https://www.ontario.ca/page/oak-ridges-moraine-conservation-plan

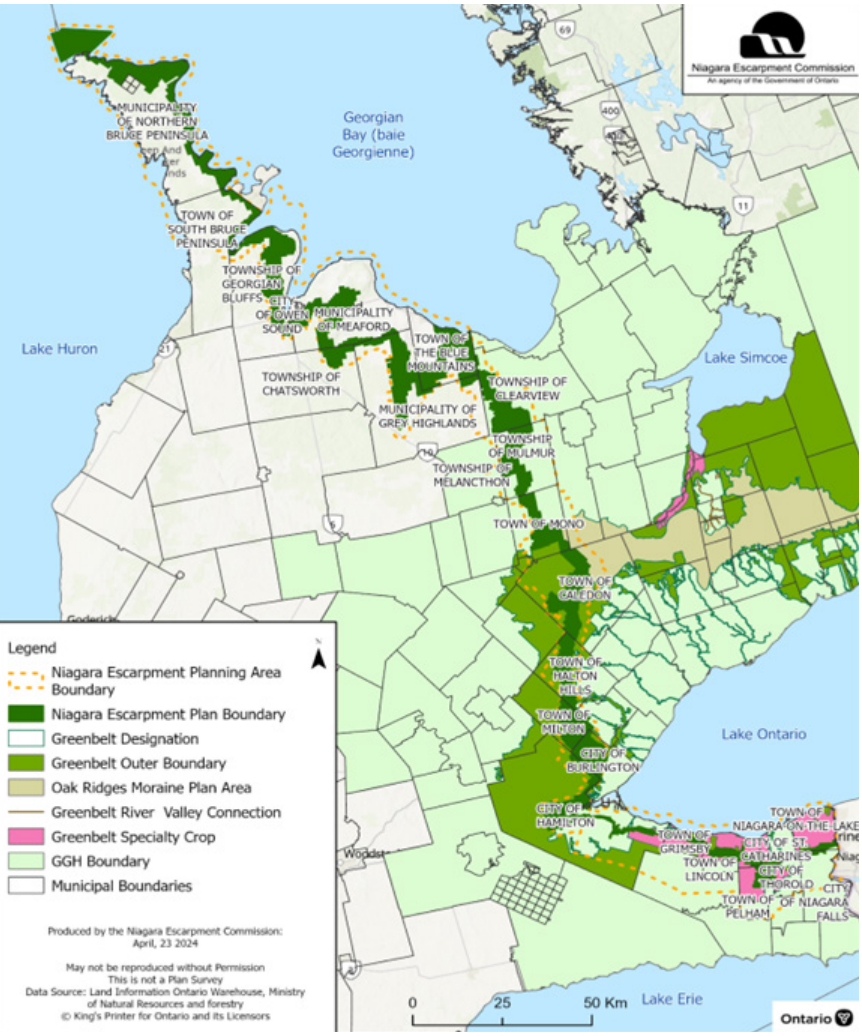
NIAGARA ESCARPMENT PLAN[2]

The Niagara Escarpment Plan (**NEP**) is authorized under the *Niagara Escarpment Planning and Development Act* and builds upon the policy foundation provided by the Provincial Planning Statement. The NEP provides additional land use planning policies for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment and to ensure that only such development occurs as is compatible with that natural environment.

The Niagara Escarpment includes a variety of topographic features and land uses extending 725 kilometres from Queenston on the Niagara River to the islands off Tobermory on the Bruce Peninsula.

The NEP applies to certain lands within the regions of Niagara, Halton, and Peel; the counties of Dufferin, Simcoe, Grey, and Bruce; and the municipalities of Hamilton, Grey Highlands, Blue Mountains, Chatsworth, Meaford, Owen Sound, Georgian Bluffs, South Bruce Peninsula, and Northern Bruce Peninsula, all as shown on various schedules to the NEP.

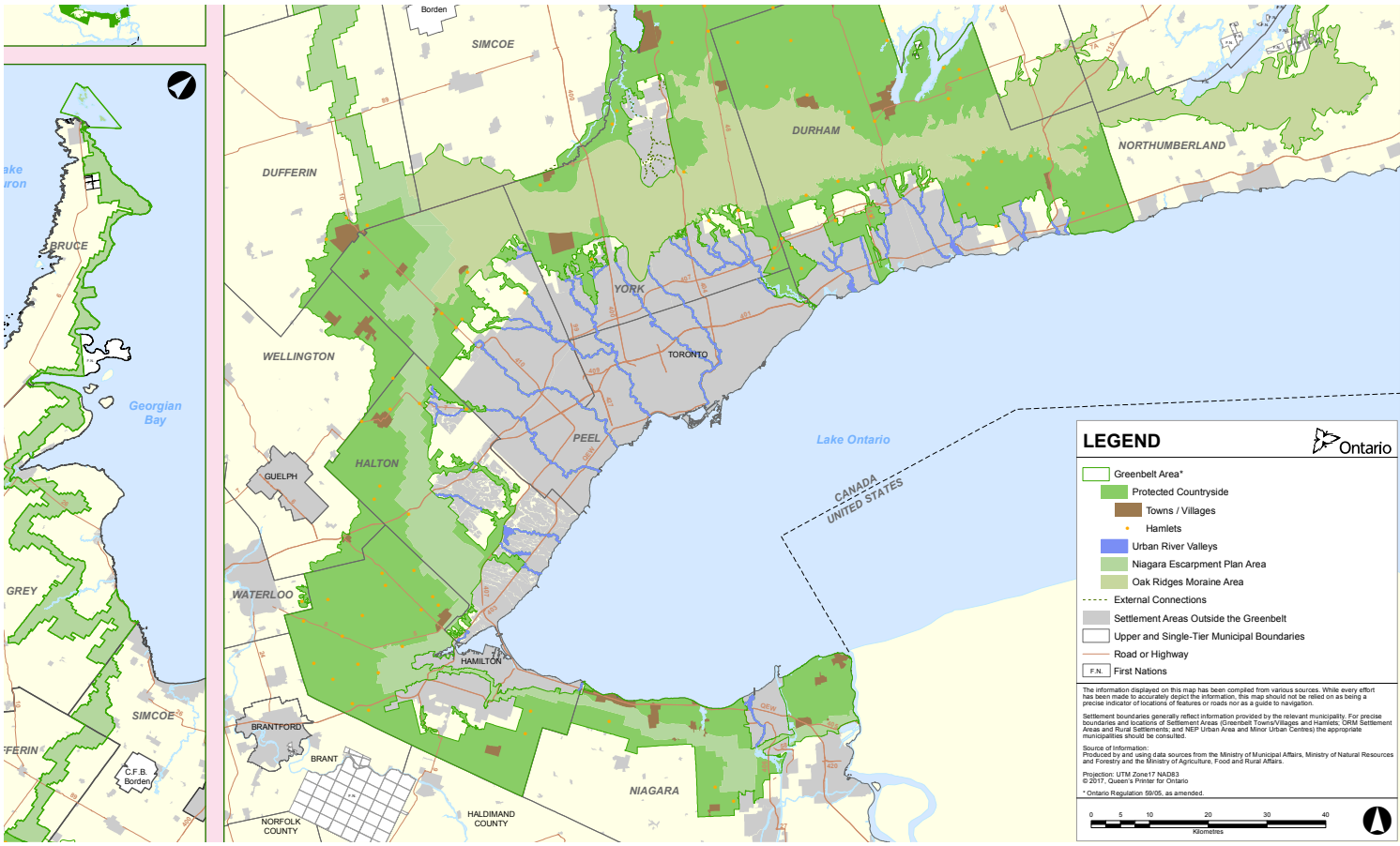
In 1990, the United Nations Educational, Scientific and Cultural Organization (UNESCO) named the Niagara Escarpment a World Biosphere Reserve. This designation recognizes the Escarpment and land in its vicinity as a nationally and internationally significant landform.



The NEP must be implemented in a manner that is consistent with the recognition and affirmation of existing Aboriginal and treaty rights under Section 35 of the Constitution Act, 1982.

For any proposed development within the NEP, landowners should, in consultation with NEP commission staff, consider the opportunities and constraints for lands located within the NEP area and the applicability of the NEP policies.

2 https://files.ontario.ca/appendix_-_niagara_escarpment_plan_2017_-_oc-10262017.pdf



GREENBELT PLAN[3]

The Greenbelt Plan derives its authority from the *Greenbelt Act, 2005*. The Greenbelt Plan, together with the ORMCP and the NEP, identifies where urbanization should not occur in order to provide permanent protection to the agricultural land base and the ecological and hydrological features, areas, and functions occurring on this landscape. The Greenbelt Plan builds upon the ecological protections provided by the NEP and the ORMCP.

The Greenbelt is a broad band of permanently protected land which:

- Protects against the loss and fragmentation of the agricultural land base and supports agriculture as the predominant land use;
- Gives permanent protection to the natural heritage and water resource systems that sustain ecological and human health and that form the environmental framework around which major urbanization in south-central Ontario will be organized;
- Provides for a diverse range of economic and social activities associated with rural communities, agriculture, tourism, recreation, and resource uses; and
- Builds resilience to and mitigates climate change. The successful realization of this vision for the Greenbelt centres on effective collaboration among the province, other levels of government, First Nations and Métis communities, residents, private and non-profit sectors across all industries, and other stakeholders.

3 https://www.ontario.ca/document/greenbelt-plan

Lands identified as "Protected Countryside" in the Greenbelt Plan are intended to enhance the spatial extent of agriculturally and environmentally protected lands covered by the NEP and the ORMCP, while at the same time, improving linkages between these areas and the surrounding major lake systems and watersheds. The Protected Countryside is made up of an agricultural system and a natural system together with a series of settlement areas.

The agricultural system has two components:

- The agricultural land base, which is composed of prime agricultural areas, including specialty crop areas, and rural lands that together create a continuous, productive land base for agriculture; and
- The agri-food network, which includes infrastructure, services, and assets important to the viability of the agri-food sector.

The natural system identifies lands that support both natural heritage and hydrologic features and functions, including providing for pollinator habitat, which is an essential support for agricultural production and for ecosystems.

Settlement areas, identified as "towns/villages and hamlets," vary in size, diversity and intensity of uses and are found throughout the protected countryside. The policies for these settlement areas support the achievement of complete communities that are healthier, safer, more equitable, and more resilient to the impacts of climate change.

The Greenbelt Plan permanently protects the agricultural land base and the ecological and hydrological features, areas, and functions occurring in the Greenbelt. Although primarily implemented through Ontario's land use planning system, including Official Plans, the Greenbelt Plan is not solely a land use plan. Certain policies contemplate implementation by both the province and municipalities through other land use planning tools, such as regulations and guidelines.

PARKWAY BELT WEST PLAN[4]

The Parkway Belt West Plan (**PBWP**) is Ontario's first provincial land use plan under the authority of the *Ontario Planning and Development Act, 1994*.

The PBWP applies to lands which generally stretch 120 kilometres from the City of Hamilton to the City of Markham and covers approximately 12,070 hectares or 29,830 acres generally along the Highway 407 corridor. It crosses a number of municipalities in the Greater Golden Horseshoe, including Hamilton, Burlington, Oakville, Milton, Halton Hills, Mississauga, Brampton, Vaughan, Richmond Hill, and Markham.

