

# Staff Report



Development Services Department

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**REPORT TO:** Special Council

**DATE OF MEETING:** December 12, 2022

**SUBMITTED BY:** Garrett Stevenson, Interim Director Planning, 519-741-2200 ext. 7070

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**WARD(S) INVOLVED:** ALL

**DATE OF REPORT:** December 8, 2022

**REPORT NO.:** DSD-2022-501

**SUBJECT:** Bill 23 More Homes Built Faster Act – Kitchener Comments

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## RECOMMENDATION:

That staff be directed to prepare an implementation action plan for Bill 23, *More Homes Built Faster Act, 2022*, as well as other recently approved Provincial legislation, including Bill 13, *Supporting People and Businesses Act, 2021*, and Bill 109, *More Homes for Everyone Act, 2022*, and to report back to Council on, or before, June 26, 2023.

## REPORT HIGHLIGHTS:

- The purpose of this report is to provide an overview of Bill 23 and related Environmental Registry of Ontario (ERO) postings and outline Kitchener's administrative response.
- Bill 23 was approved and received Royal Assent on November 28.
- Kitchener continues to be a leader in Ontario and has already undertaken some of the work that Bill 23 seeks to achieve through its Development Services Review, Affordable Housing Strategy, and updates to Kitchener's Zoning By-law permitting additional residential units (e.g., tiny homes) on more than 25,000 residential lots across the city.
- Staff comments and questions on Bill 23 were submitted to the Province on November 23 and were focused in the areas of Development Charges and Park land Dedication; coordination of planning responsibilities; Site Plan authority; natural heritage responsibilities; and cultural heritage.
- Staff have identified a development charge (DC) revenue loss of at least \$40 million over the next 10 years due to changes advanced through Bill 23.
- Staff have identified a park land reduction of at least 50%, and up to 85% in high density type developments. Bill 23 has the potential to reduce anticipated cash-in-lieu of park land by approximately \$10 to \$17 million annually. Additionally, park conveyances are appealable to the Ontario Land Tribunal (OLT) giving the OLT the authority to require the City to accept encumbered, leased, or strata lands as public park land.
- It would require a property tax increase of 10% or more to fund the losses to the community associated with Bill 23.
- Staff are continuing to monitor budget implications of Bill 23 as part of the 2024 and subsequent budget processes. Additionally, through ongoing process improvement discussions, staff will

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continue to assess necessary changes to the City's site plan review process, the cultural heritage implementation and protection workplan, as well as the City's policy planning work plan and deliverables.

- This report supports the delivery of core services.

### **BACKGROUND:**

On October 25, 2022 the Province tabled Bill 23, More Homes Built Faster Act, for comment. The original commenting period for some ERO postings was planned to end on November 24, 2022, but was extended to December 9, 2022. However, Bill 23 received Royal Assent on November 28, 2022, prior to the comment period closing. This report provides an overview of Bill 23 and other related Environmental Registry of Ontario (ERO) postings and staff's comment and questions submitted to the Province on November 23, 2022 (Attachment A). There were additional ERO postings made at the same time as those mentioned above (e.g., changes to the greenbelt) which are not applicable to lands within the City of Kitchener and as such have not been commented on by staff. An additional two ERO postings remain open for comment related to "Conserving Ontario's Natural Heritage" and "Review of A Place to Grow and Provincial Policy Statement". These postings are not tied to Bill 23. Staff continues to review these postings and will provide technical comments prior to the closing of comments on December 30, 2022.

### **REPORT:**

On October 25, 2022 the Province tabled Bill 23, More Homes Built Faster Act, for comment. Bill 23 received Royal Assent on November 28, 2022 and amends the following acts:

- Development Charges Act, 1997 – This Act allows municipalities to pass by-laws to collect money to pay for certain increased capital costs needed as a result of growth.
- Planning Act, 1990 – This act sets out rules of land use planning and describes how land use may be controlled and who may control land.
- Ontario Land Tribunal Act, 2021 – This Act sets out the rules and procedures of the Provincial appeal body, the Ontario Land Tribunal (OLT). The OLT hears appeals on a variety of matters including land use matters.
- Conservation Authorities Act, 1990 – This Act establishes conservation authorities and their ability to delivery programs and services that further the conservation, restoration, development, and management of natural resources in watersheds.
- Ontario Heritage Act, 1990 – This Act provides the framework for the identification and protection of cultural heritage resources and archaeological resources. The Act also gives the province and municipalities powers to identify and protect properties and areas of cultural heritage value or interest.

