



Comments on "Proposed Amendments to the Growth Plan for the Greater Golden Horseshoe, 2017"

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Housing

Submitted by: Ontario Bar Association



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Introduction

The Ontario Bar Association (“**OBA**”) appreciates the opportunity to provide feedback on the Proposed Amendment 1 to the Growth Plan for the Great Golden Horseshoe, 2017, the Proposed Modifications to O. Reg. 311/06, the Proposed Modifications to O. Reg. 525/97, and the Proposed Framework for Provincially Significant Employment Zones, to the Ministry of Municipal Affairs and Housing (collectively, the “**Growth Plan Proposals**”).

Land use planning is a unique field of practice. In addition to applying statutory and regulatory authorities, our members are challenged to integrate provincial, regional, and local policies that are further translated into regulatory instruments and implementation requirements. There are often multiple layers of approvals necessary in any given matter, leading to a complex intersection of planning, engineering, environmental stewardship, and local politics. Our members strive to ensure that the process of navigating and ultimately resolving these matters is completed in a fair, transparent, and supportable manner.

The OBA

Established in 1907, the OBA is the largest voluntary legal organization in Ontario, representing lawyers, judges, law professors and students from across the province, on the frontlines of our justice system and in no fewer than 40 different sectors. In addition to providing legal education for its members, the OBA assists government and other decision-makers with several legislative and policy initiatives each year– both in the interest of the profession and in the interest of the public.

This submission was prepared by members of the OBA Municipal Law Section (the “**Section**”), which has approximately 300 lawyers who are leading experts in municipal and land use planning law matters representing proponents, municipalities, residents, developers, and other stakeholders. Though we represent a broad spectrum of clients with diverse and sometimes competing interests, our goal is to provide decision-makers with commentary that represents a balance of the various interests of our members and their clients.

Members of the Section often advocate before municipal councils and committees, all levels of court in the Province of Ontario, the various tribunals that comprise Tribunals Ontario, including the Local



Planning Appeal Tribunal (formerly the Ontario Municipal Board), and the Toronto Local Appeal Body.

Overview

The Growth Plan Proposals outline a number of significant changes to the land use planning system for the province of Ontario. Given the diverse nature of the OBA's membership, it is beyond the scope of our mandate to provide substantive feedback on the nature of these proposals and policy decisions on which they are based. Our comments instead focus on ways in which to implement these reforms that would support substantive, timely, just, and cost-efficient decisions.

The following feedback outlines a number of issues we have identified with the implementation and procedures of the Growth Plan Proposals. Additionally, we have set out certain responses to the specific requests for feedback included in the proposal materials. Our feedback may be summarized as follows:

- Lack of clarity or uncertainty in key land use planning policies and processes may give rise to significant disagreement, and even costly litigation, thereby undermining the very goals of the Growth Plan Proposals. We therefore recommend that further attention be given to clarify the central tenets and procedures, as further discussed below.
- All stakeholders would benefit from the release of draft regulations prior to enactment, to allow for consideration of their impacts and the provision of feedback. We therefore request that the draft text of amendments to regulations be provided for public comment.

Taken together, our comments are intended to assist with ensuring that these changes can be implemented in a manner that minimizes uncertainty, and that the stated goals of the Growth Plan changes can be met.



Comments and Suggested Revisions

Our comments respecting each of the related Growth Plan Proposals are as follows:

1. Proposal 013-4504: Proposed Amendment to the Growth Plan for the Greater Golden Horseshoe, 2017

Additional attention should be provided to the proposed amendment to the Growth Plan, particularly in areas where changes to thresholds or conditions are proposed. Additionally, we note a potential discrepancy between the proposed statutory authority for the amendment and the existing provisions in place under the *Places to Grow Act, 2005*.

- **Appropriate statutory authority:** The Proposed Amendment 1 indicates its statutory basis pursuant to Section 7 of the *Places to Grow Act, 2005*. It is our understanding that amendments to an existing Growth Plan would in fact be made pursuant to Section 10.
- **Lack of clarity:** Section 2.2.5(10)(b) of the Proposed Amendment 1 provides that, as a condition of conversion of lands to non-employment uses prior to the next municipal comprehensive review, such conversion must "maintain a significant number of jobs on those lands." Given the significance of this policy, it is important that this threshold be sufficiently clear so as to allow landowners, municipalities, approval authorities and other stakeholders to properly assess whether the condition is met. Without sufficient clarity, this provision could be the focus of significant and lengthy litigation, which could in turn undermine the goals of the proposed amendments. We therefore recommend that additional consideration be given to providing further clarity on what this provision means, and how it is intended to operate.