The purposes of the PBWP are:

- To separate and define the boundaries of urban areas in the western Greater Toronto Area;
- To link urban areas by providing space for the movement of people, goods, energy and information;
- To provide a land reserve for future linear facilities (including major transportation, communication, and utility facilities) and for unanticipated activities; and
- To provide a linked system of open space and recreational facilities.

There are two general land use designations in the PBWP:

1. Public Use Areas:

- Mainly are used for infrastructure (utility, electric power facility, roads, inter-urban transit) and open space; and
- Generally, reflect areas where infrastructure has been built.

2. Complementary Use Areas:

- Mainly are for uses that help preserve open spaces and encourage agricultural, recreational, and institutional land uses.

The PBWP is not always readily available; therefore, landowners working in these areas should consult the schedules of these plans or reach out to municipal planners or parkwaybeltwestplan@ontario.ca for inquiries.

In 2022, the Province of Ontario indicated that it intended to repeal the PBWP; however, they have not yet done so, and it remains in force on many lands within the Greater Golden Horseshoe Area.

4 Source: https://ero.ontario.ca/notice/019-6167

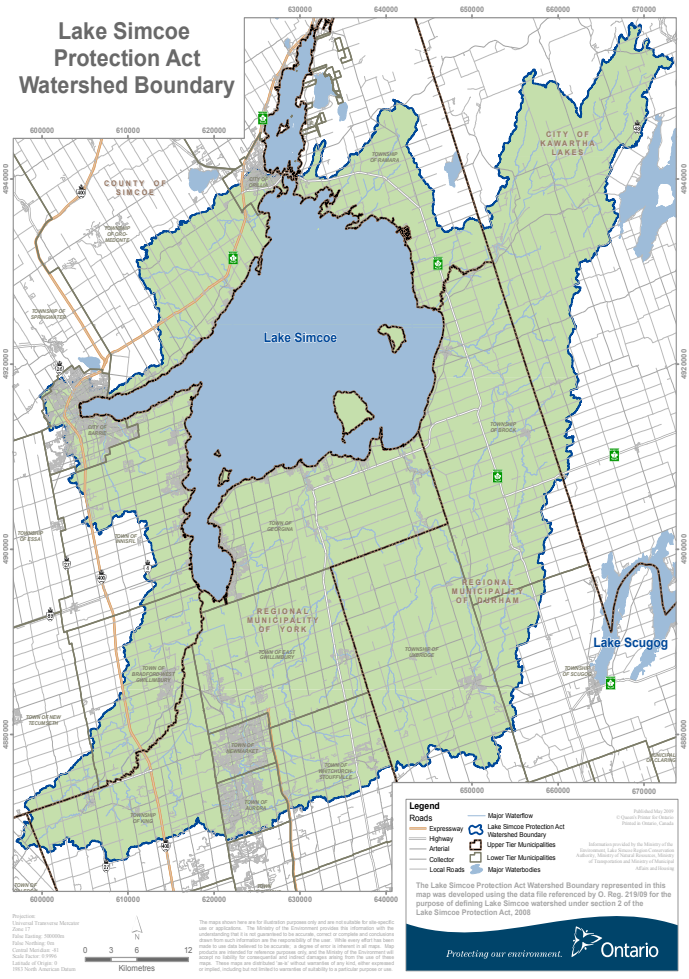
LAKE SIMCOE PROTECTION PLAN[5]

The Lake Simcoe Protection Plan (**LSPP**) is approved under the authority of the *Lake Simcoe Protection Act, 2008*. The LSPP watershed contains important natural, urban, and agricultural systems that are vital to the region and Ontario, including parts of the Oak Ridges Moraine and the Greenbelt. Recognizing the pressures facing this important watershed, the LSPP provides a policy framework for the protection and restoration of Lake Simcoe.

The objectives of the LSPP include to:

- Protect, improve, or restore the elements that contribute to the ecological health of the Lake Simcoe watershed, including water quality, hydrology, key natural heritage features and their functions, and key hydrologic features and their functions;
- Restore a self-sustaining cold water fish community in Lake Simcoe;
- Reduce loadings of phosphorus and other nutrients of concern to Lake Simcoe and its tributaries;
- Respond to adverse effects related to invasive species and, where possible, to prevent invasive species from entering the Lake Simcoe watershed;
- Improve the Lake Simcoe watershed's capacity to adapt to climate change; and
- Promote environmentally sustainable land and water uses, activities, and development practices.

The LSPP expresses the Province of Ontario's interest and direction with regard to protecting the ecological health and environmental sustainability of the Lake Simcoe watershed.



5 https://www.ontario.ca/document/lake simcoe-protection-plan

GROWTH PLAN FOR NORTHERN ONTARIO[6]

The Growth Plan for Northern Ontario (**GPNO**) is developed pursuant to the *Places to Grow Act, 2005* and applies to the Northern Ontario Growth Plan Area defined by *Ontario Regulation 416/05*.

The GPNO was released March 3, 2011, and is a 25-year plan that provides guidance to align provincial decision-making and investment for economic and population growth in Northern Ontario. The GPNO is structured around six theme areas: economy, people, communities, infrastructure, environment, and Aboriginal peoples. Within each theme, the GPNO identifies a series of policies to achieve its vision.

The key growth management goals for the GPNO include:

- Diversifying of traditional resource-based industries; workforce education and training; integration of infrastructure investments and planning; and tools for Indigenous peoples' participation in the economy.

The GPNO has been prepared under the *Places to Grow Act, 2005* and sets out the following purposes:

1. To enable decisions about growth to be made in ways that sustain a robust economy, build strong communities, and promote a healthy environment and a culture of conservation;
2. To promote a rational and balanced approach to decisions about growth that builds on community priorities, strengths, and opportunities and makes efficient use of infrastructure;
3. To enable planning for growth in a manner that reflects a broad geographical perspective and is integrated across natural and municipal boundaries; and
4. To ensure that a long-term vision and long-term goals guide decision-making about growth and provide for the co-ordination of growth policies among all levels of government.

The GPNO is a strategic framework that will guide decision-making and investment planning in Northern Ontario over the next 25 years. It contains policies to guide decision-making about growth that promote economic prosperity, sound environmental stewardship, and strong, sustainable communities that offer northerners a high quality of life. It also recognizes that a holistic approach is needed to plan for growth in Northern Ontario. A skilled and healthy population, modern and efficient infrastructure, and well-planned communities are critical to achieving long-term global competitiveness.

6 https://www.ontario.ca/document/growth-plan-northern-ontario/schedule

The GPNO reflects a shared vision between northerners and the Government of Ontario that engages and empowers residents, businesses, institutions, and communities to work together to build a stronger Northern Ontario. The GPNO recognizes that to achieve these long-term goals, strategic co-ordination, partnerships, and collaboration are essential. The GPNO is intended to complement other provincial and regional initiatives that also contribute to the long-term sustainability and prosperity of Northern Ontario.

Conclusion

One of the stated purposes of the *Planning Act* is to "provide for a land use planning system led by provincial policy." Essentially, this means that the *Planning Act* outlines a policy-led system with provincial policies outlined in the PPS, 2024 and provincial plans. The PPS, 2024 and the various provincial plans spell out the provincial policy which leads the land use planning system.

As such, it is critical to consider not only relevant official plan policies, but also the PPS, 2024 and the applicable provincial plans in forming a planning opinion on any type of land use planning matter.

CHAPTER 4:
OFFICIAL PLANS

An Official Plan (OP) is a long-term planning document created by a municipality to guide land use and development within their jurisdiction. It sets out a vision for how land should be developed, used, and managed over time, including housing, jobs, parks, natural areas, community services, and streets.

The OP is a key tool for municipal governments to guide growth, protect resources, and ensure that development is sustainable and aligned with broader provincial policies. OPs set out the upper-, lower-, or single-tier planning policies based on the PPS, 2024 and other relevant provincial plans.

Sections 16(1) and (2) of *the Act* set out what an OP must or may contain, including:

(a) goals, objectives and policies to manage and direct physical change and the effects on the social, economic, built and natural environment of the municipality;

(b) policies to ensure the adequate provision of affordable housing;

(c) a description of the procedures for informing and obtaining the views of the public in respect of planning applications; and

(d) the procedures proposed to attain the objectives of the plan.

Key elements of OP include:

- Goals and objectives;
- Policies that describe specific uses that are allowed in each designation and criteria for evaluating development applications;
- Schedules for all lands in the municipality, showing land designations, roads, natural hazards among others, which are read in conjunction with the policies; and
- Appendices that provide further information or clarification.

OPs are required to implement the *Planning Act*, conform to provincial plans, and be consistent with provincial policies and are implemented through Zoning By-laws, minor variances, Site Plan Pontrol, plans of subdivision and severances.

The Official Plan Process

OPs provide direction for future growth over the long term, which is typically 20–30 years. A municipality is required to regularly update their OP to ensure it implements relevant changes that may have occurred and continues to implement the *Planning Act*, conform with relevant provincial plans, be consistent with the Provincial Planning Statement, and conform to any applicable upper-tier OP.

The Key Steps in Preparing an Official Plan:

1. **Prepare the Draft OP**: The first step involves working with Council to determine the vision for the municipality.
2. **Public Consultation**: Throughout the process, it is critical that municipalities gather input from stakeholders and residents. This is done through open houses, public meetings, design charrettes, and visioning exercises as just a few examples.
3. **Research**: Detailed research and data collection follows.
4. **Development of Draft Policies:** Draft policies and schedules are prepared for further consultation with stakeholders.
5. **Council Approval**: When the plan is ready, Council formally adopts the OP.
6. **Approval Authority**: The OP is then submitted to the approval authority as applicable.
7. **Implementation**: Zoning By-laws are updated and the OP is monitored for effectiveness.

Review of Official Plans

An OP can be reviewed by a municipality at any time, but the *Planning Act* requires that OPs are updated no less frequently than 10 years after a new OP comes into effect and every five years thereafter, unless replaced by another OP. This is to ensure that the OPs continues to conform with provincial legislation, policy, and plans.

As part of the review of an OP, new and updated policies are put before Council for approval. This ensures the municipalities are keeping their OPs up to date not only with provincial requirements but to address the local context.

Official Plan Amendments

An Official Plan amendment (**OPA**) is the process through which the municipality changes/updates its policies and/or land use designations on schedules within the OP. This can be the result of a municipally initiated review of its own OP policies or the result of a landowner seeking to use or develop their property in a way that is not contemplated by in-force OP policies. An OPA can apply to a single property, multiple properties, an area, or an entire municipality. Typically, municipally initiated OPAs follow the key steps in preparing an Official Plan, as described above.

Privately Initiated OPA

When a development application is submitted to a municipality that does not comply with the municipality's OP, a privately initiated OPA is required. Typically, the steps to facilitate a privately initiated OPA include:

1. Pre-consultation Meeting

Prior to submitting an OPA application, a pre-consultation meeting with municipal planning staff and external agencies is recommended to:

- Confirm whether an OPA is necessary and supportable;
- Provide initial feedback on the proposed development and amendment;
- Determine whether other approvals will be required (i.e. Zoning By-law amendment, site plan, etc.) and whether they should be filed at the same time; and
- Outline the plans and studies that will be required for the municipality to evaluate the application.