Additionally, a series of companion postings were made to the ERO on October 25 amending existing regulations and guidelines and proposing a new regulation. These include:

- New regulation for Development for the Protection of People and Property from Natural Hazards in Ontario – This regulation proposes to govern activities that require permits under the Conservation Authorities Act suggesting that permits focus on flooding and other natural hazards and the protection of people and property.
- Updates to the Additional Residential Units Regulation – This regulation implements additional residential units (including tiny homes) provisions of the Planning Act.
- Updates to the Inclusionary Zoning Regulation – This regulation implements inclusionary zoning provisions of the Planning Act.
- Updates to the Ontario Wetland Evaluation System (OWES) – The OWES is the Provincial procedure that is used to determine significant wetlands and their boundaries.

Attachment A is a fulsome summary of the changes to the Acts and regulations outline above as well as staff's submission to the Province on the same. Staff's submission is the result of a collaborative review of Bill 23 by staff from across the corporation including Legal Services; Financial

Planning and Reporting; Building; Engineering; Planning; Parks and Cemeteries; and Sanitary and Stormwater Utilities. The final submission was provided through the relevant ERO postings on November 23.

Kitchener continues to be a leader in Ontario and has already undertaken some of the work that Bill 23 seeks to achieve:

- The City has prioritized continuous improvement through the Development Services Review (DSR) which resulted in the creation of a customer-informed workplan that included 18 lean improvement projects known as Kaizens involving over 111 staff. Additionally, projects are underway to implement recommendations from the provincially funded 2021 KPMG report on Digital Transformation as well as through Streamlining Development Approvals provincial funding awarded earlier this year to continue to refine our processes. Staff continue to explore opportunities for process improvements and streamlining the development approvals process as part of the implementation of Bill 109.
- Kitchener Council recently approved a \$2 million fund to pay development charges for affordable housing and in August 2022 through Council's approval of a parkland dedication bylaw, exempted parkland dedication requirements for affordable housing. Bill 23 makes affordable housing projects exempt from development charges and parkland dedication.
- In 2021, Kitchener was one of the first municipalities in Ontario to update its zoning by-law to allow for additional dwelling units (tiny houses) on over 25,000 lots. To date Kitchener has received 37 applications for additional dwelling units with some already occupied.

Staff outlined several areas of concern and proposed questions to the Province through the ERO submission (Attachment A). These are:

### **Development Charge Framework**

Bill 23 includes changes in development charge (DC) eligible items, effective November 28, such as no longer being able to fund growth related studies and land acquisition. **Under Bill 23 staff have estimated a DC revenue loss totaling at least \$40 million over the next 10 years.** This includes:

- \$14.6 million due to growth related studies being removed as a DC eligible service
- \$7.65 million due to land acquisitions being removed as a DC eligible cost
- \$17M due to new DC rates being phased-in over multiple years

Additional DC revenue losses will also occur but cannot be calculated at this time. The two additional areas resulting in DC revenue loss relate to:

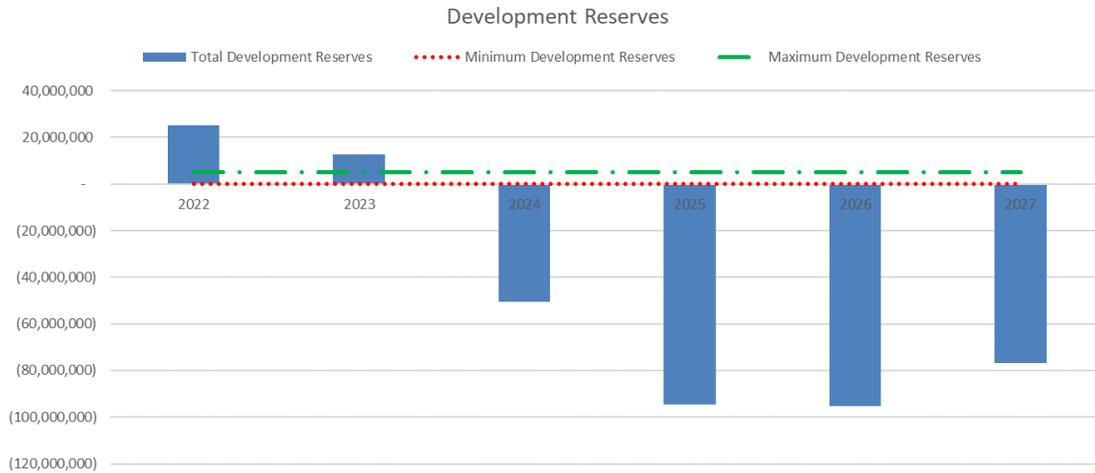
- Attainable housing being exempt from DCs (no definition of attainable housing provided)
- DC discounts for purpose-built rental housing (will require detailed analysis of forecasted construction starts based on typology)

These changes will hamper the City's ability to supply infrastructure in a timely and coordinated manner to support growth. In recent years the City's DC reserve levels have increased (projected balance of \$25M at the end of 2022), as it saves up for significant planned growth-related capital expenses in the near future. Upcoming DC expenses in the near future include:

- \$40M for an indoor aquatic facility (2023-2025)
- \$39M for an indoor turf field (2023-2025)
- \$20M for Upper Hidden Valley Sewage Pumping Station (2023-2024)
- \$18M for Strasburg Road South & Watermain (2023-2025)
- \$15M for an additional fire hall (2023-2025)

These major expenses (in addition to smaller items that make up the entirety of the DC funded capital program) are already projected to drive the DC reserve into deficit as early as 2024 and remain there until 2032. The graph below shows the projected balance of the DC reserve turning from a surplus position to a deficit position over the next five years before any impacts from Bill 23.