2. Proposal 013-4505: Proposed Modifications to O. Reg. 311/06 (Transitional Matters - Growth Plans) made under the *Places to Grow Act, 2005* to implement the Proposed Amendment to the Growth Plan for the Greater Golden Horseshoe, 2017

As a general comment, it is impossible to fully understand the legal implications of Proposal 013-4505 without the draft text of the regulations themselves. As an illustrative example, some of the proposed changes in Proposal 013-4505 appear largely procedural – for example, by updating



current references to the "the Growth Plan for the Greater Golden Horseshoe, 2017" in existing regulations to the "the Greater Golden Horseshoe, 2017, as amended by Amendment 1". However, there may also be substantive changes being contemplated that can only be properly understood and analyzed in light of the draft text itself. We therefore strongly recommend the release of the full text of the proposed regulations in order to properly evaluate the regulations' intended and actual impact.

We specifically note the following concerns with the proposed modifications to O. Reg. 311/06:

- As publicly posted, Proposal 013-4505 indicates that such modifications will "change references to the Growth Plan for the Greater Golden Horseshoe, 2017" to "the Growth Plan for the Greater Golden Horseshoe, 2017, as amended by Amendment 1".

O. Reg. 311/06 currently sets out the transition between the Growth Plan 2006 and the Growth Plan 2017. If the title of "Growth Plan 2017, as amended by Amendment 1" by is substituted for "Growth Plan 2017" in all instances, the regulation will therefore provide transition between the Growth Plan 2006 and the Growth Plan 2017, as amended by Amendment 1, but not between the Growth Plan 2017 and Growth Plan 2017, as amended by Amendment 1. Without further context or clarification, this would mean that there is no transition between the Growth Plan 2017 and the Growth Plan 2017, as amended by Amendment 1. However, this outcome appears to be contrary to the proposed modification's purpose, undermining the very concept of orderly transition between the existing and proposed systems.

We therefore request that additional consideration be given to how Proposal 013-4505 amends O. Reg. 311/06, and that the full text of the contemplated regulation, as amended, be provided for public consideration and feedback.

- We also note that one of the stated purposes of the modifications to the transition regulation is to delete the provisions that support implementation of a standard methodology for land needs assessments. Without commenting on the merits of the standard methodology that was developed by the previous government, we believe that it is important to provide certainty and clarity as to the manner in which lands needs assessments are to be conducted



by municipalities through their forthcoming conformity exercises and municipal comprehensive reviews. Whether the intention is to create a new standard methodology, to modify the existing standard methodology or to dispense with the requirement for a standard methodology, we believe the policy direction should be clarified. Consistent with our other comments, we would appreciate an opportunity to review the draft text of these modifications in order to properly evaluate the proposal.

3. Proposal 013-4506: Proposed Framework for Provincially Significant Employment Zones

The Proposed Framework for Provincially Significant Employment Zones represents a significant shift in the land use planning system for Ontario. One of the concerns we have noted with the Proposed Framework is the inherent tension between regulation of "major transit station areas", and the new "provincially significant employment zones".

- Amendment 1 to the Growth Plan, 2017 would allow the Minister to identify "provincially significant employment zones" which cannot be converted outside of a municipal comprehensive review.
- However, other proposed changes would allow a municipality to delineate the boundaries of "major transit station areas" and identify minimum density targets for these areas in its official plan. Such delineation could occur in advance of a municipal comprehensive review, provided that certain *Planning Act* requirements regarding official plan policies for such areas are met.
- As currently drafted, should a municipality wish to delineate the boundaries of a major transit station area and identify minimum density targets, it would be unclear whether a municipality could do so if the lands are also subject to a provincially significant employment zone.
- We therefore request that additional consideration be given to clarifying this potential tension, and clarification be provided regarding which policies would take precedence should such a conflict arise.



4. Proposal 013-4507: Proposed Modifications to O. Reg. 525/97 (Exemption from Approval – Official Plan Amendments) made under the *Planning Act* to implement the Proposed Amendment to the Growth Plan for the Greater Golden Horseshoe, 2017

Based on the explanation of the purpose and method for the amendments to the regulation, it appears that these changes are intended to give proper effect to the policy goals outlined in Proposal 013-4504.

Without the regulatory text as proposed to be amended for O. Reg. 525/97, the potential implications of the proposed amendments to regulations cannot be fully understood. No substantive comments can be provided at this time in the absence of such text, as insufficient information is available to understand the potential and intended impacts of this proposed regulation.

We therefore recommend the release of the full text of the proposed regulations in order to properly evaluate the regulations' intended and actual impact.

Conclusion

Our membership understands the challenges involved in seeking to address policies seen as potential barriers to the development of housing, job creation and business attraction in the Greater Golden Horseshoe. While it is difficult to critically examine the practical operation of the Proposed Amendment 1 and the associated proposals in the absence of the draft text of the regulations, we hope that the above feedback, based on the high-level information currently available, is helpful moving forward.

We thank you for considering our input and look forward to responding to any questions you may have regarding our submission.