After the pre-consultation meeting, most municipalities provide a checklist of required documents to be submitted with the application for it to be deemed complete.

2. Application Submission

In order to have the municipality process an OPA, the applicant must submit:

- A complete application form for an OPA;
- The application fee(s); and,
- The plans and studies that were outlined in the pre-consultation meeting as required.

If the application is deemed complete, the municipality will begin to process it. If it is not, the municipality will advise the applicant, and any outstanding reports or studies will be required to be submitted. If there is a dispute regarding whether an application is complete, the Ontario Land Tribunal will make the determination.

3. Processing the Application

After receiving a complete OPA application, the municipality will circulate it to municipal departments, including the planning and engineering departments, as well as any external agencies, such as conservation authorities, CN Railway, and various utility companies, which will provide comments and/or recommendations.

The Planning Act requires that the application be processed within a statutory timeline of 120 days, commencing once a complete application is received. If a municipality does not make a decision within that timeframe, an applicant is permitted to file an appeal with the Ontario Land Tribunal.

4. Public Meeting

The Planning Act requires one statutory public meeting before an OPA can be approved to ensure the views of the public are obtained and taken into consideration. Many municipalities provide additional opportunities for members of the public to review and ask questions about the application.

5. Recommendation Report and Council Meeting

A recommendation report will be prepared by the planning department and presented to a planning committee or to Council, which will contain a recommendation as to whether Council should approve or refuse the application.

6. Council Decision

The Municipal Council will make a decision on the application. If Council approves the OPA, then Council will pass a by-law to implement their decision. If Council refuses the application, the applicant can file a notice of appeal with the Ontario Land Tribunal, which will make the decision on the application.

7. Approval Authority

Depending on the nature of the OPA, either the lower-tier Council, the upper-tier Council, or the Ministry of Municipal Affairs and Housing may be the approval authority.

8. Appeal

Once an appeal is filed, the Municipal Council no longer has decision-making authority and the Ontario Land Tribunal will make a decision based on the statutory tests set out in the *Planning Act*, namely, does the OPA have regard for matters of provincial interest, is it consistent with the Provincial Planning Statement, does it conform with the relevant provincial plan, and does it conform with any applicable upper-tier OP. The Ontario Land Tribunal will also consider non-statutory tests, such as whether the OPA represents good planning and is in the public interest.

CHAPTER 5:
ZONING BY-LAWS AND LEGAL NON-CONFORMING USES

A Zoning By-law is a legal document that controls how land and buildings are developed and used in a certain area. Zoning By-laws establish the uses and regulations for the uses for different zones within a municipality. Zoning By-laws typically regulate permitted uses, the location of structures on a lot, the amount of density permitted on a lot, lot size requirements, parking requirements, and so on. There are very few parts of a structure on a lot that are not regulated by a Zoning By-law.

5.1 Purpose and Relationship to the Official Plan

Section 34 of the *Planning Act* gives municipalities the authority to implement land use controls through a Zoning By-law.

While an Official Plan sets out a municipality's general policies for land use, a Zoning By-law implements those policies by establishing legally enforceable, specific requirements. For example, the OP may designate lands for residential use but then the Zoning By-law details what types of residential built forms are permitted, as well as the regulations associated with them, such as lot coverage, setbacks, and building heights.

A Zoning By-law is required to be consistent with the Provincial Planning Statement and conform to any applicable provincial plans, as well as any applicable OPs.

Establishing a Zoning By-law is a similar process to establishing an OP in terms of *Planning Act* requirements for public consultation and notice. The appeal rights of a new comprehensive Zoning By-law and amendments thereto are also similar to those of a new OP.

5.2 Zones and Regulations

Zoning By-laws can apply to a property, area, or entire municipality. They include schedules that identify the applicable zoning that applies to a specific property and also include information on how to interpret the Zoning By-law, administrative information, definitions, general provisions that apply to all zones, zoning related to parking and loading, holding provisions, temporary uses, and interim control zones.

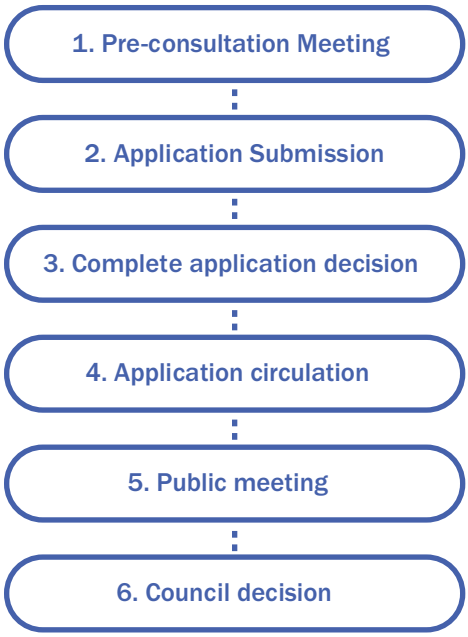
The Zoning By-law divides land into different zones, each with its own set of permitted uses and regulations that apply but generally govern:

- Permitted uses: what uses are legally established on a property, with or without conditions;
- Lot requirements: what are the lot size and area requirements;
- Location: where can buildings or uses be located on a property; and
- Built form: what shape/size of building can be located on the property, including height, density, setbacks, open space, and landscaping requirements, etc.

Municipalities create their own Zoning By-laws. If a proposed development does not comply with the Zoning By-law, relief can be sought by applying for a Zoning By-law amendment or a minor variance, depending on the required scale of relief.

5.3 Zoning By-law Amendments

The *Planning Act* permits Zoning By-law amendments (**ZBAs**) to address changes such as a change in land use or significant increase in the regulated height or density. Consider, for example, a residential zone that only permits single detached dwellings. If a landowner wanted to construct townhouses in such a zone, a ZBA application would be required. A concurrent OP amendment application is required to be filed with the municipality if, in this example, the OP policies do not permit townhouses on this property. Typically, the steps to facilitate a ZBA include:



5.4 Appeals

If Council fails to make a decision on an application for a ZBA within 90 days of the application being deemed complete, or otherwise refuses the application, the applicant or the Minister of Municipal Affairs and Housing may appeal to the Ontario Land Tribunal.

5.5 Temporary Use Zoning By-Law

Section 39 of the *Planning Act* allows the authorization of the temporary use of land, buildings, or structures for any purpose that is otherwise prohibited by the by-law. The temporary use by-law is granted for up to three years; however, Council may grant further extensions of up to three years at a time.

Temporary use by-laws are often used for uses that are temporary in nature, such as outdoor patios or sales centres. Another example of a temporary use might be where a property is intended for long-term employment uses but since servicing is not yet available, a drive-in theatre is permitted and renewed on an ongoing (but still temporary) use.

Applying for a temporary use by-law follows the same process as a ZBA.

5.6 Legal Non-Conforming Uses

A legal non-conforming use is a use of land that is not permitted under the current Zoning By-law but was legally permitted at the time that the use was established.

Section 34(9) of the *Planning Act* prevents new Zoning By-laws from interfering with the continued legal use of any land, building, or structure, if such land, building, or structure was lawfully used for such purpose on the day of passing of the by-law, so long as it continues to be used for that purpose.

To be considered legal non-conforming, a building, structure, or land must meet the following requirements:

1. **Established Legally**: the use must have been legally established under a previous zoning by-law or before a Zoning By-law existed;
2. **Continuous Use**: the use must have been in continuous use since it was established; and
3. **Current By-law**: the use must not be permitted under the current Zoning By-law.

Since Zoning By-laws cannot be applied retroactively, the *Planning Act* allows for those uses that were legally established to be recognized going forward so long as the use continues. An example of this can be a gas station located in a residential neighbourhood that was established before a Zoning By-law was put in place. Even if the new Zoning By-law envisions the site for another use, provided the land continues to be used as a gas station, a legal non-conforming status applies. However, any new development on the site would have to conform with the Zoning By-law.

The onus to prove that the use enjoys legal non-conforming rights lies with the property owner.

5.7 Redevelopment or Intensification

Under certain circumstances, landowners have the right to demolish and rebuild legally non-conforming and legally non-complying structures within the same building envelope. However, a landowner must be careful not to lose the legal non-conforming status by allowing a particular use to cease. If there is an intention to demolish a legal non-conforming use, the landowner must speak to the municipality to determine whether they will lose their legal non-conforming status. Landowners also have the right to reasonable flexibility and expansion of legally non-conforming and legally non-complying uses, land, building, and structures, provided the evolution or expansion does not cause undue adverse impacts on the surrounding neighbourhood. So, staying with the gas station example above, the gas station may be permitted to expand to include a convenience store as part of the gas station operation or to include more pumps, provided it does not cause adverse impacts on the neighbours.

Subsection 34(10) of the *Planning Act* allows municipalities to pass by-laws to permit the expansion or enlargement of a legal non-conforming use, which effectively allows municipalities to regulate the enlargement of legal non-conforming uses.

There are restrictions on how legal non-conforming uses can be altered. If a property owner desires to expand or otherwise alter a legal non-conforming use, they must apply to the committee of adjustment under Section 45(2) of the *Planning Act*. The four tests for minor variance applications under subsection 45(1) of the *Planning Act* do not apply to applications to enlarge a legal non- conforming structure. Instead, the test of "good planning" is broadly applied, which generally is an assessment of impacts associated with the proposed expansion.

Appeals to the Ontario Land Tribunal from decisions of the committee of adjustment with respect to legal non-conforming uses are permitted and follow the same process as appeals from decisions of the Committee of Adjustment.

CHAPTER 6: DEVELOPMENT CONTROL

In addition to Official Plans (OPs), Zoning By-laws, minor variances, and the subdivision of land, there are numerous other forms of development control in Ontario. Together, these *Planning Act* tools ensure that development is safe, orderly, and functional.

This chapter covers Site Plan Control, the community planning permit system, holding by-laws, interim control by-laws, and Minister's zoning orders.

6.1 Site Plan Control

What is Site Plan Control?

Section 41 of the *Planning Act* allows municipalities to control certain matters in a development. The benefits of Site Plan Control are to ensure orderly and high-quality development, protection of the environment through proper stormwater and landscaping design, enhanced public safety by regulating access and traffic flow, and the promotion of accessibility and compliance with the *Accessibility for Ontarians with Disabilities Act*.

Where does it apply?

In order to use Site Plan Control, a municipality must show or describe the Site Plan Control area in an OP. It is typical for municipalities in Ontario to designate all lands in the entire municipality as a Site Plan Control area and to regulate the Site Plan Control area through an implementing Site Plan Control By-law. The Site Plan Control By-law will also describe the types of development that may be exempt from Site Plan Control and the potential conditions of approval.

How does it apply?

Site Plan Control only applies to "development" which is defined as:

> "the construction, erection or placing of one or more buildings or structures on land or the making of an addition or alteration to a building or structure that has the effect of substantially increasing the size or usability thereof, or the laying out and establishment of a commercial parking lot or of sites for the location of three or more trailers as defined in subsection 164 (4) of the *Municipal Act, 2001* or subsection 3 (1) of the *City of Toronto Act, 2006*, as the case may be, or of sites for the location of three or more mobile homes as defined in subsection 46 (1) of this Act or of sites for the construction, erection or location of three or more land lease community homes as defined in subsection 46 (1) of this Act."