## Development Charges Reserve Fund Projected Yearend Balance (2022-2027)



**Further reductions to the City’s DC revenue stream will extend the time the DC reserve remain in deficit or more likely cause the City to delay the delivery of important growth-related infrastructure projects. Kitchener does not have surplus funds in the DC reserve fund that are not allocated to a future project.**

### Parkland Dedication Framework

On August 22, 2022, City of Kitchener Council approved the updated Parks Strategic Plan “Spaces”, and alongside it adopted two updated documents relating to Park Dedication – The Park Dedication By-Law and Council Policy. Spaces (2022) establishes the target local park provision at 10 square meters of park space per person, linked directly to the current average provision and maximizing park dedication contributions under the Planning Act.

Under Bill 23, all types of park dedication will be reduced by 50% and reductions could be as high as 85% for higher density developments. This change effectively halves the alternative rates in the Planning Act, resulting in a minimum 50% reduction of park land in all future development. The result is a reduction in total park dedication equivalent to 6.7 square meters per person in new community development (i.e., subdivisions) and 4 square meters per person in established communities (i.e., site plan development).

Further reductions are levied onto park dedication through the use of a land area cap. Under Bill 23, the City can now take park land up to 10% of the land for developments less than 5 hectares and 15% for developments greater than 5 hectares. The cap does not factor into new community developments maintaining the 6.7 square meter per person average expected park land provision. The cap at the highest density ranges in existing communities will reduce park land by up to 85% and provide near zero park land provisions at the highest density range.

**Direct cash-in-lieu of parkland revenue loss is anticipated between \$10M - \$17M annually, with initial longer term revenue loss estimates of between \$200M-\$340M over 20 years.**

**The result will be park land being provided at a substantially reduced provision rates relative to the city’s current average, or park land that is relegated to otherwise undevelopable lands if available at all, particularly in critical needs communities.**

Bill 23 also proposes a system in which developers have the means to propose encumbered, leased, or strata portions of their development. If the City does not accept these lands as park land, the decision is appealable to the Ontario Land Tribunal (OLT) by the developer. The OLT has the

authority to require the municipality to accept these lands as park land, regardless of any by-law or policy in place. The City maintains its position that strata parks, privately owned public spaces (POPS) or leased properties, are not equivalent to publicly owned park property. It has been demonstrated across North America that privately owned public spaces are not maintained consistently or as equitably compared to public parks. The proposal of potentially dozens of fractured, undesirable park spaces will continue to reduce overall provisions that are being reduced by up to 85% by this Bill. While the provision is a concern, the ability of the OLT to mandate the taking of lands that are categorically unsuitable as park land has potential long-term implications to the financial health of Kitchener's parks, and its ability to provide suitable open spaces. The quantity, quality, and even public nature of parks in Kitchener and Ontario will be negatively impacted by this proposed change.

The changes within Bill 23 outlined above will limit Kitchener's ability to build new parks and park service levels are expected to decline significantly as the City continues to grow. This is particularly problematic in intensification areas where smaller units are being built and residents will increasingly rely on public amenity space as part of their quality of life. As Kitchener's parkland dedication bylaw has been appealed and is proceeding through the Ontario Land Tribunal process, staff are seeking clarification from the Province on how Bill 23 changes are to be implemented given the lack of transition clauses in the legislation.

### **Regional Planning Authorities**

Bill 23 removes planning responsibilities from select upper-tier municipalities including the Region of Waterloo. These changes are not yet in effect. Additionally, on November 16 the Province announced that provincial facilitators will be appointed to work with select regional governments, including the Region of Waterloo and lower-tier governments within the Region, to assess the best mix of roles and responsibilities between upper and lower-tier governments. Staff see merit in a continued coordinated approach to certain aspects that are currently within the Region's planning jurisdiction. Coordination of growth in geographic areas with shared interests and infrastructure, like groundwater/sourcewater protection, wastewater and water treatment, natural heritage, and transit is beneficial. Coordination will assist with continuing to balance increasing housing supply while maintaining agricultural lands for needed food supply and protecting and conserving lands that are an integral part of our watershed and natural heritage system that cross municipal boundaries.

