

Bill 257 combines broadband with MZO changes – *Planning Act* amendments to further expand the Minister Zoning Order powers

March 5, 2021

On March 4, 2021, the Ministry of Infrastructure presented Bill 257 which proposed amendments to the *Planning Act*. Schedule 3 of Bill 257, the *Supporting Broadband and Infrastructure Expansion Act* (the Bill), will provide the Minister of Municipal Affairs and Housing the ability to make Minister Zoning Orders without having to be consistent with the policies in the Provincial Policy Statement - so long as the lands are not located within the Greenbelt Area.

Minister Zoning Orders

The proposed amendments clarify that the existing Minister Zoning Order tool does not need to be consistent with the Provincial Policy Statement pursuant to section 3(5)(a) of the *Planning Act*.

The proposed amendments mean that section 3(5)(a), which requires that decisions of the Minister be consistent with the Provincial Policy Statement (or other policy statements), does not apply and is deemed to never have applied to Minister Zoning Orders. As such, the proposed changes to the *Planning Act* would allow projects that may have otherwise been prohibited by the Provincial Policy Statement, to now have another path forward. The proposed amendments apply retroactively, meaning that any past Minister Zoning Order issued by the Minister of Municipal Affairs and Housing will not be required to be consistent with the Provincial Policy Statement. The proposed amendments clarify that despite the exemption, the Provincial Policy Statement (or other policy statements) do apply and have always applied to Minister Zoning Orders for lands that are located within the Greenbelt.

Building Broadband Faster Act and access to electricity and municipal infrastructure

Other provisions of the Bill include amendments to legislation respecting the delivery of broadband projects of provincial significance and the development of, use of, or access to electricity infrastructure that is wholly or partly for the purpose other than the generation, transmission, distribution, consumption, sale, or demand management of electricity associated with that objective.

The purpose of the legislation, as described, is to expedite the delivery of designated broadband projects by streamlining processes to remove barriers and enhance co-ordination between proponents of broadband projects, municipalities and utilities. Broadband projects will be designated by regulation. The provisions of the Bill target access to the property of municipalities and to the property of electricity distributors and transmitters. In the case of the latter, this would most often relate to hydro poles. In the case of municipalities, it is very broad and could impact any municipal real property or building.

Electricity distributors and transmitters will be required to complete work determined necessary by the Minister for the

purposes of deployment of a designated broadband project. Negotiations between electricity distributors and transmitters, and broadband proponents regarding timing and costs of the work required, will be subject to timelines and requirements that can be enforced by the courts or by Minister's order.

Municipalities are already subject to federal telecommunications legislation that requires them to allow telecommunications infrastructure in municipal rights-of-way and the Bill will provide the Minister with authority to determine that a designated broadband project can have access to not only municipal rights of way, but also municipal real property, infrastructure and municipal services related to the infrastructure. A municipality that receives a Minister's notice to provide access must negotiate terms with a broadband proponent, and where terms cannot be agreed to, the Minister retains broad powers to stipulate the terms that a municipality must then comply with. If compensation cannot be agreed to, the final arbiter shall be the Local Property Appeal Tribunal (LPAT).

It also addresses delay related to obtaining utility locates. When infrastructure related to a designated broadband project is to be placed underground, the legislation imposes obligations on Ontario One Call, established under the *Ontario Underground Infrastructure Notification System Act, 2012* to carry out the necessary utility locate work within ten business days, failing which the Minister may allow another party to do the work and the broadband proponent to seek compensation from Ontario One Call.

Dentons will continue to assess the full impact of the Bill, and the Province's agenda on moving this legislation forward. Please watch for future Alerts. If you have any questions about how this relates to you or your business, please contact Katarzyna Sliwa, Mary Ellen Bench or any member of our Municipal Planning, Land Use and Development Law group.

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