Therefore, the first assessment that needs to be undertaken is whether or not what is being proposed meets the definition of development, as not all development is required to proceed through the site plan approval process.

The goal of Site Plan Control is to ensure development functionally and safely integrates with surrounding development to ensure compatibility with surrounding lands. The Site Plan Control process is a key component of ensuring that an OP and Zoning By-law is implemented. However, the Site Plan Control process cannot be used to amend or require more than what is required under the in-force Zoning By-law that applies to the property.

The Site Plan Control process examines the design and technical elements of a proposed development, such as site access, servicing, waste storage, parking, loading, and landscaping among other matters. For properties subject to Site Plan Control, an above-grade building permit cannot be issued until site plan approval has been granted.

Site Plan Control cannot regulate matters covered in the Zoning By-law or matters related to the interior of a building. In accordance with Section 41(4.1) of the *Planning Act*, interior and exterior design, layout of interior areas, excluding interior walkways, stairs, elevators, and escalators and the manner of construction and standards for construction are not subject to Site Plan Control. In addition, the appearance of the elements, facilities, and works on the land or any adjoining highway is not subject to Site Plan Control, except to the extent that the appearance impacts matters of health, safety, accessibility, sustainable design, or the protection of adjoining lands.

Site Plan Control Conditions

Unlike draft plans of subdivision, subsection 41(7) of the *Planning Act* specifies the types of conditions that a municipality can impose as conditions of site plan approval. This is a finite list of conditions and includes the following to the satisfaction of and at no expense to the municipality:

1. Widenings of highways that abut on the land as long as they are described in the Official Plan.
2. Access ramps and curbings and traffic direction signs.
3. Off-street vehicular loading and parking facilities, access driveways, and the surfacing of such areas and driveways.
4. Walkways and walkway ramps, including the surfacing thereof, and all other means of pedestrian access.

4.1 Facilities designed to have regard for accessibility for persons with disabilities.

5. Facilities for the lighting of the land or of any buildings or structures thereon.
6. Walls, fences, hedges, trees, shrubs, or other groundcover or facilities for the landscaping of the lands or the protection of adjoining lands.
7. Vaults, central storage, and collection areas and other facilities and enclosures for the storage of garbage and other waste material.
8. Easements conveyed to the municipality for the construction, maintenance, or improvement of watercourses, ditches, land drainage works, sanitary sewage facilities, and other public utilities of the municipality or local board thereof on the land.
9. Grading or alteration in elevation or contour of the land and provision for the disposal of storm, surface, and waste water from the land and from any buildings or structures thereon.

The conditions also allow a municipality to require a landowner to maintain all of the facilities or works mentioned in paragraphs 2, 3, 4, 5, 6, 7, 8 and 9 of clause (a), including the removal of snow from access ramps and driveways, parking, and loading areas and walkways; the entering into one or more agreements with the municipality dealing with and ensuring the provision and maintenance of the facilities, works or matters mentioned in clause (a) or (d); the entering into one or more agreements with the municipality to ensure that development proceeds in accordance with the plans and drawings approved; and the conveyance of land to the municipality for a public transit right of way.

Site Plan Control Application and Process

The Site Plan Control process is a technical review of details of development that is otherwise permitted. Within a Site Plan Control area, most development projects require site plan approval by the local municipality. If a site plan agreement exists already, an amendment may be required.

Appeal Rights

If a municipality fails to approve the plans or drawings within 60 days after they are received, subsection 41(12) of the *Planning Act* allows the owner to appeal the failure to approve the plans or drawings to the Ontario Land Tribunal by filing a notice of appeal to the clerk of the municipality. Site Plan Control does not involve public consultation and there is no appeal right for anyone other than the applicant.

6.2 Community Planning Permit System

Section 70.2 of the *Planning Act* allows municipalities to establish a development permit system, also known as a community planning permit system (**CPPS**). A CPPS offers an alternative approach to the traditional planning approval processes of zoning, variances, and Site Plan Control. The goal of the CPPS is to simplify and streamline the land use approval process within a certain area. The CPPS is established by by-law for an area or areas within a municipality.

The CPPS is governed by *Ontario Regulation 173/16*, which provides the direction to implement a CPPS. Before a Council passes a CPPS by-law, the municipality's OP must include policies setting out the regulatory requirements for CPPS, including the scope of the delegated authority for issuing a permit, a statement of the municipality's goals, objectives, and policies in proposing a CPPS for the area. The municipality's OP must also include types of criteria that may be included in the CPPS by-law for determining whether any class of development of any use of land may be permitted by CPPS.

Where a CPPS by-law is in effect, the by-law provides decision-making direction regarding permitted and prohibited uses and development standards in conformity with the OP. The by-law may include criteria and conditions of development approval that are in accordance with the OP. The by-law may also include permission to vary from a set standard, eliminating the need for a minor variance.

CPPS is not widely used across Ontario at this time. However, CPPS frameworks are in effect townwide in Lake of Bays, Carleton Place, Huntsville, and Gananoque, and they are also used on an area-specific basis in parts of Brampton and Innisfil, and the City of Burlington is also in the process of approving a CPPS. It is important to note that where a CPPS is in place, the Zoning By-law is deemed to be repealed.

6.3 Holding By-laws

Section 36 of the *Planning Act* allows municipal Councils to apply a holding provision (also known as a "holding symbol" or "H") to restrict the use and/or development of lands until outstanding conditions of development are satisfied.

Holding by-laws are commonly used when the intended use and zoning for a site are known, but development cannot proceed until specific conditions are met. The specific requirements needed to be fulfilled are set out in the applicable Zoning By-law.

In order for a municipality to utilize this tool, the OP must contain provisions relating to the use of the holding symbol.

Examples of types of conditions that may apply to lands subject to a holding symbol include:

- Transportation or servicing improvements;
- Provision of parks, open space, community services and facilities;
- Environmental protection, remediation, and mitigation measures;
- Heritage preservation and archaeological studies;
- Technical studies;
- Development phasing; and
- Agreements with the municipality to secure these matters.

A landowner must apply to remove the holding provision from the Zoning By-law, often referred to as "lifting the hold." The application to remove a holding symbol is similar to a Zoning By-law amendment application; however, the information provided must explain how the condition of the applicable holding provision has been satisfied. The lifting of the hold is typically delegated to staff to approve. While the removal of a holding symbol is a public process, under section 36(3), only the applicant may appeal to the Ontario Land Tribunal for a refusal or non-decision.

6.4 Interim Control By-laws

Section 38 of the *Planning Act* allows a municipal Council to pass an interim control by-law (**ICBL**), which puts a temporary freeze on certain lands to allow the municipality to undertake a study or review of the land use planning policies with respect to those lands. The freeze can only be imposed for one year with a maximum extension of one additional year.

The freeze imposed by the ICBL has the effect of suspending the existing zoning rights on a property. It should be noted that ICBLs cannot be used to restrict land division but only the use of land, buildings, and structures.

An ICBL can be appealed to the Ontario Land Tribunal for determination as to whether the passage of the ICBL is authorized and whether it is in the public interest to freeze the development of land within the ICBL area. It will also consider whether the municipality is genuinely studying the use of the land or whether it was simply intended to frustrate development.

If a new Zoning By-law is passed following the expiry of the ICBL and subsequently appealed to the Ontario Land Tribunal as a result of the ICBL study, the *Planning Act* provides that the ICBL remains in effect past the two-year period. In accordance with Section 38(7) of the *Planning Act*, once an ICBL ceases to be in effect, a municipality cannot impose another ICBL on the same lands for the next three years.

6.5 Minister's Zoning Orders

Section 47 of the *Planning Act* authorizes the Minister of Municipal Affairs and Housing to make zoning orders (**MZOs**) that regulate the use of land. This is a tool that directly zones lands for a specific purpose, without the need for conformity or consistency with other provincial or local policy (except the Greenbelt Plan), and there is no right of appeal. MZOs are typically reserved for situations of urgency, because they override the local planning authority's ability to approve or refuse a development. They have also been used for proposals related to provincial initiatives, such as the creation of affordable housing, long-term care homes, and similar developments. No notice or hearing is required prior to the making of a MZO, but the Minister must give notice within 30 days of an MZO's approval.

CHAPTER 7:
THE SUBDIVISION OF LAND

In Ontario, Part VI of the *Planning Act* governs the subdivision of land. There are numerous ways to subdivide land, the most common being through the approval of a plan of subdivision/ condominium, the granting of a consent (commonly known as a "severance"), or, for lots or blocks already within a registered plan of subdivision, through part-lot control exemption.

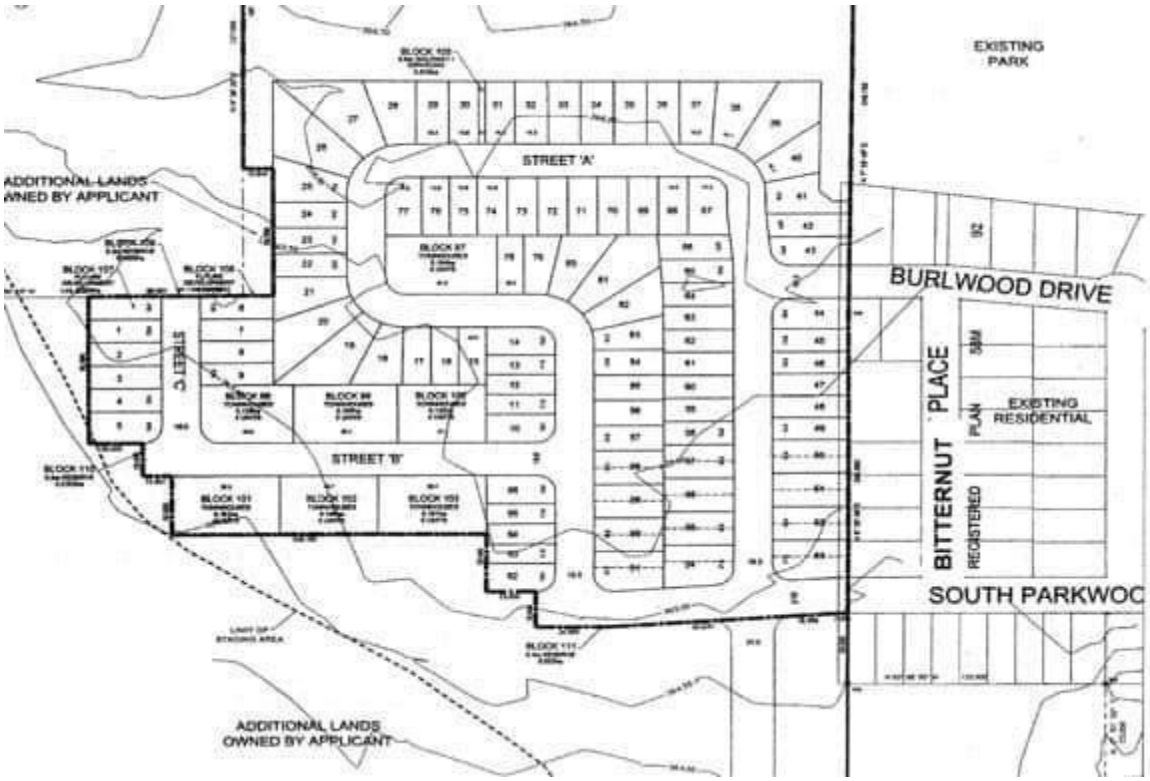
The type of *Planning Act* approval required is typically determined by the number of lots being created and the extent of servicing that is required.