### **Site Plan Exemption**

Bill 23 excludes buildings of 10 units or less from site plan control. Further, Bill 23 excludes exterior design matters including character, scale, appearance, and design features. Excluding these types of developments and matters from site plan control has implications on staff's ability to review and mitigate matters related to parking lots, grading (property drainage), building design and appearance, and new servicing. Staff has successfully worked with applicants through its site plan process to improve site design and eliminate off-site impacts. Staff are continuing to understand the implications of this change and may need to implement new Building Permit review processes in early 2023.

### **Natural heritage system review/evaluation jurisdiction**

Bill 23 limits the role of the GRCA to matters related to natural hazards and will no longer permit memorandum of understandings (MOUs) for services. Kitchener works in partnership with the Region of Waterloo and GRCA on matters related to natural hazards and natural heritage to ensure a consistent streamlined approach to conservation, enhancement, and restoration. Bill 23 presents challenges in ensuring a cross municipal, consistent approach to the conservation, protection, and restoration of natural heritage systems.

### **Cultural heritage register and designation**

Among the changes within Bill 23 are changes to the timing of the review and addition of properties to heritage registers. This change requires the evaluation and designation process to be complete

for all cultural heritage resources on Kitchener’s register within a 2-year timeframe which will be challenging to achieve.

**Ontario Land Tribunal**

Changes introduced to the Ontario land Tribunal Act through Bill 23 include, among other things, the ability for the Ontario Land Tribunal (OLT) to order an unsuccessful party to pay a successful party’s costs. Currently, costs are rarely awarded by the OLT. This change, combined with development application timeline changes introduced earlier this year through Bill 109 will have the effect of putting pressure on approval authorities to make quick decisions and to resolve matters outside of the OLT.

Staff are continuing to monitor and assess the implications of the implementation of Bill 23. Budget and resource implications will be considered as part of the 2024 and subsequent budget processes.

**Bill 109, More Homes for Everyone Act, 2022**

On November 20, 2022, Minister Steve Clark indicated that the Provincial government will introduce legislation that, if passed, would delay the implementation of development application refund requirements set out in Bill 109 by six months, from January 1, 2023 to July 1, 2023. Staff will continue to monitor for this legislation.

**STRATEGIC PLAN ALIGNMENT:**

This report supports the delivery of core services.

**FINANCIAL IMPLICATIONS:**

The City’s current DC bylaw was expected to fund approximately \$390M in growth related costs over a 10-year timeframe. The estimated impacts of Bill 23 on DC revenues over the next 10 years is at least a \$40M loss (over 10% of projected revenues). These impacts are summarized in the table below. Additional DC revenue losses are possible as staff continues to understand how Bill 23 is intended to be implemented.

DC Act Changes	Financial Impact (Preliminary)
1. Phasing of DC rates	\$17M
2. Study Related Costs	\$15M
3. Land Acquisition Costs	\$8M
4. Exemptions of DCs for "attainable" housing	Not Calculated
5. Discount for purpose built rental units	Not Calculated
<b>Total</b>	<b>\$40M</b>
Notes:	
1. Full DC rates to be phased in over 5 years (80% yr 1, 85% yr 2, 90% yr 3, 95% yr 4)	
2. Growth related studies have been eliminated as an eligible DC service	
3. Land acquisition costs may no longer be eligible to be funded by DCs	
4. DC exemptions for "attainable" housing (attainable has not been defined)	
5. Discounts to be provided for purpose built units, with higher discounts for larger units	

In addition, parkland dedication (land) and cash-in-lieu contributions will be reduced by at least 50% with current anticipated cash-in-lieu loses estimated at approximately \$10 to \$17M annually. The City’s initial estimates due to the change to park land funding as part of Bill 23 is a loss of revenue between \$200M-\$340M over 20 years.

To illustrate the impact of these changes. At the low end, the impact of the reduction to development charges and cash-in-lieu of parkland is \$14M annually. A 1% increase to the City’s tax rate

generates \$1.4M. Therefore, it would require a property tax increase of 10% or more to fund the losses to the community associated with Bill 23.

**COMMUNITY ENGAGEMENT:**

INFORM – This report has been posted to the City’s website with the agenda in advance of the council / committee meeting.

**PREVIOUS REPORTS/AUTHORITIES:**

- Development Charges Act, 1997
- Planning Act, 1990
- Ontario Land Tribunal Act, 2021
- Conservation Authorities Act, 1990
- Ontario Heritage Act, 1990

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Denise McGoldrick, General Manager Infrastructure Services  
Justin Readman, General Manager Development Services  
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**ATTACHMENTS:** Attachment A – City of Kitchener Comments on Bill 23 More Homes Built Faster Act and Related October 25, 2022 ERO Postings