This chapter focuses on how land is divided using the subdivision process, subdivision agreements, part lot control, and consent to sever.

7.1 The Process of Subdividing Land

Section 51 of the *Planning Act* permits approval authorities, including municipalities, to regulate the division of land through a plan of subdivision. A registered plan of subdivision is a legal document that shows the exact location of lots and blocks, streets, and municipal services, while the draft plan of subdivision is the planning document used to work towards obtaining final approval to subdivide the land.

Below is an example of a plan of subdivision:



A draft plan of subdivision/condominium application is used to divide larger pieces of land into new parcels to establish development lots and/or blocks. Through this process, new public services are identified, such as streets, parks, and municipal services.

To apply for a draft plan of subdivision/condominium, various application materials are required, as set out in section 51(17) of the *Planning Act*, which requires that the proposed subdivision be drawn to scale and showing:

a. the boundaries of the land proposed to be subdivided, certified by an Ontario land surveyor;

b. the locations, widths, and names of the proposed highways within the proposed subdivision and of existing highways on which the proposed subdivision abuts;

c. on a small key plan, on a scale of not less than one centimetre to 100 metres, all of the land adjacent to the proposed subdivision that is owned by the applicant or in which the applicant has an interest, every subdivision adjacent to the proposed subdivision and the relationship of the boundaries of the land to be subdivided to the boundaries of the township lot or other original grant of which the land forms the whole or part;

d. the purpose for which the proposed lots are to be used;

e. the existing uses of all adjoining lands;

f. the approximate dimensions and layout of the proposed lots;

f.1 if any affordable housing units are being proposed, the shape and dimensions of each proposed affordable housing unit and the approximate location of each proposed affordable housing unit in relation to other proposed residential units;

g. natural and artificial features such as buildings or other structures or installations, railways, highways, watercourses, drainage ditches, wetlands, and wooded areas within or adjacent to the land proposed to be subdivided;

h. the availability and nature of domestic water supplies;

i. the nature and porosity of the soil;

j. existing contours or elevations as may be required to determine the grade of the highways and the drainage of the land proposed to be subdivided;

k. the municipal services available or to be available to the land proposed to be subdivided; and

l. the nature and extent of any restrictions affecting the land proposed to be subdivided, including restrictive covenants or easements.

Other information can also be required, but only if the Official Plan contains provisions relating to those requirements.

7.2 Application Process

The application process for a draft plan of subdivision/condominium is often lengthy and iterative due to its technical nature. The process can take from a few months to several years, depending on the complexity of the proposed development and the number of conditions imposed by the approval authority. Generally, the process is as follows:

Apart from an application for a vacant land condominium, a draft plan of condominium application is typically filed after the units which are the subject of the condominium application have been built. This ensures that the property lines, which create the units, following the walls that divide the units from each other.

*Although not required under the *Planning Act*, most municipalities hold a community consultation meeting to elicit public feedback.

7.3 Evaluation

Draft plan of subdivision applications are evaluated under section 51(24) of the *Planning Act*, which states:

In considering a draft plan of subdivision/condominium, regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality as to:

a. the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2;

b. whether the proposed subdivision is premature or in the public interest;

c. whether the plan conforms to the official plan and adjacent plans of subdivision, if any;

d. the suitability of the land for the purposes for which it is to be subdivided;

d.1. if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;

e. the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;

f. the dimensions and shapes of the proposed lots;

g. the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;

h. conservation of natural resources and flood control;

i. ithe adequacy of utilities and municipal services;

j. the adequacy of school sites;

k. the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;

l. the extent to which the plan's design optimizes the available supply, means of supplying, efficient use, and conservation of energy; and

m. the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act or subsection 114 (2) of the *City of Toronto Act, 2006*.

7.4 Conditions

The approval authority may impose conditions on the approval of the plan of subdivision that are "reasonable" in their determination, as set out in section 51(25) of the *Planning Act*, including the requirement to dedicate land for parks, highways (or to widen a highway), pedestrian pathways, bicycle pathways, public transit rights of way, commuter parking lots, transit stations and related infrastructure for the use of the general public using highways.

In addition, the owner of land can be required to enter into one or more agreements with an approval authority or the government minister dealing with such matters as the approval authority may consider necessary, including the provision of municipal or other services. The approval authority will also include a provision that if the conditions are not cleared within a certain period of time, the draft plan approval will lapse.

7.5 Subdivision Agreements

Section 51(26) of the *Planning Act* authorizes a municipality or approval authority to enter into subdivision or condominium agreements. These agreements outline the developer's obligations to a municipality with regard to construction of public infrastructure, such as roads, sewers, watermains, parks, and other services in a subdivision. Subdivision agreements are fundamental to the planning process as they are an enforceable mechanism for ensuring compliance with conditions of approval following registration of a plan of subdivision. As the agreement is registered on title, they are binding on subsequent owners of the land.

A subdivision agreement may also include the requirement to include notices and warning clauses in agreements of purchase and sale or leases that are entered into with purchasers or tenants. These are intended to alert new homeowners or tenants to potential issues such as noise and odour from nearby facilities or the availability of postal service or educational facilities, among other things.

7.6 Appeal

The *Planning Act* provides a process to appeal a decision of the approval authority to the Ontario Land Tribunal on draft plan of subdivision/condominium applications. Following a decision of Council, an applicant or other specified person as defined in the *Planning Act* has 20 days to appeal the decision to the OLT. Chapter 10 provides more information on the OLT and the appeal processes.

If no appeal is filed, the plan of subdivision/condominium comes into force and effect on the day it was approved, and the applicant can begin to satisfy the conditions of draft approval and work towards the registration of the plan.

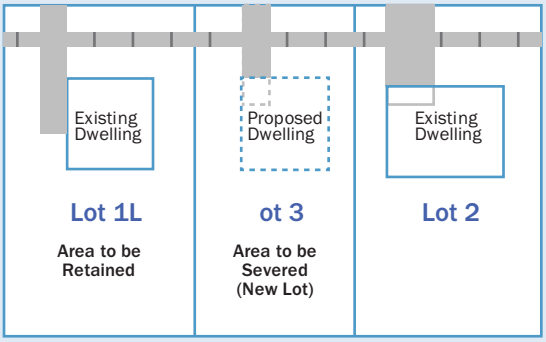
In considering approval of a draft plan of subdivision/ condominium, the OLT assesses the application against the tests set out in sections 2, 3, and 51 of the *Planning Act*.

7.7 Applications for Consent

Section 53 of the *Planning Act* requires that a consent must be granted before a parcel of land can be divided to create a new lot. Consent to sever, also known as a land severance, may be required for a number of reasons, including:

- Creating a new lot or lots;
- Lot additions;
- Boundary or lot line adjustments;
- Establishing easements or rights of way;
- Mortgaging or discharging a mortgage over a portion of a property; and
- Entering into a lease agreement for a period of 21 years or more.

In lieu of a municipal Council, a Committee of Adjustment may have delegated authority regarding consent applications. In the instance of the creation of lots, typically the consent process is used when three or fewer lots are being created. Following is an example of where one additional lot is being created by severing off a portion of Lot 1 to create a new lot (Lot 3) between two existing dwellings.

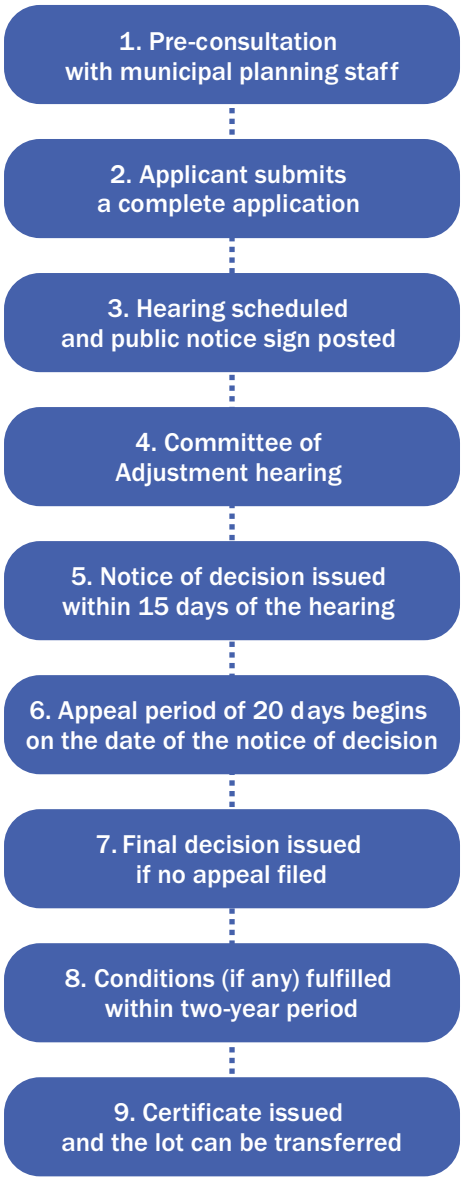


At a Committee of Adjustment hearing, the Committee will introduce the application and provide an opportunity for the applicant and members of the public to speak to the application. To approve the consent application, the Committee must evaluate the merits of the proposal against the criteria found in section 51(24) of the *Planning Act*, which is the same criteria used to evaluate a draft plan of subdivision as set out above.

Similar to the minor variance process, the Committee of Adjustment will review the applicant's materials, any staff reports and recommendations prepared by the municipal planning department, comments received by other municipal departments and agencies, and comments from the public.

The Committee of Adjustment can approve a consent application, with or without conditions, refuse the application, or defer the application to a later date.

The consent to sever process differs by municipality; however, they all follow a similar process:



Conditions

The Committee may impose conditions on a provisional consent approval. If the conditions under the provisional consent are not fulfilled within two years of the date of the notice of decision, the application is deemed to have been refused.

Appeal rights

Decisions of the Committee of Adjustment may be appealed to the OLT (or Toronto Local Appeal Body if the application is in the City of Toronto) within 20 days of notice of decision being issued. Only the applicant, the Minister of Municipal Affairs and Housing, or a specified person or public body may appeal the decision.

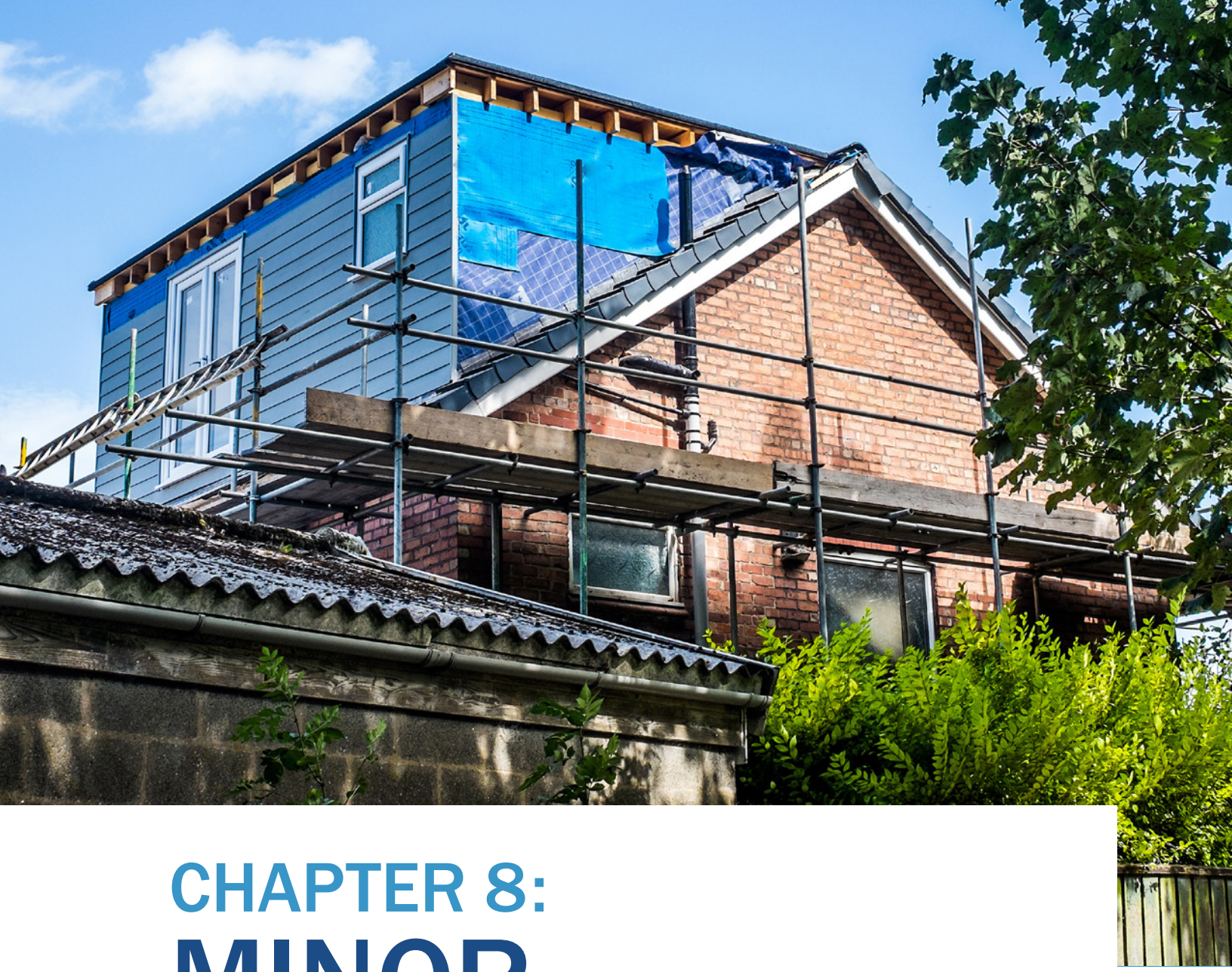
An applicant may appeal against the Committee's refusal or may appeal against a condition that is imposed by the Committee. If no appeal is filed within the appeal period, the Committee's decision to grant or to refuse provisional consent is final.

7.8 Part Lot Control

Part lot control is a provision under section 50(5) of the *Planning Act* that regulates the sale or transfer of parts of lots or blocks in a registered subdivision plan. The purpose of part lot control is to prevent the uncontrolled division of land within a subdivision after the plan has been registered. It is an alternative form of land division to plans of subdivision or consent; however, it is only used in limited circumstances, such as creating lot lines for townhouses which have been constructed on a block within an approved subdivision.

Section 50(7) of the *Planning Act* allows a municipality to adopt by-laws exempting certain lands within a registered plan of subdivision from part lot control. Such a by-law has the effect of allowing the conveyance of a portion of a lot without requiring the approval from the committee of adjustment.

The application process for part lot control exemptions are similar to other *Planning Act* applications. The main differences are that there are no requirements for public notification or consultation and there are no appeal rights; the Council's decision on the by-law is final.



CHAPTER 8:
MINOR VARIANCES

A minor variance is a deviation from a Zoning By-law. The intent of a minor variance is to reduce the inflexibility of the Zoning By-law by allowing a small change when it is difficult to comply with a particular zoning regulation, such as a side yard setback standard or a lot coverage standard. A minor variance is a form of relief from requirements of a Zoning By-law but does not alter the applicable zoning on the lands.

The authority for minor variances comes from section 45(1) of the *Planning Act*, which permits a Committee of Adjustment of a municipality to authorize a minor variance if the proposed variance meets the tests set out in the *Planning Act*. These tests include whether the minor variance has regard for matters of provincial interest, is consistent with the Provincial Planning Statement, conforms or does not conflict with any applicable provincial plan, and whether it meets the four tests established under subsection 45(1) which states:

> 45 (1) The committee of adjustment, upon the application of the owner of any land, building or structure affected by any by-law that is passed under section 34 or 38 [of the Planning Act], or a predecessor of such sections, or any person authorized in writing by the owner, may, despite any other Act, authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof, as in its opinion is desirable for the appropriate development or use of the land, building or structure, if in the opinion of the committee the general intent and purpose of the by-law and of the official plan, if any, are maintained.

To summarize, the four tests under subsection 45(1) of the *Planning Act* for a minor variance are:

1. Is the variance minor in nature?
2. Is the variance desirable for the appropriate development or use of the land, building or structure?
3. Is the general intent and purpose of the zoning by-law maintained?
4. Is the general intent and purpose of the official plan maintained?

8. 1 Committee of Adjustment

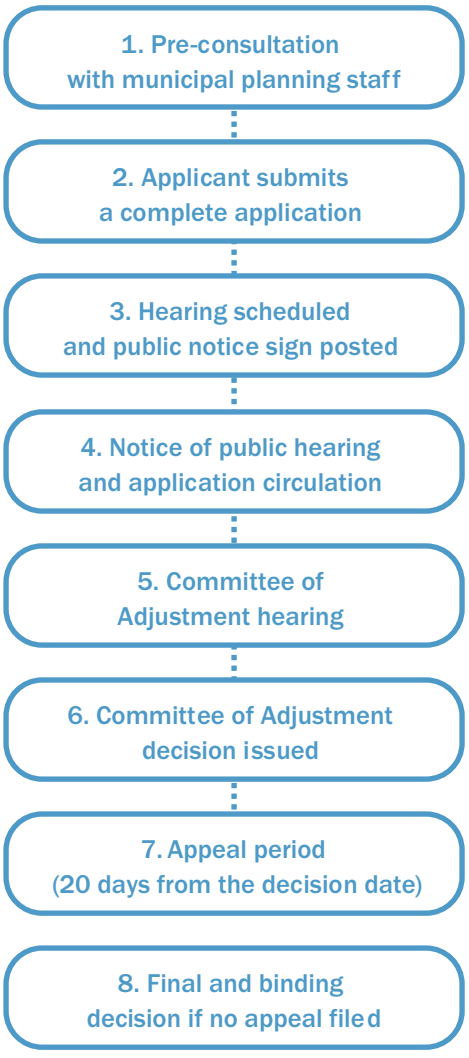
The Committee of Adjustment is an independent, quasi-judicial, administrative tribunal appointed by Council to make decisions on minor variance applications.

8.2 Minor variance application process

A minor variance application may be submitted by a property owner who is seeking to develop or improve their property in a way that does not comply with the requirements of the applicable Zoning By-law.

The amount of time it takes to obtain a minor variance approval varies depending on a number of factors, including the complexity of the application and the supporting materials, as well as the overall workload of the Committee of Adjustment. It generally takes three to six months to process the application and for a decision to be made by the Committee of Adjustment. In making a decision, the Committee of Adjustment may also impose conditions of their approval which need to be satisfied before the minor variance is finally granted.

The minor variance process can differ by municipality; however, they generally all follow a similar format:



8.3 Evaluating a Minor Variance

To approve the minor variance application, the Committee of Adjustment must be satisfied that the statutory tests, including the four tests, are met. In evaluating the four tests, the following should be considered:

Is the application minor? The evaluation of "minor" is subjective and is directly related to the application at hand. Assessing a minor variance is not a mathematical calculation. For example, in some instances, the reduction of a zoning standard by 85% may be minor in the circumstances even though, mathematically, that might appear to be a large deviation. However, Committees of Adjustment are required to assess the impact of the variance on the subject land and surrounding properties and not on a mathematical calculation only.

Is the variance desirable for the appropriate development or use of the land, building or structure? This test is more than whether the requested variance is desirable for the person making the request; rather, it must also be considered in the context of surrounding properties. In other words, this test considers whether there will be an adverse impact on the surrounding properties or the surrounding neighbourhood.

Is the general intent and purpose of the official plan maintained? This test requires an understanding of the general intent and purpose of the Official Plan and is not to be interpreted as requiring conformity with an Official Plan, but rather to ensure that its general intent is maintained. For example, if there is an Official Plan policy restricting the size of a garage in a front yard, then the question for the Committee to consider is what is the intent of the policy limiting the size of the garage? If the intent of the policy is to ensure a consistent streetscape and to ensure that front facades are not dominated by garage structures, then in either instance, if the unique characteristic of a lot, or design of a house maintains those objectives, the variance should be approved.

Is the general intent and purpose of the Zoning By-law maintained?

Like the test above, this test requires an understanding of the general intent and purpose of the specific regulation in the Zoning By-law and is not to be interpreted as requiring conformity with the Zoning By-law, but rather to ensure that its general intent is maintained. The critical analysis is one which sets out the general intent and purpose of the zoning regulation, then assesses whether the application meets it.

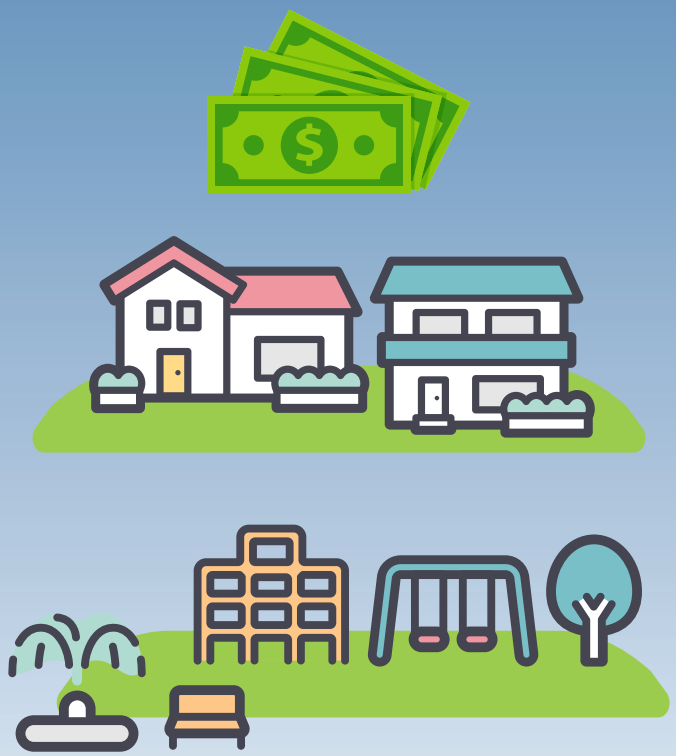
In determining whether the application meets the four tests, the Committee of Adjustment will review the applicant's materials, any staff reports and recommendations prepared by the municipal planning department, comments received by other municipal departments and agencies, and comments from the public.

The Committee of Adjustment can approve a minor variance application, with or without conditions, refuse the application, or defer the application to a later date. A deferral is considered a refusal for the purpose of appeal rights.

8.4 Appeals of Decisions on Minor Variance Applications

Decisions of the Committee of Adjustment may be appealed to the Ontario Land Tribunal (or Toronto Local Appeal Body if the application is in the City of Toronto) within 20 days of the decision. Only the applicant, the Minister, or a specified person, as defined in the Planning Act, or public body may appeal the decision.

An applicant may appeal against the refusal of the application or with respect to any condition that is imposed. If no appeal is filed within the appeal period, the Committee's decision is final and binding.



CHAPTER 9:
PAYING FOR GROWTH

"Growth pays for growth" is the guiding principle is that those who benefit from growth related infrastructure should be responsible for the costs.

The four main tools that are available to a municipality to fund infrastructure are property taxes and the charges related to growth-related infrastructure, which are development charges, community benefit charges, and parkland dedication.

9.1 Property Taxes

Property taxes are used to fund non-growth-related capital costs as well as ongoing operating expenses. This includes infrastructure costs such as sewer repair, garbage collection, snow removal, as well as general municipal services and other culture, recreation, and library services that are not related to housing and employment growth.

Property taxes are levied based on the assessed value of each property and vary from municipality to municipality, depending on the nature of the services provided.

9.2 Development Charges

Development and growth often lead to the need for new or expanded municipal services. In Ontario, development charges (**DCs**) are the primary revenue tool to allow municipalities to pay for these municipal services.

DCs are discretionary for a municipality to collect and are one-time fees imposed on developers generally at the time of building permit issuance or approval of a draft plan of subdivision. They are intended to pay for the increased need for works or services in the municipality required due to new development to accommodate population and/or employment growth within the municipality. The municipality can use DCs to pay for "hard services" such as water, waste management or roads and "soft services" such as community centres, libraries, and police services.

9.2.1 *Development Charges Act*

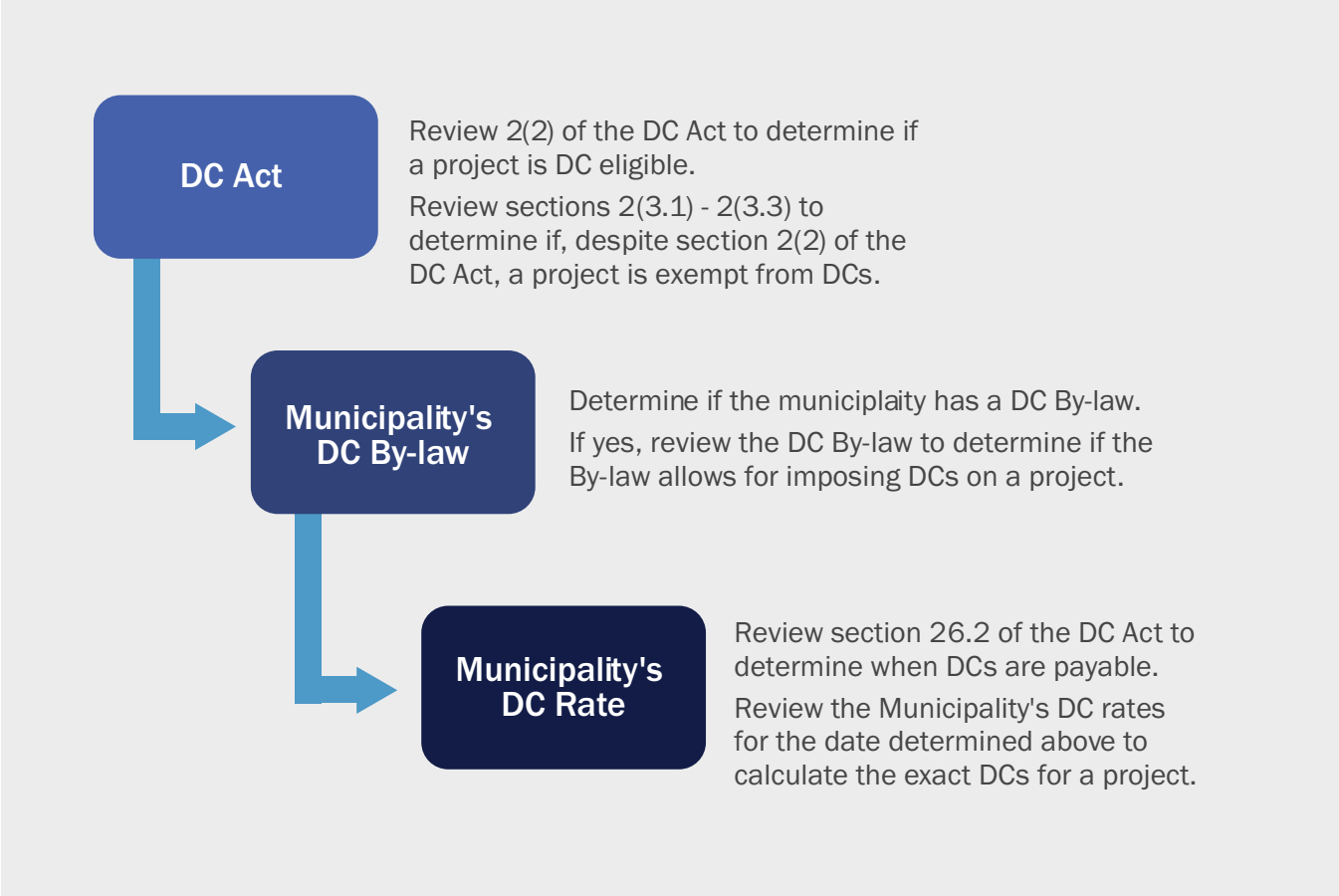
An applicant may appeal against the refusal of the application or with respect to any condition that is imposed. If no appeal is filed within the appeal period, the Committee's decision is final and binding.

THE DEVELOPMENT CHARGES ACT, 1997 (DC ACT) GOVERNS HOW DCS ARE CALCULATED AND PAID AND SETS OUT THE REQUIREMENTS AND PROCESSES THROUGH WHICH A MUNICIPALITY CAN CHARGE DCS. THE KEY PROVISIONS IN THE DC ACT ARE SET OUT IN THE CHART BELOW.

SECTION	OVERVIEW
1	Provides a list of definitions of the terms in the DC Act.
2 (1)	The passage of a by-law is required before a municipality can impose the DCs.
2 (2)	DCs can only be imposed on development that requires: • a Zoning By-law amendment under section 34 of the *Planning Act*; • approval of a minor variance under section 45 of the *Planning Act*; • conveyance of land under section 50(7) of the *Planning Act*; • approval of a plan of subdivision under section 51 of the *Planning Act*; • a consent under section 53 of the Planning Act; • approval of a description under section 9 the *Condominium Act, 1998*; or • issuing of a permit under the *Building Code Act, 1992*.
2(3.1) -(3.3)	These subsections exempt imposing DCs for select residential units in existing rental residential buildings, select residential units in existing houses, and select additional residential units in new residential buildings.
2(4)	Sets out the only services for which DCs can be imposed. DC eligible services include, but are not limited to, water and wastewater services; policing, fire protection and ambulance services; services related to long-term care; and parks and recreation services.
5	Sets out the method that must be used in developing a DC by-law.
6	Sets out the required contents of a DC by-law.
10	Requires that a municipality complete a DC background study prior to passing a DC by-law.
13	Sets out the steps to appealing a DC by-law.
14	Allows for the appeal of a DC by-law to the Ontario Land Tribunal.
20	Sets out the process by which to formally complain to the Municipal Council about DCs that are imposed.
22	Allows for the appeal of the Municipal Council's decision regarding a DC complaint to the Ontario Land Tribunal.
26	States that DCs are payable upon a building permit being issued based on the rate on the date of issue unless the municipality's DC by-law provides otherwise.
26.1	Despite the above section, this section provides that development that consists of rental housing or institutional development can be paid in installments over five years at the rate determined under section 26.2 below.
26.2	Indicates when the amount of DC is determined, which is on the date of the application for a Site Plan control and, if that does not apply, then the date of the application for a Zoning By-law amendment. As of the applicable date, the DC rates are frozen for a period of 18 months.
28	Permits a municipality to withhold a building permit until DCs are paid.

9.2.2 Determining DCs for a Project

The following steps can be used to determine if and how much DCs apply to a project



9.3 Community Benefit Charges

Section 37 of the *Planning Act* authorizes a municipality to charge community benefits charges (**CBCs**) to pay for capital costs of facilities, services, and matters that are required to serve development and redevelopment. If a municipality wants to impose CBCs, the *Planning Act* requires that a CBC strategy be in place and a by-law passed by the municipality. A municipality's CBC by-law may also allow developers to provide in-kind contributions in-lieu of a cash payment that would otherwise be required. For example, instead of making a cash payment, a developer could provide public art to the municipality. The amount of the CBCs to be paid by a landowner when it is required to be paid is capped at 4% of land value.

CBC by-laws can be appealed to the Ontario Land Tribunal only when they are first passed. Disputes regarding the quantity of the charge to be imposed in any given instance is to be resolved through the land appraisal process set out in the *Planning Act*.

Like DCs, CBCs can only be imposed on the following development and redevelopment:

- A Zoning By-law amendment under section 34 of the *Planning Act*;
- Approval of a minor variance under section 45 of the *Planning Act*;
- Conveyance of land under section 50(7) of the *Planning Act*;
- Approval of a plan of subdivision under section 51 of the *Planning Act*;
- A consent under section 53 of the *Planning Act*;
- Approval of a description under section 9 the *Condominium Act, 1998*; or
- Issuing of a permit under the *Building Code Act, 1992*.

Regardless of the above, CBCs may not be imposed on the following:

- Development of a proposed building or structure with fewer than five storeys at or above grade;
- Development of a proposed building or structure with fewer than 10 residential units;
- Redevelopment of an existing building or structure that will have fewer than five storeys at or above ground after the redevelopment;
- Redevelopment that proposes to add fewer than 10 residential units to an existing building or structure; or
- Such types of development or redevelopment as are prescribed, including long-term care homes, retirement homes, publicly funded post-secondary institutions, and non-profit housing.

9.4 Parkland

Sections 42 and 51.1 of the *Planning Act* allows a municipality to require all new development to convey land to the municipality for park or other public recreational purposes as a condition of development or redevelopment. Municipalities are required to have a parkland dedication by-law in place in order to require parkland dedication as part of a development.

Parkland can be dedicated in one of two ways;

1. Developers may transfer land for parks and public recreation, or
2. Developers may provide money for future parks, park equipment, or recreational buildings.

A combination of the two may also be acceptable.

Land may be conveyed at a rate of 2% of land area for non-residential uses and 5% of land area for residential uses or an alternate rate set by the municipality in certain circumstances. In addition, where an alternative rate is imposed by the municipality, the amount of parkland to be conveyed, or its equivalent cash value to be provided, is capped depending on the size of the particular property. Property less than five hectares is capped at 10% of the land to be conveyed or the payment of its value, and property greater than five hectares is capped at 15%.

Parkland dedication by-laws that use alternative rates can be appealed to the Ontario Land Tribunal. Additionally, when municipalities require cash, a cash payment instead of the conveyance of land and disputes regarding the cash value may also be appealed to the Ontario Land Tribunal.

The requirement to convey parkland or pay the cash value generally does not apply to affordable housing, non-profit housing, or additional residential units.

9.5 Relationship between the DCs, CBCs, and Parkland

DCs, CBCs, and parkland dedication are all ways in which municipalities can ensure that new infrastructure is funded. Not all municipalities have the requisite by-laws in place to use all three of these growth-funding tools. For example, it may be the case that a municipality has a DC by-law and a parkland dedication by-law in place but does not have a CBC by-law and, therefore, cannot collect the CBC that would otherwise be available to it.

As the payment of DCs, CBCs, and parkland dedication can impact the viability of development within a municipality, it is important for planners to understand growth funding and its impact on development.

CHAPTER 10:
THE ROLE OF THE ONTARIO LAND TRIBUNAL

The Ontario Land Tribunal (**OLT**) is an independent tribunal responsible for resolving a variety of municipal and land use planning matters. The OLT was formerly known as the Local Planning Appeals Tribunal (**LPAT**), and before that, the Ontario Municipal Board (**OMB**). This chapter focuses on the OLT's role in dealing with land use planning matters under the *Planning Act*. The OLT has jurisdiction over planning matters across the Province of Ontario. However, it is important to note that the City of Toronto (Toronto) has its own appeal board called the Toronto Local Appeal Body (**TLAB**) that hears appeals from City of Toronto Committee of Adjustment decisions for minor variance and consent applications in Toronto, unless they are appealed together with a site plan application. In that instance the appeals go to the OLT.

10.1 Jurisdiction and Powers of the OLT

The OLT operates under the *Ontario Land Tribunal Act, 2021* (**OLT Act**) and the OLT Rules of Practice and Procedure.

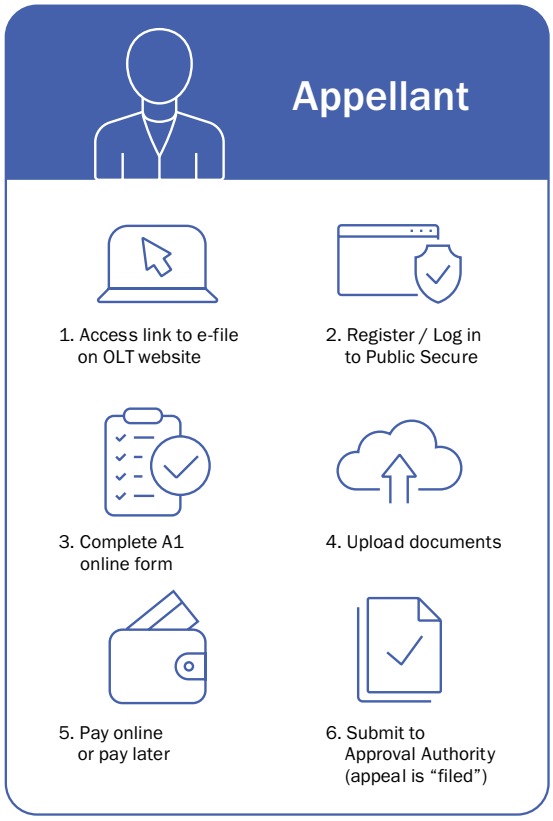
The OLT's mandate is to fairly, effectively, and efficiently resolve disputes related to land use planning, heritage matters, environmental and natural features, land valuation, land compensation, municipal finance, and related other matters as authorized by statute and regulation.

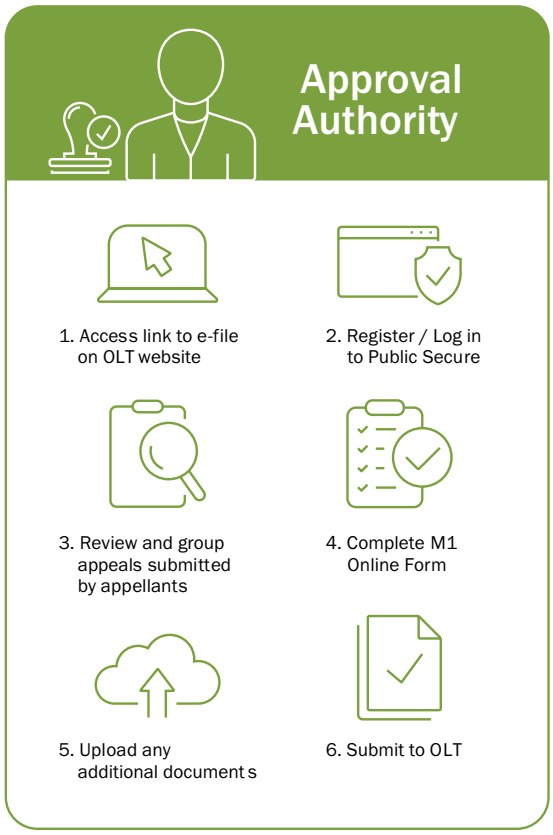
The OLT hears and decides appeals that can be filed under various statutes including, but not limited to, the *Planning Act; Conservation Authorities Act; Development Charges Act, 1997; Expropriations Act; Municipal Act, 2001; City of Toronto Act, 2006; and Ontario Heritage Act.*

Who can file an appeal?

The right to file an objection or appeal with the OLT depends on the specific legislation involved. For some matters, an appeal may be filed from a municipal decision by the applicant or by someone who submitted oral or written comments to the approval authority prior to a decision on the application being made by Council. For other appeals, only the applicant, the Minister of Municipal Affairs and Housing, or a specified person or public body that has an interest in the matter may file an appeal.

In filing an appeal of a non-decision on an application (a non-decision being when an application has not been decided on by Council within the time period allowed under the relevant legislation), there may be other restrictions on who can appeal and when that appeal can be filed. Therefore, it is imperative that the applicable legislation is carefully reviewed. Generally, an appeal of amendments to an Official Plan, Zoning By-law, site plan application, draft plans of subdivision and condominium, minor variances and consent applications (all of which are applications under the *Planning Act*) cannot be appealed by a "third party," namely someone who is not the applicant or a specific person identified in the legislation. As this is a relatively recent change to the Planning Act, it is critical for planners to determine early in the process what rights of appeal are applicable.





What can be appealed?

Matters that can come before the OLT are identified in various statutes including:

- *Aggregate Resources Act*
- *Clean Water Act, 2006*
- *Conservation Authorities Act*
- *Development Charges Act, 1997*
- *Environmental Assessment Act*
- Environmental Bill of Rights, 1993
- *Environmental Protection Act*
- *Expropriations Act*
- *Funeral Burial and Crematorium Services Act, 2002*
- *Greenbelt Act, 2005*
- *Lakes and Rivers Improvement Act*
- *Mining Act*
- *Municipal Act, 2001*
- *City of Toronto Act, 2006*
- *Niagara Escarpment Planning and Development Act*
- *Nutrient Management Act, 2002*
- *Oak Ridges Moraine Conservation Act, 2001*
- *Oil, Gas and Salt Resources Act*
- *Ontario Heritage Act*
- *Ontario Water Resources Act*
- *Pesticides Act*
- *Planning Act*
- *Resource Recovery and Circular Economy Act, 2016*
- *Safe Drinking Water Act, 2002*

In accordance with the *Ontario Land Tribunal Act, 2021*, the mandate of the OLT is to fairly, effectively, and efficiently resolve disputes related to land use planning, environmental and natural features and heritage protection, land valuation, land compensation, municipal finance, and related other matters as authorized by statute and regulation.

How are appeals filed?

The process for filing an appeal is set out in the applicable legislation. An appeal must be filed with either the authority that issued the decision or the OLT directly, as determined by the legislation.

The appeal must outline the reasons for the appeal and must also include the requisite OLT forms and pay the applicable fees.

What happens after an appeal is filed?

Once the OLT receives the appeal and the filing fee is processed, the OLT will initiate a formal process to structure how the appeal will be managed. Each appeal is assigned an OLT case number, and a case coordinator is assigned to manage the file. The case coordinator will review the file and may contact parties for additional information. The OLT will send the known parties an acknowledgement letter, which will include the case file number(s), the name of the case coordinator, and general information about the OLT's process.

Depending on the type of appeal, the OLT can schedule several types of hearing events, including Case Management Conferences, mediation, motions, and hearings.

All OLT hearing events are presided over by OLT members who generally have expertise in the applicable dispute, be it land use planning, built heritage, natural heritage, municipal finance, or expropriations. Members review written materials and listen to oral expert evidence and submissions of parties through their delegates, counsel, and experts. Members then make decisions and issue orders in making a determination on the matters before them.

Decisions are made based on tests set out in the relevant legislation that governs the particular appeal. For example, for the approval of a Zoning By-law amendment application, the OLT has to be satisfied that the proposed Zoning By-law amendment has regard for matters of provincial interest, is consistent with the Provincial Planning Statement, conforms with any applicable provincial plan, conforms to any applicable Official Plan, is in the public interest and represents good planning. It is the application of the relevant tests that determines whether an application will be approved or not.

10.3 Role of the Land Use Planner at the OLT

Planners have a duty to provide independent, expert-opinion evidence in one's area of expertise to assist the OLT in determining the matter in issue. The planner's duty to provide fair, objective, and non-partisan evidence prevails over any obligation to the client.

Fulfilling these duties, a planner will prepare evidence materials and attend some or all of the hearing events as required. Planners also work with other experts, such as transportation planners and urban designers, who are involved in the dispute and work with planners on the other side of the dispute through attendance at meetings among the experts to try to resolve issues prior to the hearing.

If the matter proceeds to a mediation, planners are involved in the mediation process. If motions are involved, planners typically prepare affidavits providing their expert opinion on the subject matter of the motion.

If the matter proceeds to a hearing, planners are required to prepare a witness statement and a reply witness statement if needed and present evidence in an oral hearing that is subject to cross examination to test the foundation of the planner's opinion.

10.4 What Happens after a Decision is Made by the OLT

Once a decision is made by the OLT, if there is no request for review or appeal filed, then the decision is final. Depending on the nature of the decision, there may be further applications that need to be filed (e.g. site plan applications if the decision relates to an Official Plan and/or Zoning By-law amendment). If no further applications need to be filed, then the typical applicant would seek a building permit for the purpose of implementing the proposed development that was the subject of the decision.

If a party who was involved in the original decision at the OLT does not like the decision made by the OLT, they may either seek a review of the decision by the OLT chair or their designate, or they can appeal the decision to divisional court, but they must seek leave to do so. Both processes are complex and have particular tests associated with filing either a review request or filing an appeal and have specific timelines associated with these processes. As such, it would be highly recommended that any person seeking review or appealing a decision obtain legal advice from a lawyer experienced in this area.

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